HOUSE OF LORDS

Library Note

Small Business, Enterprise and Employment Bill
HL Bill 57 of session 2014–15

The Small Business, Enterprise and Employment Bill is wide-ranging in its scope, containing measures to improve access to finance for small businesses and reduce regulatory requirements; open up public sector procurement further; introduce a pubs code and adjudicator; enhance transparency in company ownership; strengthen rules for disqualification of directors; reform insolvency laws; and introduce a number of reforms to employment law, including banning exclusivity in zero-hours contracts.

The Bill received broad support from MPs during its passage through the House of Commons. A number of its provisions, particularly those relating to pubs, the national minimum wage and zero-hours contracts, have proven more contentious. Amendments and new clauses were tabled to each part of the Bill and were debated at public bill committee and report stage. Amendments were agreed to. The most noteworthy of these changes followed a government defeat at report stage on Government proposals to introduce a pubs code. A cross-party amendment, which sought to include a 'market rent only' option for tied pub tenants, was added to the Bill following a division, in which MPs voted 284 to 259 to accept the amendment.

This Library Note provides background reading ahead of the Bill's second reading in the House of Lords on 2 December 2014. The Bill was formally announced in the Queen's Speech in June 2014. Reactions to the announcement are provided in section 1 of the Note. Section 2 provides an overview of the measures found in the Bill. The remainder of the Note summarises the Bill's passage through the House of Commons: section 3 provides a selection of the contributions made by MPs at second reading and section 4 highlights how the Bill was amended at public bill committee stage. The key debates and divisions held on the Bill at report stage are summarised in section 5. The Note concludes with a short summary of the debate held at third reading.

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28 November 2014
LLN 2014/038

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1. Announcement of the Bill

In June 2014, the Queen's Speech contained details of the Government's legislative plan for the 2014–15 session, the final session before the general election in May 2015. One of the bills announced, the Small Business, Enterprise and Employment Bill, would "help make the United Kingdom the most attractive place to start, finance and grow a business".[1] In terms of the measures it would contain, the speech said:

> The Bill will support small businesses by cutting bureaucracy and enabling them to access finance.
>
> New legislation will require Ministers to set and report on a deregulation target for each Parliament. The legislation will also reduce delays in employment tribunals, improve the fairness of contracts for low-paid workers and establish a public register of company beneficial ownership. Legislation will be introduced to provide for a new statutory code and an adjudicator to increase fairness for public house tenants.
>
> Legislation will impose higher penalties on employers who fail to pay their staff the minimum wage. Measures will be brought forward to limit excessive redundancy payments across the public sector.[2]

In a joint statement in support of the announcement, David Cameron, the Prime Minister, and Nick Clegg, the Deputy Prime Minister, explained that the Small Business, Enterprise and Employment Bill would:

> […] back entrepreneurs who run our small businesses—the backbone of our economy—and those who are looking for work. It will crack down on costly tribunal delays, set a deregulation target for each Parliament and help businesses get credit from banks, ensuring they can expand and create jobs. Low earners will be protected as employers face tougher penalties for not paying the National Minimum Wage and we will crack down on abuse in zero-hours contracts. The Bill will also ensure that pub landlords receive a fair deal through the introduction of a statutory code and an adjudicator.[3]

Reaction to Announcement

The announcement of the Bill was met with the broad support of the business community. On behalf of the Confederation of British Industry (CBI), Katja Hall, its deputy director-general, gave the Bill her support, stating that:

> Successfully getting credit to our small and medium-sized businesses will underpin the recovery, so we support action to match firms with providers and there is merit in formalising and extending existing referral arrangements.
>
> We also back measures that improve access to credit data, which should help facilitate better decisions by providers. Changes to make it easier for small and medium-sized

[1] HL *Hansard*, 4 June 2014, col 2.
[2] ibid.
[3] Cabinet Office, *The Queen's Speech 2014*, 4 June 2014, p 5.

> businesses to tender for public sector contracts, including a one-off registration process are much-needed. Growing businesses rely on cash flow and are too often hampered by late payers, so we back a 'comply or explain' system for payment terms of more than 60 days.[4]

John Longworth, director general of the British Chambers of Commerce (BCC) added his support, observing that:

> Simplifying life for small or growing businesses should be an objective shared across all political parties. There are many measures in the Small Business, Enterprise and Employment Bill that will receive support if they work in practice—including faster company registration, improvements to public sector payment, and measures to support business cash flow. [5]

The Federation of Small Businesses (FSB) welcomed what it called a "landmark" bill, describing it as "a significant piece of legislation that is, for the first time, specifically designed to address the needs of small businesses".[6] The FSB also noted the inclusion of measures to address the problems associated with late payments, which it said caused "serious cashflow problems for businesses and to reduce the impact of costly and burdensome regulation on small firms".[7]

British Banking Association chief executive, Anthony Browne, also the welcomed measures for small businesses in the Bill:

> It's great to see a Bill devoted entirely to supporting smaller businesses: the first put forward by any government. This could give a shot in the arm for entrepreneurs up and down the land.
>
> Banks fully support moves to make it easier for smaller firms to find the finance they need to invest and grow. The steps outlined today to encourage credit data sharing will also help businesses hoping to export.
>
> Meanwhile, the Government has sent a clear commitment that it wants to take a tougher stance against financial crime by updating current legislation. That's not just in the interests of banks and our customers, but the whole of society.[8]

The proposals relating to enforcement of the national minimum wage and banning exclusivity in zero-hours contracts also drew support from the business community. The CBI said that:

> All employers should pay the National Minimum Wage, so we would support the introduction of an increased fine for those who intentionally do not, and strong enforcement to ensure that the law is respected. The UK's flexible labour market is a strength of our economy, keeping the number of people out of work down and boosting employment—it should be protected. A ban on exclusivity clauses in zero-hours contracts would be a proportionate response to some of the issues that have

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[4] Confederation of British Industry, 'CBI Responds to Queen's Speech', 4 June 2014.
[5] British Chambers of Commerce, 'Queen's Speech: New Laws Must Translate into Actions that Support Enterprise', 4 June 2014.
[6] Federation of Small Businesses, 'First Ever Small Business Bill Set to Benefit FSB Members, in Queen's Speech', 4 June 2014.
[7] ibid.
[8] British Banking Association, 'BBA Response to the Queen's Speech', 4 June 2014.

> been highlighted, as it focuses on poor practice rather than demonising flexible work in general.[9]

John Longworth, for the BCC, concurred, but added the detail of the proposals was important. He observed:

> The vast majority of law-abiding businesses will also favour a clampdown on rogue employers who do not pay the National Minimum Wage, and on company directors who act unscrupulously. The key here will be to ensure that enforcement focuses on those businesses and individuals that knowingly and wilfully flout the law. Any measures that tie up honest businesses in new bureaucracy would ultimately be self-defeating.[10]

In contrast, the measures met with a cautious reaction from Frances O'Grady, general secretary of the Trades Union Congress (TUC). She believed the Bill's proposals did not go far enough to protect vulnerable workers:

> Casualised work offering low pay and poor working conditions was a feature of the recession that has continued to grow even as the economy has started to recover. The weak proposals on zero-hours contracts shows the Government realises that casualisation is a problem, but lacks the courage to tackle exploitative working practices properly. The tougher penalties for employers caught dodging the minimum wage are a welcome move that unions have long called for. But unless the Government matches these new powers with greater resources to catch minimum wage crooks in the first place, rogue employers will continue to underpay staff without fear of being caught.[11]

Ian Brinkley, of the Work Foundation, was also uncertain about the proposed ban on exclusivity in zero-hours contracts. He argued:

> […] the evidence base on the use of exclusivity contracts across the workforce as a whole is not robust and for zero-hours contracts it is almost non-existent. Nor had the results of the BIS [Department for Business, Innovation and Skills] consultation on exclusivity and zero-hours been published at the time of writing, which might shed more insights into the use of exclusive contracts and therefore how many people might be affected and whether there are any downsides. However, it is hard to argue that in principle an employer who refuses to supply work under a zero-hours agreement should not be able to stop that individual working for another employer.[12]

The Campaign for Real Ale (CAMRA) described itself as "delighted" with the Bill's measures for a statutory code and adjudicator for public house tenants. Tom Stainer, head of communications for CAMRA, argued that:

> With 28 pubs closing a week it is vital that publicans, who are on the frontline of keeping our valued community pubs open, are given protection from heavy handed business practices from the big pubcos.

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[9] Confederation of British Industry, 'CBI Responds to Queen's Speech', 4 June 2014.
[10] British Chambers of Commerce, 'Queen's Speech: New Laws Must Translate into Actions that Support Enterprise', 4 June 2014.
[11] TUC, 'Government is Failing to Tackle the Growing Casualisation of Work', 4 June 2014.
[12] Work Foundation, 'Comment on the Queen's Speech', 4 June 2014. The BIS consultation response was published in August 2014: *Zero Hours Employment Contracts: Banning Exclusivity Clauses—Tackling Avoidance*, August 2014.

> Publicans could see the price they pay for beer fall by up to 60 pence a pint if the adjudicator forces the big pubcos to match open market prices. A 60 pence a pint saving would be a huge boost in the battle to keep pubs open and could lead to cheaper pub prices for customers.[13]

Mr Stainer urged the Government to "go further" with its reforms "by introducing guest beer and market rent only options for tied publicans".[14] The British Beer and Pub Association (BBPA), which represents a large number of Britain's brewers and pub companies, warned against the Bill being amended further in parliament. Brigid Simmonds, its chief executive, said that it was "important for the health of the pub industry that this legislation is implemented as currently proposed and calls for free-of-tie options remain unheeded".[15] She argued:

> Proponents of legislating for landlords to be forced to offer a mandatory free-of-tie option, fail to see that reducing the commercial buying power of the pub company would destroy the model and threaten the closure of vast numbers of pubs throughout the country with thousands of vital jobs lost—as acknowledged by the Government's own economic analysis. Why would the pub company invest capital in a business if they did not know that at the end of five years they would still be making a reasonable return from their drinks tie? Regional breweries, often major local employers would be under serious threat of closure without the guaranteed route to market via their tied pubs.

Ms Simmonds concluded: "light touch legislation is one thing, but at the end of the day, pub companies need to be able to support small individual tenants who with very little capital are able to run their own business. Anything which dilutes this support would be very unwelcome and destabilising for the pub sector".[16]

2. Overview of the Bill

The Small Business, Enterprise and Employment Bill was introduced in the House of Commons on 25 June 2014.[17] A government press release in support of its introduction stated that the Bill:

> […] builds on the government's commitment to help make the UK the most attractive place to start, finance and grow a business.
>
> It will ensure that businesses that play by the rules cannot be undercut by those who break the law and that Britain continues to be recognised globally as a trusted and fair place to do business.[18]

During its passage through the House of Commons, the Bill was amended at public bill committee and again at report stage (see sections 4 and 5 of this Note). Following the passing

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[13] CAMRA, 'Press Statement: Tough New Adjudicator to Protect Over Half of Britain's Pubs', 3 June 2014.
[14] ibid.
[15] BBPA, 'New Small Business, Enterprise and Employment Bill Confirms Statutory Code for Pub Companies', 4 June 2014.
[16] ibid.
[17] HC Bill 11 of session 2014–15.
[18] Department for Business, Innovation and Skills, 'Small Businesses at the Heart of the Legislative Agenda', 25 June 2014.

of the Bill at third reading by the House of Commons, the Bill was introduced in the House of Lords on 19 November.[19]

What the Bill Proposes

The Bill, as introduced in the House of Lords[20], is divided into twelve parts covering a wide range of issues. These include access to finance for small businesses; regulatory reform; public sector procurement; pubs; childcare and schools; education evaluation; company transparency; company filing requirements; directors' disqualifications; insolvency; and employment. Part 12 sets out information about consequential amendments, repeals and revocations, as well as providing the financial provisions and territorial extent. The Bill extends mainly to England and Wales, but some aspects also apply to Northern Ireland and Scotland.[21]

As introduced to the House of Lords, the Bill contains 158 clauses and eleven schedules. Below is an overview of what the Bill proposes in each part.

Access to Finance (Part 1: Clauses 1–14)

Part 1 contains a number of measures that seek to improve access to finance for small businesses. These proposals, in part, follow the results of a government consultation held in December 2013, *Building a Responsible Payment Culture*, and the outcome of the subsequent government response, which explored ways to prevent or discourage companies from paying suppliers late or having unreasonably long term payment terms.[22] The Government has stated that measures in part 1 would:

- improve small businesses' access to finance by removing legal barriers to invoice finance;
- incentivise businesses to improve their payment policies and practices;
- encourage greater competition in banking by improving the ability of challenger banks and alternative finance providers to conduct accurate risk assessments and making it easier for small and medium sized businesses to seek a loan from a lender other than their bank;
- enable UKEF [UK Export Finance] to better support UK businesses engaged, or wishing to become engaged, in exporting or in an exporting supply chain;
- provide for an innovation called cheque imaging that will make paying in cheques quicker and easier;
- ensure that the Payment Systems Regulator's powers on access are aligned with the requirements of the Payment Services Directive and the Settlement Finality Directive.[23]

Regulatory Reform (Part 2: Clauses 15–37)

Part 2 of the Bill concerns regulatory reform. In April 2011, David Cameron, the Prime Minister, stated that he wanted his administration "to be the first Government in modern

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[19] HL *Hansard*, 19 November 2014, col 534.
[20] HL Bill 57 of session 2014–15.
[21] Cabinet Office, *The Queen's Speech 2014*, 4 June 2014, p 18.
[22] BIS, *Building a Responsible Payment Culture: A Government Response*, May 2014.
[23] BIS, *Small Business, Enterprise and Employment Bill: Summary*, June 2014, pp 1–2.

history to leave office having reduced the overall burden of regulation, rather than increasing it".[24] A wider-ranging set of deregulatory measures are currently before Parliament in the Deregulation Bill,[25] which was carried over from the previous session. These are currently being considered by the House of Lords.[26] Those relating to regulation in the Small Business, Enterprise and Employment Bill aim to:

- commit the government to creating a more streamlined process to incorporate a new company and register for tax purposes;
- review the business appeals procedures via the creation of a Small Business Appeals Champion, ensuring that the complaints and appeals procedures in non-economic regulators are user-friendly for business and that businesses have an easy pathway to challenge decisions from non-economic regulators;
- entrench in law the setting of a deregulation target—similar to the "One-in, Two-out" approach—and transparent reporting of new regulatory burdens on business;
- ensure that all new regulations affecting business are reviewed regularly and that regulations are effective and necessary and not subjecting businesses to unnecessary burdens;
- create statutory definitions for the terms "small business" and "micro business";
- allow the CMA [Competition and Markets Authority], at its discretion, to make recommendations on the impact on competition of legislative proposals, which it must then publish; and
- introduce a new power for the Secretary of State to introduce an exemption from liability for bodies concerned with accounting standards to take effect without it being conditional on the awarding of a grant to a body.[27]

Public Sector Procurement (Part 3: Clauses 38–9)

Part 3 contains two clauses about public sector procurement, which the Government wishes to open up to small businesses. In May 2013, Lord Young of Graffham, in his report *Growing Your Business: a Report on Growing Micro Businesses*, recommended the development of a set of 'single market principles' that would be applied to all public sector procurement. Between September and October 2013, the Government consulted on the principles that small businesses should expect when doing business with a public sector body.[28] The government response, issued in December 2013, set out the next steps.[29]

Clause 38 relates to regulations about procurement, which would:

> Provide Government with the ability to implement a number of measures relating to public procurement in the future, as necessary. This will enable Government to remove barriers for small businesses and make procurement practices across the entire public sector more streamlined and efficient.

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[24] Gov.uk, 'Letter from the Prime Minister on Cutting Red Tape', 7 April 2011.
[25] HL Bill 33 of session 2014–15.
[26] See House of Lords Library, *Deregulation Bill (HL Bill 33 of 2014–15)*, 2 July 2014, LLN 2014/024.
[27] ibid, p 2.
[28] HM Government, *Making Public Sector Procurement More Accessible to SMEs*, September 2013.
[29] HM Government, *Analysis of Responses to the Consultation on Making Public Sector Procurement More Accessible to Small and Medium Sized Enterprises*, December 2013.

> The overarching objective is to create a simple and consistent approach to procurement across all public sector authorities so that small businesses can gain better and more direct access to this market.[30]

Clause 39 concerns investigation of procurement functions. This would:

> Provide the Minister for the Cabinet Office or the Secretary of State with a general power to investigate procurement processes and practices carried out by contracting authorities in scope, who are not wholly or mainly undertaking devolved functions.[31]

The Cabinet Office ran a consultation between October and November 2014 on the regulation-making powers in part 3. This gave more information about the Government's thinking in how it would use the powers. It stated:

> The clause in the SBEE Bill will, subject to Parliamentary procedure, give the Government the ability to implement further measures relating to public procurement in the future. It will provide the Government with the ability to make provision in secondary legislation imposing duties on procuring authorities in relation to procurement.
>
> The clause also enables the Government to issue guidance relating to the regulations, to which procuring authorities will be obliged to have regard. The Government is now consulting on how the power could in particular be used to require procuring authorities to:
>
> - run an efficient and timely procurement process;
> - make available, free of charge, information or documents, or processes necessary for any potential supplier to bid for a contract opportunity; and
> - accept electronic invoices.[32]

Pubs Code and Adjudicator (Part 4: Clauses 40–70)

Part 4 provides for the establishment of a pubs code and an adjudicator, which the Government has said would "govern the relationship between pub-owning companies and their tied tenants, bringing fairness to the sole traders and small businesses that run approximately 20,000 tied pubs across England and Wales".[33] Tied tenants refer to those who manage pubs that are owned by pub companies. In this arrangement, the tenants are obliged to buy their beer direct from the pub owner in exchange for other benefits. A BIS paper described this as:

> […] a historic if unusual business model where the tenant landlord pays a lower property rent (dry-rent) to their pub company (pubco) landlord, and receives 'special commercial or financial advantages' (SCORFA), such as free satellite television or subsidised buildings insurance. In return for this, they commit to only purchase beer from the pubco, often at above market prices (where the surplus is labelled the 'wet-rent').[34]

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[30] BIS, *Small Business, Enterprise and Employment Bill: Public Sector Procurement Fact Sheets*, 2014, pp 2–3.
[31] ibid.
[32] Cabinet Office, *Small Business, Enterprise and Employment Bill: Reforms to Public Procurement*, October 2014, p 4.
[33] BIS, 'Small Businesses at the Heart of the Legislative Agenda', 25 June 2014.
[34] London Economics, *Modelling the Impact of Proposed Policies on Pubs and the Pub Sector: A Report to the Department for Business, Innovation and Skills*, December 2013, p iv.

In April 2013, the Government ran a consultation on proposals to establish a pubs code and adjudicator.[35] In the foreword, Vince Cable, Secretary of State for Business, Innovation and Skills, wrote that the Government had decided to act because:

> Although some pub companies behave well, the evidence I have received makes it clear that in too many cases tenants are being exploited and squeezed, through a combination of unfair practices, lack of transparency and a focus on short-termism at the expense of the long-term sustainability of the sector. This behaviour, especially alongside the many other challenges facing the sector, risks damaging the British pub industry, which not only consists of small businesses employing hundreds of thousands of people across the country but also contributes substantially to community spirit and cohesion.[36]

The consultation ran until June 2013. In December 2013, the Government revealed it had received 1,120 written responses and 7,038 online responses.[37] In its response to the consultation, published in June 2014, the Government confirmed that it would bring forward legislation to enact the reforms.[38] The Government has said that measures in the Bill would:

- Provide all tied tenants with increased transparency, fair treatment, the right to request a rent review if they have not had one for five years, and the right to take disputes to an independent adjudicator.
- Require pub owning companies with 500 or more tied pubs to provide a 'parallel free-of-tie rent assessment' if requested by a tenant if rent negotiations break down, enabling tenants to judge for the first time whether they are no worse off than free-of-tie tenants.[39]

The Bill was amended by MPs at report stage. Following a government defeat, the Bill now includes a 'market rent only' option for large pub-owning businesses (now clause 42 of the Bill).

Childcare and Schools (Part 5: Clauses 71–4)

Part 5 relates to childcare and schools. In January 2013, the Government published a report in regard to improving childcare provision and enhancing parental choice.[40] Following consultation on a number of options, the Government brought forward its plans in clauses 71–4. These would:

- make it easier for schools to take two-year-olds by removing the requirement to register separately with Ofsted for provision for two-year-olds. This will reduce the bureaucratic burden on schools—and has already been done for three and four-year-old provision; and
- enable multiple premises to be included in a single registration for provision of childcare, promoting a prosperous and growing childcare market which meets the needs of working families.[41]

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[35] BIS, *Pub Companies and Tenants: a Government Consultation*, April 2013.
[36] ibid, p 4.
[37] BIS, *Pub Companies and Tenants: Introduction to Consultation Responses*, December 2013.
[38] BIS, *Pub Companies and Tenants: Government Response to theConsultation*, June 2014.
[39] BIS, *Small Business, Enterprise and Employment Bill: The Pubs Code Adjudicator and the Pubs Code Fact Sheet*, June 2014, p 2.
[40] Department for Education, *More Great Childcare: Raising Quality and Giving Parents More Choice*, January 2013.
[41] BIS, *Small Business, Enterprise and Employment Bill: Summary*, June 2014, p 3.

Education Evaluation (Part 6: Clauses 75–7)

Clauses in part 6 propose measures relating to the sharing of educational data. The Government has stated that clauses 75–7 would:

> […] provide new and improved information on learning outcomes by tracking students through education into the labour market; identifying which schools and colleges provide the best routes to sustainable employment.[42]

Companies: Transparency (Part 7: Clauses 78–88)

Part 7 sets out reforms to transparency of company ownership. In July 2013, the Government published a discussion paper that set out the benefits of transparency in company ownership but also highlighted where the law was deficient in this regard and put forward some options that could be taken.[43] The Government published its response in April 2014, foreshadowing proposals in the Bill.[44]

The Government has said clauses in this part of the Bill would:

- require UK companies to keep a register of people with significant control over the company (a 'PSC register'). This will increase transparency around who ultimately owns and controls UK companies. It will help deter, identify and sanction those who hide their interest in UK companies to facilitate illegal activities. Enhanced transparency will also promote good corporate behaviour;
- abolish bearer shares, to remove an easy means of facilitating illegal activity, and ensure we are compliant with international standards. This will increase transparency around who owns and controls UK companies; and
- prohibit the use of corporate directors—one company as the director of another—with limited exceptions (to be set out in regulations). This will help counter the use of opaque arrangements involving company directors.[45]

Companies: Filing Requirements (Part 8: Clauses 89–100)

Part 8 concerns company filing requirements. Clauses in this part of the Bill would "introduce measures to simplify the current filing requirements for companies, remove duplication and complexity, and improve the accuracy and integrity of the public companies register by making it quicker and easier to remove inaccurate information".[46]

This package of reforms follows from the Company and Commercial Law Red Tape Challenge and a subsequent government consultation.[47] In its response to the consultation, the

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[42] BIS, 'Small Businesses at the Heart of the Legislative Agenda', 25 June 2014.
[43] BIS, *Transparency and Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business*, July 2013.
[44] BIS, *Transparency and Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business: Government Response*, April 2014.
[45] BIS, *Small Business, Enterprise and Employment Bill: Summary*, June 2014, p 3.
[46] ibid, p 4.
[47] BIS, *Company Filing Requirements: Red Tape Challenge*, October 2013.

Government said the reforms would "rationalise requirements for business, allowing companies to provide the most useful set of information in the most sensible way, with new requirements reducing duplication or complexity. They will also increase transparency and improve the UK's business environment".[48] The measures would:

- replace the annual return with more flexibility to confirm companies' basic information is correct and complete at any point;
- allow companies to keep certain information on the public register instead of company registers;
- provide a new a means of resolving disputes about directors' appointments;
- simplify the removal of inaccurate registered office addresses from the public register; and
- reduce the strike off period down from approx 6 months to 3 months.[49]

Directors' Disqualifications (Part 9: Clauses 101–13)

Part 9 would strengthen the current directors' disqualification rules. The clauses would:

> […] widen the matters of misconduct courts must take into account when disqualifying, including conduct in overseas companies, and measures to help creditors recoup losses resulting from director misconduct.[50]

These measures, the Government state, would have the following outcomes:

- a simplified system for reporting director misconduct;
- an increase in confidence in our director disqualification regime;
- greater transparency as to what director misconduct can lead to disqualification;
- more compensation for creditors who have suffered from director misconduct;
- an ability to disqualify persons for overseas conduct or where they have been convicted of relevant offences abroad; and
- better joining-up and more efficient working between financial regulators resulting in more effective interventions.[51]

Insolvency (Part 10: Clauses 114–43)

Proposed changes to insolvency law that require primary legislation are set out in part 10. These aim to:

> […] remove unnecessary costs and ensure effective oversight of insolvency practitioners so they deliver their services at a fair and reasonable cost that reflects the work undertaken.[52]

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[48] BIS, *Company Filing Requirements: Red Tape Challenge Government Response*, April 2014, p 5.
[49] Gov.uk, 'Consultation Outcome: Company Filing Requirements', accessed 24 November 2014.
[50] BIS, 'Small Businesses at the Heart of the Legislative Agenda', 25 June 2014.
[51] BIS, *Small Business, Enterprise and Employment Bill: Directors' Disqualification, Compensation Awards and Bankruptcy Fact Sheet*, June 2014, p 3.
[52] ibid.

Measures in part 10 include proposals to:

- Modernise the insolvency framework, through increasing creditor engagement in the insolvency process by encouraging the use of decision-making processes fit for the 21st century and removing burdens that add no value for creditors.
- Strengthen the regulatory framework for IPs [Insolvency Practioners] to deal effectively and efficiently with poor performance and abuse and provide greater confidence in the insolvency profession.
- Create a reserve power to prohibit 'pre-pack' administration sales to connected parties if certain criteria are not met, for use if non-legislative voluntary solutions do not have the desired effect.[53]

These proposals follow submissions received by the Government during the Red Tape Challenge and responses to the consultations held by the Insolvency Service.[54]

Employment (Part 11: Clauses 144–51)

Part 11 deals with a number of aspects of employment law, including whistleblowing, tribunals, national minimum wage, zero-hours contracts and public sector exit payments. Measures in part 11, the Government has said, would:

- reform whistleblowing procedures to achieve a consistent standard of best practice for handling disclosures and provide greater reassurance to the whistle-blower that action is being taken by the prescribed person and as a result increase the confidence in the actions of the prescribed person;
- deter business non-payment of employment tribunal awards by creating strong financial consequences of non-payment;
- reduce the delays in Employment Tribunals caused by frequent and short notice postponements, and addressing the costs arising from short notice postponements;
- increase the penalties imposed on employers that underpay their workers in breach of the national minimum wage legislation on a per worker basis;
- make exclusivity clauses in zero-hours contracts invalid and unenforceable so that no one is tied into a contract without any guarantee of paid work. This will enable employers and employees to benefit from the flexibility of zero-hours contracts whilst addressing abuse of these contracts; and
- recover exit payments from public sector employees that leave and re-join the same part of the public sector within a year.[55]

A number of these policies follow from government consultations. Whistleblowing was subject to a consultation in 2013 with the Government publishing its response in June 2014, the same day as the Bill was introduced to the House of Commons.[56] Zero-hours contracts were consulted on in December 2013.[57] Since the publication of the Bill, the Government has issued

[53] BIS, *Small Business, Enterprise and Employment Bill: Summary*, June 2014, p 4.
[54] Insolvency Service, *Red Tape Challenge: Changes to Insolvency Law to Reduce Unnecessary Regulation and Simplify Procedures—Consultation*, July 2013.
[55] BIS, *Small Business, Enterprise and Employment Bill: Summary*, June 2014, pp 4–5.
[56] BIS, *Whistleblowing Framework Call For Evidence: Government Response*, June 2014.
[57] BIS, *Consultation: Zero Hours Employment Contracts*, December 2013.

a further consultation on the best ways of ensuring the ban on exclusivity is not avoided by employers.[58]

Further information on the Bill's provisions, on a clause-by-clause basis, is available in the House of Commons Library research paper *Small Business, Enterprise and Employment Bill*.[59] The Government has also published a series of fact sheets on each part of the Bill, together with impact assessments and various materials in support.

3. House of Commons: Second Reading

The Bill received its second reading in the House of Commons on 16 July 2014.[60] Opening the debate, Vince Cable, Secretary of State for Business, Innovation and Skills, told MPs that the Bill had "two fundamental purposes".[61] One was "to help small businesses grow and succeed" and the second was "to ensure that the UK continues to be regarded as a trusted and fair place in which to do business". Mr Cable explained that the Bill contained various measures, but that there were four themes running through it. The first, he explained, related to employment. He said:

> We want to make changes to the legislation in a way that benefits both employees and employers to ensure that employees are not disadvantaged by unacceptable practices, be they exclusivity clauses in zero-hours contracts or underpayment of the national minimum wage.

The second theme concerned company transparency. He said that the Government's proposals would mean companies could not "conceal ownership or control and that they engage in good corporate behaviour". The third theme related to small businesses. He highlighted measures that would "help our small businesses get access to the finance they need to grow and export, compete in public sector procurement and address some of the issues around late payment". The fourth theme was regulation. The Bill intended "to support the Government's regulatory reform agenda, ensuring that ineffective, out-of-date and burdensome regulation does not hold back our businesses".[62] Taken as a package, Mr Cable argued, the Bill would "make the UK a much better place for business".[63] During his opening speech, Mr Cable announced to MPs that additional proposals may be brought before the House. These would relate to transparency and company takeovers. He said he had made "clear publicly that we need to take action in this area that may well—not certainly, but very probably—involve legislation for which this Bill would be the vehicle".[64] Mr Cable added that he was also considering whether to add proposals to the Bill relating to the enforcement of assurances given during merger talks.[65] This followed comments he had made about takeovers during an interview on the BBC's Andrew Marr Show on 13 July 2014.[66]

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[58] BIS, *Zero Hours Employment Contracts: Banning Exclusivity Clauses—Tackling Avoidance*, August 2014.
[59] House of Commons Library, *Small Business, Enterprise and Employment Bill*, 10 July 2014, RP14/29.
[60] HC *Hansard*, 16 July 2014, cols 905–73.
[61] HC *Hansard*, 16 July 2014, col 906.
[62] ibid.
[63] ibid, col 917.
[64] ibid, col 910.
[65] ibid.
[66] BBC, 'The Andrew Marr Show Interview: Vince Cable, MP Business Secretary', 13 July 2014.

Chuka Umunna, Shadow Secretary of State for Business, Innovation and Skills, said while the Opposition supported the objectives of the Bill, it would focus on the details in its scrutiny. He said:

> We are told that the Bill is designed to reduce the barriers that hamper the ability of small businesses to innovate, grow and compete, and that is seeks to pave the way for the Government to be more supportive of small business. After four years of this Government, it is about time too. We support the purported general purposes and principles of the Bill—how could one not?—but the detail is everything and we will scrutinise it.[67]

Mr Umunna was critical of the Government's economic policy which, he said, did "not resolve the underlying structural issues". He explained:

> The recovery is not what we would want it to be, and it looks a lot like the model of growth that we need to get away from. It is a business-as-usual recovery, based on a rising housing market and consumer spending; it is not the export and business investment-led recovery we were promised. Therefore, now is the time to intensify the pace of reform of the economy to build a better-balanced, sustainable economy. It should also be said that the Bill is not just about building an economy with flourishing businesses. We must remember that, if we want to be pro-business, we cannot continually beat up on the rights of the people who work in businesses.[68]

He then identified some of the elements in the Bill that his party would seek to amend. With regard to pubs, Mr Umunna said Labour would "seek to ensure that the Secretary of State gets the right to introduce the mandatory rent-only option for tied tenants in the near future".[69] He added that the Opposition was not convinced by the proposed changes to insolvency laws that would abolish a requirement to hold physical creditor meetings.[70] Mr Umunna lamented the Government's record on employment, with particular reference to its reforms to employment tribunals. He added that the Bill did not go far enough on enforcement of the national minimum wage and the exclusivity proposals for zero-hours contracts were "simply not good enough". Mr Umunna argued that the terms and conditions in such contracts needed to include an automatic right to a fixed-hours contract after a year, if an employee was working regular hours for a certain period.[71] Finally, with regard to the announcement made about takeovers, Mr Umunna said he supported the "thrust of the Secretary of State's proposal" and that he was "happy to work on it with the Secretary of State in the context of this Bill".[72]

A number of contributions followed from backbench MPs, who largely welcomed the Bill. Some highlighted areas they believed required amendment. Amongst these were Jonathan Djanogly, Conservative MP for Huntingdon, who spoke about the Bill's proposals relating to transparency in company ownership. He said he doubted it would have the effect the Government intended and expressed concerns about the implications for individual privacy.[73] Greg Mulholland, Liberal Democrat MP for Leeds North West and chair of the all-party parliamentary Save the Pub group, focussed his comments on part 4 of the Bill. Whilst welcoming the Bill, he highlighted

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[67] HC *Hansard*, 16 July 2014, col 919.
[68] ibid, col 919.
[69] ibid, col 921.
[70] ibid, col 922.
[71] ibid, col 925.
[72] ibid, col 926.
[73] ibid, cols 926–8.

what he saw as flaws in the proposals, foreshadowing the amendment he would table at report stage about introducing a market-rent only option for pub tenants.[74] Sheryll Murray, Conservative MP for South East Cornwall, also spoke to highlight the need to exclude small businesses running under 500 pubs from the regulatory changes.[75] William Bain, Labour MP for Glasgow North East, said the Bill fell short "of putting optimism back into business in Britain", citing the absence of policies to address young people and work; a lack of "substantial measures to improve access to finance"; a failure to improve access to broadband; and the lack a commitment for people regularly employed on zero-hours contracts to be guaranteed work.[76]

Following debate, the Bill was given second reading without a division. The programme motion that followed was approved by 289 votes to 127.[77]

4. House of Commons: Public Bill Committee

A public bill committee of MPs considered the Bill over sixteen sittings between 14 October and 6 November 2014. The first four sittings provided an opportunity for the committee to take evidence, including hearing from representatives working in business and the law, interested stakeholders and Ministers on behalf of the Government.

Through its consideration of the Bill, the Committee agreed a number of amendments and new clauses. The Government introduced two new clauses (now clauses 5 and 7), and an amendment, to part 1 of the Bill, that would enable the sharing of information between banks about SMEs seeking finance.[78] Amendments were also made by the Government to the Bill's clauses in part 2. Clause 33 was amended to redefine the meaning of small and micro businesses in relation to employee numbers and the size of the company's balance sheet or annual turnover.[79] The permitted content of regulations concerning this definition was also set out in a Government sponsored new clause (now clause 34). A measure to remove the current incentive for landlords to bar tenants from operating a business from their home was also added to the Bill. This now forms clause 35 of the Bill.[80]

In part 4, the Bill's proposals for a pubs code and adjudicator were also amended. Sheryll Murray, Conservative MP for South East Cornwall, successfully moved an amendment to the plans for a pubs code, which would mean it would only apply to pub companies with at least 500 tied tenants.[81] The amendment was agreed to after a division, 11 votes to 7.[82] The Government added a new clause (now clause 71) to part 5 that would support funding for free of charge child care in early years provision.[83]

A small number of minor and technical amendments were tabled by the Government to part 7.[84] These were agreed to, as was one amendment to part 8 and one to part 9.[85] In part 10,

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[74] ibid, cols 932–4.
[75] ibid, col 936.
[76] ibid, cols 943–4.
[77] ibid, col 970.
[78] House of Commons Public Bill Committee, Small Business, Enterprise and Employment Bill, *Fifth Sitting*, 21 October 2014, col 175.
[79] ibid, *Eighth Sitting*, 23 October 2014, col 263.
[80] ibid, *Sixteenth Sitting*, 6 November 2014, col 570.
[81] ibid, *Eleventh Sitting*, 30 October 2014, col 377.
[82] ibid, col 387.
[83] ibid, *Sixteenth Sitting*, 6 November 2014, col 568.
[84] ibid, *Twelfth Sitting*, 30 October 2014, cols 424–9 and col 423 respectively.
[85] ibid,.

the clauses concerning the removal of face-to-face meetings as the default way in which decisions are made in insolvency proceedings were also changed without division through a number of government amendments. This included the insertion of a new schedule (now schedule 9).[86] An Opposition amendment that would have allowed a meeting to be called by one shareholder was also added to the Bill, despite protests from the Government.[87] This was overturned by the Government at report stage.[88]

Part 11 was altered by a government amendment that sought to close a potential loophole in the proposals to ban exclusivity in zero-hours contracts. Jo Swinson, the Minister, explained that the amendment was "to ensure that courts can consider an exclusivity clause in a contract when they are trying to determine whether a contract of employment exists, even though the clause itself is unenforceable".[89]

A summary of the debates held by the Committee over the sixteen sittings, including details of all the amendments discussed, is available in the House of Commons Library research paper, *Small Business, Enterprise and Employment Bill: Committee Stage Report*.[90]

5. House of Commons: Report Stage

Report stage in the House of Commons took place over two days on 18 and 19 November 2014. A programme motion set out the order of consideration of amendments to the Bill.[91] The subsections that follow summarise the amendments that were debated by MPs, in the order in which they relate to the part of the Bill. No amendments were tabled to parts 5, 6 or 9 of the Bill. A small number of amendments to part 8, in the names of Jonathan Djanogly and David Nuttall, Conservative MP for Bury North, were tabled but not called for debate.[92]

5.1 Access to Finance (Part 1)

The Bill's provisions to improve access to finance for small businesses were subject to a number of amendments. These were debated on the first day of report stage on 18 November 2014.[93]

Toby Perkins, Shadow Minister for Business, Innovation and Skills, argued in favour of the new clauses 3 and 4, tabled by the Opposition. This returned to the issue of late payments, which was raised during deliberations by the Public Bill Committee.[94] New clause 3 sought to place duties on the Secretary of State with regard to the Prompt Payment Code, which was established in 2008 to help small businesses to get paid promptly. The clause would have required the Secretary of State to ensure companies with payment terms of more than 60 days would not be allowed to sign up to the code. Additionally, the Secretary of State would be

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[86] ibid, *Sixteenth Sitting*, 6 November 2014, col 574–96.
[87] ibid, *Thirteenth Sitting*, 4 November 2014, col 462.
[88] See section 5.6 of this Note for further information.
[89] ibid, *Sixteenth Sitting*, 6 November 2014, col 554.
[90] House of Commons Library, *Small Business, Enterprise and Employment Bill: Committee Stage Report*, 14 November 2014, RP 14/62.
[91] HC *Hansard*, 18 November 2014, col 144.
[92] House of Commons, *Tuesday 18 November 2014: Consideration of Bill—Small Business, Enterprise and Employment Bill as Amended*, accessed 24 November 2014.
[93] ibid, cols 208–38.
[94] House of Commons Public Bill Committee, Small Business, Enterprise and Employment Bill, *Fifth Sitting*, 21 October 2014, col 150.

required to write to those businesses in the FTSE 350 who had not signed the code to ask them to do so, and then publish a list of those businesses on its website. Mr Perkins told MPs that the Government had "dragged their feet" on tackling the issue of late payments and suggested the 'naming and shaming policy' the Government had advocated had "ceased to be the policy of the Government before it had ever actually become the policy of the Government".[95] He explained:

> New clause 3 would take this issue out of any Minister's hands by ensuring that the very biggest businesses would know that they would all be named and shamed publicly if they did not comply. It would also provide an opportunity for Ministers to name and praise businesses that paid on time and complied. That carrot-and-stick approach is valuable as it would ensure that businesses that played by the rules and ensured that their customers were paid on time would not be tarnished with the same brush as those that gamed the system. It would ensure that the Government had a focus on signing up businesses to the prompt payment code.[96]

New clause 4 proposed a review of the late payment regime, in particular to examine the case for an automatic compensation scheme. Mr Perkins said that the Government "failed to grasp the central problem behind the late payment crisis". He said small businesses were reluctant to report late payments. A review was therefore a means to help address that. He said:

> […] our proposed review would be an opportunity to investigate the matter in more detail, away from the cut and thrust of a committee stage, where governments, for whatever reason, are often reluctant to take forward ideas simply because they come from the Opposition. Our review would be an opportunity to explore an idea that we think has real merit. Our proposed quarterly statement would list all payments made late to suppliers without a formal query having to be made. It would also confirm whether interest has been paid to compensate the supplier and set out a payment plan to ensure it is paid promptly where it has not. As a package, those measures would be a significant step forward, with greater potential than any other to change the relationship between small businesses and their suppliers in the context of late payments.[97]

Gordon Banks, Labour MP for Ochil and South Perthshire, spoke in favour of new clauses 3 and 4. He felt new clause 3 would "flush out late payers".[98] Measures in the Bill, he thought, would not solve the problem as "it will still be up to the supplier […] to pursue its customer for prompt payment". This, he said, meant the "supplier will either lose the argument, and lose the prompt payment, or win the argument and put at risk its relationship with that larger customer". Ben Gummer, Conservative MP for Ipswich, disagreed. He felt the Government's position on the Opposition clauses was "compelling" and that "if the regime and legislation is too rigid, we could end up with perverse consequences".[99] Bill Esterson, Labour MP for Sefton Central, stated that the current late payments regime was not working. He agreed that small businesses would not challenge larger companies who were not paying promptly and so felt introducing automatic compensation or a penalty was an attractive option.[100]

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[95] HC *Hansard*, 18 November 2014, cols 228–9.
[96] ibid, col 229.
[97] ibid, cols 229–30.
[98] ibid, cols 214–5.
[99] ibid, col 221.
[100] ibid, cols 224–5.

In response to the debate, Matthew Hancock, Minister of State for Business and Enterprise, agreed that the late payments regime was not working, but said "the question is what to do about it".[101] He said that the Government had:

> […] consulted broadly on all the potential options surrounding late payments, including many of the options covered by the amendments, and we listened carefully to the responses to the consultations. There was a range of responses, including from those who would firmly regulate all private contracts and from those who did not want any change at all. It is important for us to take steps that will have a positive impact, and to think about the unintended consequences. If we introduce into English law a requirement for a contract to take a specific form, we will remove a freedom of contract that has served the country extremely well for a long time.[102]

He went on to argue that "the best way to tackle the problem of companies going bust and others paying late is first to establish a stable economy, and then to establish a culture of payment that is stronger and better".[103] With regard to the Bill, Mr Hancock said that it already contained "measures to improve transparency and increase prompt payment in the public sector". He said:

> The fact that the Bill requires transparency means that all payment practices of all large companies will be published. It is not a question of having to ask a Minister to name and shame, or even the good idea of naming and shaming on the one side and celebrating on the other. The argument about naming and shaming will be driven by the measures taken in the Bill.[104]

Turning to the Opposition's new clause 3, the Minister said that, with regard to writing to non-signatory FTSE 350 companies, he was "delighted to say that I commit wholeheartedly to writing to all non-signatory FTSE 350 companies asking them to join the strengthened prompt payment code" adding that "we should continue the cross-party push aimed at getting more large companies to sign up. The new reporting requirement will provide sufficient transparency, which will lead to competitive pressure on companies to improve their payment practices".[105] On the proposals for a late payment review in new clause 4, Mr Hancock reminded MPs that the Government had consulted on "something similar". He said that the Government would resist adding it to the Bill "because we do not think the case for it has been made and we do not believe that the unintended consequences have been thought through. However, we will report back publicly on the findings of further work before the end of this Parliament".[106]

On hearing the Minister's comments, Toby Perkins intervened to say his party would not press new clauses 3 and 4 to a division.[107]

Among backbench amendments debated was new clause 1, which sought to address the issue of retention of monies in the construction industry. Debbie Abrahams, Labour MP for Oldham East and Saddleworth, said that these sums, retained in the event small businesses failed to

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[101] ibid, col 233.
[102] ibid.
[103] ibid.
[104] ibid, col 234.
[105] ibid, cols 235–6.
[106] ibid.
[107] ibid, col 236.

remedy defects in the course of a carrying out work, were small businesses' "livelihood". She described her new clause as:

> […] a stepping-stone towards that by requiring the publication of companies' policies, practices and performance on retention moneys, reviewing this and subsequently making recommendations about further action to help secure and protect retention of moneys for small businesses—in trusts, for example.
>
> The new clause is timely, with New Zealand considering the requirement for cash retentions to be taken in trusts, and New South Wales in Australia is currently reviewing regulations to that effect. The new clause would enable the Secretary of State to review published information and then issue regulations to ensure that these owed moneys are protected for small businesses.[108]

Ms Abrahams also spoke to amendment 6 which she said sought to introduce a requirement for companies to include, in their payment practices and policies, details of how payment terms could be amended. This aimed to address circumstances in which payments terms were unilaterally changed, which she argued "affected the financial viability of so many small businesses".[109] For the Government, Matthew Hancock explained to MPs why he could not support either the new clause or the amendment. He said this was because "we already have a new obligation to report on these practices in this Bill. The transparency measures are at the core of the prompt payment changes proposed in the Bill".[110] He added that the Government would consult on the issue and was "working with industry to move to a position where retentions are no longer necessary". On amendment 6, he agreed that it was "poor practice" to unilaterally change payment terms, but that the Government believed transparency would "increase accountability" and would consult on that could be achieved.[111] Following the Minister's reply, Ms Abrahams withdrew her amendments.[112]

Caroline Lucas, Green MP for Brighton, Pavilion, tabled amendment 91 to the Bill's clauses on supporting access to export finance. She explained the amendment would:

> […] alter the Export and Investment Guarantees Act 1991 to give the Secretary of State power to create a prohibitions list, thereby allowing the Government to ensure that UK export finance was not available to projects overseas that undermined other government policies.[113]

She said she recognised that the Government would resist the amendment but said it would not bind the Secretary of State, rather would "merely allow" the creation of such a list if "he or she chose". In response to the amendment, Mr Hancock said the Government did not support the amendment. He explained:

> […] a prohibited list, by its very nature, would not allow the Secretary of State to take an open-minded approach in coming to a decision on whether to support an export falling within an included class. The measures already enhance the support that UK

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[108] ibid, col 210.
[109] ibid, col 211.
[110] ibid, col 235.
[111] ibid, col 236.
[112] ibid, col 238.
[113] ibid, col 212.

> Export Finance can offer, and creating an ability to prohibit support for certain exports which are otherwise perfectly legal goes directly against that goal.[114]

The amendment was withdrawn.

5.2 Regulatory Reform (Part 2)

The Government amended aspects of its proposals in part 2 of the Bill that concerned regulatory reform. New clause 5 (now clause 20 of the Bill) would introduce a duty on the Independent Complaints Commissioner to produce an annual report, with regard to their investigations under the financial regulator's complaints scheme. Government amendments 27 and 28 were also passed. These would require the business impact target, the interim target, the determination of qualifying regulatory provisions and the methodology for assessing the target, and any changes to these, to be laid before Parliament.[115]

One other amendment to part 2 was debated at report stage. Caroline Lucas, Green MP for Brighton, Pavilion, moved amendment 92 that sought to remove the Bill's clauses to "impose a deregulation or business impact target on future parliaments". She argued:

> In effect, the Secretary of State is trying to lock future Governments into continuing their obsession with deregulation. This provision was not subject to any public consultation [...]
>
> Nobody supports regulation for its own sake, but it is equally facile to oppose all regulation in a similar manner. The deregulatory zeal of this Government, which the new duty will entrench, is premised on just that: on the assumption that all regulation is bad and is something we should seek to minimise. This is a worrying example of the "market knows best" mindset and of the "Government's role is to get out of the way" mantra, which is implicated in the banking crisis, air pollution, food safety scares, higher energy bills for householders and sky-high rents, to name just some examples.[116]

She told MPs: "we should remove our fingers from our ears and look again at whether this new deregulation duty will help or hinder".[117] Toby Perkins, speaking for the Opposition, said that, while his party shared some of Ms Lucas' concerns about deregulation, its view was the "deregulatory target has some value".[118] Matthew Hancock, Minister for Business and Enterprise, resisted the amendment. He said "too many businesses, particularly smaller ones, find that complying with Government regulation is the single biggest challenge to running their business" and that the target had received "strong support in Committee".[119]

5.3 Public Sector Procurement (Part 3)

Opposition amendments were tabled to part 3 of the Bill. These sought to amend provisions in the Bill that would provide the Minister for the Cabinet Office with regulation-making powers concerning public sector procurement.

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[114] ibid, col 237.
[115] ibid, cols 238–9.
[116] ibid, col 213.
[117] ibid, col 214.
[118] ibid, col 232.
[119] ibid, cols 237–8.

Opposition amendment 1 sought to introduce additional areas under which regulations could be laid through powers in clause 38. These would include duties on contracting authorities relating to the provision of apprenticeships and training opportunities as a result of public procurement. These additional areas would also include a requirement to publish reports about the amount and proportion of expenditure undertaken by the procurement in relation to SMEs and the local area. Mr Perkins introduced the amendment:

> Public procurement is a hugely important function of government. Central Government spend about £45 billion a year on the purchase of goods and services, and ensuring that more of that money delivers for the UK economy is one of the most valuable things that any Government can do. We are absolutely behind ensuring that the power of UK Government procurement delivers for the real economy. That is [the] principle behind our amendment 1, which outlines three areas in which such value can be found for our constituents, constituencies and communities, ensuring that proper reports are made and kept in each of those areas.[120]

Of the other opposition amendments, amendment 2 would enable the Minister making regulations under what is now clause 38 to specify why a firm was excluded from entering into contracts. Amendment 3 would provide that those regulations were subject to the Freedom of Information Act 2000. Amendment 4 proposed removing subsection 10 of clause 38, which stipulated the regulations would be laid before Parliament under the negative scrutiny procedure.

Responding to these amendments, Matthew Hancock reminded MPs that prompt payment in public sector procurement was "dealt with in the new procurement regulations" that would appear in the New Year. He added:

> The Government agree that transparency and reporting in public sector procurement is vital, and Departments are already required to report on procurement expenditure with smaller businesses. As hon. Members know, that expenditure has been rising rapidly as a proportion and we are on target to hit the goals we set.[121]

He said that the requirements of amendments 2 and 3 were already provided for by the Bill and reassured MPs that "contracting authorities, as public authorities, are already required to respond to FOI requests". The Government had also, he explained, considered whether the negative procedure was the right level of parliamentary scrutiny, but thought the affirmative procedure would "slow down potential changes when the Government want to remain nimble in responding to the needs of small businesses".[122]

Amendment 1 was defeated at a division, 295 votes to 229.[123]

Debbie Abrahams tabled Amendment 7. This, she said, would require public bodies to "determine the 'past payment performance' of potential contractors before any contract is entered into". and tier 1 suppliers to public bodies would also be required to "commit them to pay their suppliers promptly".[124] In response for the Government, Matthew Hancock said that

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[120] ibid, col 232.
[121] ibid, col 237.
[122] ibid, col 237.
[123] ibid, col 239.
[124] ibid.

new procurement regulations that would be made in early 2015 would "place a duty on contracting authorities to pass 30-day payment terms all the way down the public sector supply chain".[125]

5.4 Pubs Code and Adjudicator (Part 4)

The Government's proposals to introduce a statutory pubs code for England and Wales, and an independent pubs code adjudicator to enforce it, were subject to a number of amendments. Discussion at report stage centred on which individuals and companies would be subject to the pubs code, and whether the code went far enough in not providing a 'market rent only' option to address perceived problems in the leased and tenanted pub sector.[126]

The most substantial change at report stage was the defeat of the Government, who had tried to prevent the inclusion of new clause 2 in the Bill. This clause provided that a 'market rent only' option, available to the tenants and leaseholders of large pub-owning business, be included in the pubs code. The market rent only option would mean that a tenant or leaseholder would be offered a tenancy or lease based on an independently assessed market rent, to be paid to the pub owning business, rather than being bound by a 'tie', stipulating that some or all of the alcohol sold on the premises should be bought from the landlord or from a person nominated by the landlord.

The clause, which was signed by 91 MPs, was moved by Greg Mulholland, Liberal Democrat MP for Leeds North West, who explained the background to the amendment:

> New clause 2 is the cross-party solution from the Business, Innovation and Skills Committee introduced first by the hon. Member for Mid Worcestershire (Sir Peter Luff), then ably continued by the hon. Member for West Bromwich West (Mr Bailey), and supported by all colleagues on the Select Committee at all stages in this and the last Parliament. It is also backed by the FSB, the Forum of Private Business, the Pubs Advisory Service, Justice for Licensees, Licensees Supporting Licensees, CAMRA, Licensees Unite the union, the Fair Pint campaign, the Guild of Master Victuallers, the GMB and now the Punch tenant network, which represents Punch tenants and is giving an honest and a very different picture of the Punch model from that which Punch Taverns has been trying to communicate to MPs.
>
> To remind the House, the problem is a simple one, despite the complexity of the sector: the large companies went on a reckless acquisition spree, buying up pubs using borrowed money, and got themselves into grotesque amounts of debt—more than £4 billion in the case of Punch Taverns and more than £3 billion in the case of Enterprise Inns—and with nothing to stop them charging unlimited prices for beer and unlimited rents, both of which have gone up and up and up. The beer tie, which was always operated responsibly, has been abused. It used to offer lower rent in exchange for higher beer prices and genuine support for small breweries, but the pub company model does not do that.[127]

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[125] ibid, col 236.
[126] For more information regarding issues facing the pubs sector and the movement towards a statutory system of regulation see House of Commons Library, *Pub Companies, Pub Tenants and Pub Closures*, 17 November 2014, SN06740.
[127] HC *Hansard*, 18 November 2014, col 168.

The clause would allow for the market rent only option to be triggered at "certain key points in the lease or tenancy", including the five-year rent review, on lease renewal, on the sale of the property title, if there were a substantial change in prices (decided upon by the independent adjudicator), or if there were a change in circumstances.[128]

Responding, Jo Swinson, Parliamentary Under-Secretary of State for Business, Innovation and Skills, noted that the issue of a market rent only option had been the subject of BIS consultation and had received support from many quarters. However, she cautioned that "there could be uncertain outcomes from such an approach. We would not want unintended consequences to harm the sector and people we are trying to protect".[129] Instead, the Government felt that the proposed parallel rent assessment, which would be included in the pubs code, would ensure that tied tenants were no worse off than those who paid market rent only. Explaining the parallel rent assessment process during committee stage, Jo Swinson summarised it thus:

> Our proposal would allow prospective tenants who are unhappy with their negotiations with a large pub company and do not think they have been fairly treated to request from the company a parallel rent assessment to set out clearly what their rent would be under the tied model and the free-of-tie model, so that they can make a decision. If they have concerns about how the assessment is calculated, the adjudicator is in a position to arbitrate.[130]

In addition, the Government committed at report stage to introducing further amendments in the House of Lords regarding the market rent only option:

> We recognise that many hon. Members worry that the pub companies need the very real threat of tenants going free of tie before they will offer their tenants a good tied deal. I can commit today that the Government will bring forward amendments in the other place to respond to this. Following the many Select Committee reports and the campaigning by my hon. Friend the Member for Leeds North West (Greg Mulholland) and others in all parties in the House, we have listened to those strong representations and we plan to add to the Bill a power to introduce a market rent only option after two years if a review concludes that the measures have not delivered sufficiently for tied tenants.[131]

Andrew Griffiths, Conservative MP for Burton and Uttoxeter, was critical of the Government's proposals regarding the possible introduction of a market rent only option after two years as "an amendment that was cobbled together within the last couple of hours".[132] However, he echoed concerns regarding the unintended consequences of the proposed new clause, stating:

> The Minister will know that the Department for Business, Innovation and Skills commissioned a report from London Economics, which estimated that if we scrapped the tie and introduced something like this new clause, 1,800 pubs would close and 8,000

[128] ibid, col 170.
[129] ibid, col 150.
[130] House of Commons Public Bill Committee, Small Business, Enterprise and Employment Bill, *10th sitting*, 28 October 2014, col 339.
[131] HC *Hansard*, 18 November 2014, col 150.
[132] ibid, col 179.

> jobs would go. Nobody here wants to see that happen to our pubs. We saw what happened under the previous Government, when 52 pubs a week were closing and the hated beer duty escalator increased duty by 48 percent. We have seen the consequences of legislation for our industry. We should hold our nerve. We should vote for the statutory code and for the adjudicator, and we should give power to our publicans, but we should not throw the baby out with the bathwater—we should not vote for new clause 2.[133]

Toby Perkins, Shadow Minister for Business, Innovation and Skills, noted that "the industry is desperate for certainty" which the prospect of a further review in two years did not deliver.[134] Instead, he highlighted the poor financial situation of tenants and leaseholders who "often work as many hours as anyone, but who earn less than they could legally be paid by an employer on the minimum wage",[135] and indicated support for the market rent only option proposed in new clause 2:

> We have supported the introduction of a free-of-tie option for pubco pub tenants at the date of renewal ever since the Business, Innovation and Skills Committee concluded that the industry had had its last chance and that the time was right. That was back in September 2011, and in debates in January 2012, 2013 and 2014 the Opposition sought the support of the House for that viewpoint. It will therefore come as no surprise to Members that it remains the view of Opposition Members that the time for the mandatory rent-only option is now. I am delighted that a cross-party group of Members has tabled new clause 2.[136]

The current chair of the Business, Skills and Innovation Select Committee, Adrian Bailey, Labour/Co-Op MP for West Bromwich West, was also critical of government proposals for a review of the effect of the pubs code and adjudicator after two years, claiming the "industry had been consulted to death" and asserting that the "deeply entrenched position of the British Beer and Pub Association", which represents pub companies, meant that "there is no reason to believe that any further consultation over the next two years will make any difference whatsoever".[137]

New clause 2 was added to the Bill after a division, 284 votes 259.[138]

Several of the other amendments related to which individuals and companies would be covered by the pubs code. The Bill as introduced had included provisions for a core code applicable to all pub-owning businesses, which would seek to ensure fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants. Additional provisions would apply to large pub companies, those which are the landlord of 500 of more pubs, an example being the proposed parallel rent assessments. Initially, the Government's consultation had proposed that the pubs

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[133] ibid, col 184.
[134] ibid, col 151.
[135] ibid, col 164.
[136] ibid, cols 166–7.
[137] ibid, cols 176–7.
[138] ibid, col 196.

code would only apply only to pub companies owning 500 or more pubs.[139] However, as Toby Perkins, Shadow Minister for Business, Innovation and Skills emphasised:

> Small pub companies—family brewers and so on—had no reason to expect that they would be brought into the scope of the code. Indeed, the Secretary of State, on one of the occasions when he was able to be here, said in a debate:
>
> "we propose to deal with the larger pub companies—those with more than 500 pubs. We will be consulting on that"—
>
> he was specific on what the consultation would be about—
>
> "but that is the approach we intend to adopt."—[*Official Report*, 9 January 2013; vol 556, c 353.]
>
> Our Opposition day debate in 2014 referred to the 500 pub limit as the point at which measures for pub companies should be introduced. It was therefore a major shock for family breweries, microbreweries and other small pub-owning companies to find not only that they had been brought within the scope of the Bill, but that many onerous requirements would be visited on a group of businesses that had been given every reason to expect they would not be involved.[140]

Concerns about the impact of the pubs code on smaller businesses led Sheryll Murray, Conservative MP for South East Cornwall, to successfully move an amendment to the plans for a pubs code at committee, which would mean it only applied to pub companies with at least 500 tied tenants.[141] Amendments tabled by the Government for debate at report stage (amendments 29 to 33, 41, 43 and 44) suggested that it would seek reverse that committee stage defeat. However, Jo Swinson instead outlined plans to table an amendment in the House of Lords which would change the 500 pub limit for large pub companies to 350:

> We have been considering how best to respond to those genuine concerns. This Government have no wish to overburden small business. Indeed, we have done a huge amount to reduce regulation on business, particularly small business. Of course, this is a small business Bill. We are trying carefully to strike the right balance between helping smaller pub-owning companies and helping individual tenants and small business people who are struggling with some of the difficulties documented in the Select Committee reports.
>
> We have listened to all the concerns put to us and, on further reflection, have decided not to press amendments 29 to 33, 41, 43 and 44, which were designed to reinstate smaller pub companies within the scope of the statutory pubs code, albeit with lesser requirements. Instead, we will bring forward amendments in the other place to change the exemption to those companies that own fewer than 350 tied pubs. We think that strikes the right balance between preventing overburdening of genuinely small family brewers and ensuring adequate protection of tied tenants in a way that is proportionate.[142]

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[139] Department for Business, Innovation and Skills, *Pubs Companies and Tenants: Government Response to the Consultation*, June 2014, p 20.
[140] HC *Hansard,* 18 November 2014, col 165.
[141] See section 4 of this Library Note.
[142] ibid, col 148.

While welcoming the Government's decision not to press its amendments, Sheryll Murray sought clarity on the proposals which would be brought forward in the House of Lords:

> The Secretary of State has continually led the House to believe that it was his intention not to include small family brewers with fewer than 500 tied pubs in the statutory code. When the Bill appeared, it included those small family brewers, with top-heavy bureaucracy […]
>
> I listened carefully to what the Minister said today. I would like her to confirm, with a clear yes—I will give way if she does not intend to speak again—that if the Bill goes unamended to the other place, and an amendment is tabled there to reduce the number to 350, the wording will be either "350 tied pubs, excluding managed pubs", or "350 short-term tenancies and leases, excluding managed pubs". The industry can have no faith in a Secretary of State keeping his promise, after what we have seen over the past few months, and indeed the past few days. It needs and is seeking that reassurance from the Minister today.[143]

Other Government amendments were more technical in nature. Responding to concerns raised during committee by Oliver Colvile, Conservative MP for Plymouth, Sutton and Devonport, that restaurants and other premises might inadvertently be included in the definition of 'tied pubs', the Government introduced new clause 6 (now clause 68). Jo Swinson explained:

> New clause 6 ensures that the definition of a tied pub does not inadvertently capture restaurant or hotel premises, which was a concern raised in committee. We are aware of one fish and chip restaurant chain that could meet the conditions set out in clause 63, and it is possible that there are others. We all know a pub when we see one, and we all know the difference between a pub and a fish and chip restaurant, but defining that in legislation can prove difficult, particularly given increased food consumption in pubs […]
>
> New clause 6 therefore provides the Secretary of State with a power to exempt a particular type of tenant or premise from the pubs code in secondary legislation, so that we can ensure that it is only pub premises that are in scope.[144]

In addition, amendments were made to ensure that rent assessments would also include assessments of money payable in lieu of rent, to ensure that tied agreements were subject to the pubs code whether the pubs were occupied under tenancy or licence to occupy. The definition of a 'tied' agreement was clarified to mean where the tenant was subject to a contractual obligation that some of or all of the alcohol to be sold at the premises must be supplied by the landlord or somebody nominated by the landlord. Changes were also made to ensure that the definition of a pub-owning business could include any parent or subsidiary companies. Amendment 55 would give the Secretary of State power to define a parallel rent assessment in regulations, to ensure that there was flexibility for how these were undertaken for different types of tied pub agreements.

Finally, amendment 57 provided that all regulation under part 4, other than regulations under clause 61(1)(c), which relate to if the pubs code was revoked and not replaced, would be

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[143] ibid, cols 191–2.
[144] ibid, col 147.

subject to the affirmative resolution procedure, and amendment 58 provided that regulations made under the power to exempt from the pubs code, which would otherwise be a hybrid instrument procedure in the House of Lords, would not be so.

5.5 Companies: Transparency (Part 7)

A series of government amendments (65–90) were made to schedule 3 at the end of day two of report stage on 19 November 2014. Most of the amendments were required in order to provide clarity and remove any unnecessary provisions, with the remainder largely being consequential amendments. No debate took place on these and the amendments were agreed to without divisions.[145]

5.6 Insolvency (Part 10)

A small number of government amendments were passed without divisions at the conclusion of report stage on 19 November 2014.[146] Amendment 59 overturned the Opposition amendment that meant one creditor could request a meeting. Amendment 60 changed the regulation making power in clause 123 (now 126), relating to the sale of companies in administration to connected persons, to become subject to the affirmative procedure, rather than the negative procedure as originally drafted.

5.7 Employment (Part 11)

A number of amendments to part 11 of the Bill were debated. The Bill's provisions for exit payments to public sector employees were amended by the Government (amendments 61 to 64) without divisions. Jo Swinson, Parliamentary Under-Secretary of State at the Department for Business, Innovation and Skills, explained the purpose of these changes:

> The amendments are technical in nature and simply seek to clarify that the obligations can be placed on individuals who received exit payments when it is likely that they will swiftly return to the same part of the public sector.
>
> […] the amendments clarify that obligations can be placed on the public sector body responsible for the exit payment and the subsequent authority that re-engages the individual as an employee, contractor, or office holder. The amendments are in line with the Government response to the consultation on these measures, which was published on 28 October.[147]

The Opposition tabled amendments jointly with Caroline Lucas, Green MP for Brighton, Pavilion. These related to the national minimum wage and zero-hours contracts. Ian Murray, Shadow Minister for Trade and Investment, explained that the amendments were tabled with the view to improving the Bill. By way of context, he opened by lamenting the Government's approach to low pay:

> We hear from our constituents throughout the country concerns about pay and insecurity in the workplace. Part 11 is an opportunity missed by the Government to

[145] HC *Hansard*, 19 November 2014, cols 316–20.
[146] ibid, col 316.
[147] ibid, cols 300–1. See HM Treasury, *Recovery of Public Sector Exit Payments: Government Response to the Consultation*, October 2014.

> deal with the problems of national minimum wage enforcement and exploitative zero-hours contracts. They need to show that they are on the side of ordinary people who have had their wages cut by more than £1,600 per year since 2010, but again the Government have missed the opportunity to do so.[148]

He said that, for some, the national minimum wage had become the "maximum wage", and said his party would increase the rate to £8 per hour were IT to come to power. Mr Murray turned to amendment 8, which he said would:

> […] require the Secretary of State to provide an annual report to Parliament on three crucial aspects of the national minimum wage—first, its enforcement; secondly, the level of the financial payment for underpayment; and thirdly and crucially, the relationship between the national minimum wage and how it reflects pay in the wider labour market, particularly in interaction with the living wage.[149]

He argued that enforcement of the minimum wage under the Government had been "poor" and said that the use to date of the Government's "naming and shaming policy" of companies not paying the minimum showed "why an annual report is necessary to ensure that the regulations are working, the deterrents are robust and all avenues are being explored to prevent exploitation".[150] An annual report, which included analysis of the level of the financial penalty levied against employers, he added, was also needed because the current level of fine for those in breach of the national minimum wage was set too low at £20,000.[151] The final aspect of the amendment concerned ensuring "that the Government consider wider improvements in pay in our labour market—namely, the promotion of the living wage". He said his party supported its promotion as it "improves the living standards of employees and benefits employers too".[152]

Mr Murray then spoke to amendments 9 and 10. These related to zero-hours contracts. He told MPs his party welcomed measures in the Bill to ban exclusivity in these contracts but:

> Amendment 9 would require the Secretary of State to introduce regulations so that workers on zero-hours contracts can enforce their rights. It is completely ludicrous that we have been left in a situation where the Government have introduced legislation to ban exclusivity clauses in zero-hours contracts but have not put in any enforcement action so as to be able to remedy the problem.[153]

He said that the Government had said enforcement of the ban would be possible through tribunals. This, however, was inadequate. Mr Murray stated: "the Government need to be clear about how individuals can enforce the provision against exclusivity. We cannot just hope that employees who refuse to work exclusively for an employer will not subsequently be discriminated against in the workplace".[154] Amendment 10, Mr Murray explained, proposed introducing rights to compensation for those on zero-hours contracts. He argued: "there should be some kind of compensation if people are unable to do their shift at short notice

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[148] HC *Hansard*, 19 November 2014, col 280.
[149] ibid.
[150] ibid, col 281.
[151] ibid, col 282.
[152] ibid, col 283.
[153] ibid, col 286.
[154] ibid, col 287.

because the employer has changed the particular shift pattern".[155] The amendment would also allow "a worker to receive a regular-hours contract after a continuous period of employment. If an employer has an employee on a zero-hours contract for more than two years that must mean that the employee has regular hours and regular employment. Employment law should reflect such a situation".[156]

Sheila Gilmore, Labour MP for Edinburgh East, spoke in favour of the amendments. She said the Bill as drafted dealt "only with one part of a much larger problem".[157] She said she had met people on zero-hours contracts, which led her to the view that there was "no compelling reason why there cannot be a much more organised set of working arrangements and why the arrangements have to be quite so flexible for the employer". This was especially true in the care sector. She said she supported the provisions of amendment 10 to enable such employees to be offered a permanent contract.[158] Sir Greg Knight, Conservative MP for East Yorkshire, intervened to suggest that amendment 10 might have implications for the employer, particularly those in industries such as the entertainment industry or those whose work was seasonal, such as at the seaside.[159] Bill Esterson, Labour MP for Sefton Central, said he supported the amendments as a means "to start to tackle some of the scourges and problems caused by low pay and payment that is below the national minimum wage".[160] He added:

> Amendments 8 to 10 are designed to help raise the pay of the lowest paid in the country and those most affected by our low pay economy and to boost the economy in parts of the country, such as my constituency, where there is a big problem. They are designed to protect workers, enforce the law and support businesses that are being undercut and trying to do their bit.[161]

John McDonnell, Labour MP for Hayes and Harlington, also spoke in support of the amendments. He said the annual report proposed by amendment 8 "could give us shared knowledge of where the minimum wage was not being paid and how we can work together to overcome the difficulties".[162] With regard to zero-hours contracts, Mr McDonnell said that he welcomed the ban on exclusivity clauses, but thought that "without the capability to enforce them, they will be almost meaningless". He told MPs: "the amendment is not particularly challenging; it would simply require regulations making it open and transparent how people can enforce their rights. At the moment, it is almost inexplicable to people how they can be enforced". Turning to the desirability of converting contracts into permanent employment, Mr McDonnell thought that the rights proposed by the amendment could be defined in the regulations.[163]

Responding for the Government, Jo Swinson said she recognised the "genuine concern" expressed and assured MPs that the Government shared "the commitment to tackle the issues".[164] In relation to the reporting requirements proposed by amendment 8, Jo Swinson said

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[155] ibid, col 288.
[156] ibid.
[157] ibid, col 289.
[158] ibid, col 292.
[159] ibid.
[160] ibid, col 295.
[161] ibid, col 299.
[162] ibid, col 300.
[163] ibid, col 301.
[164] ibid, col 302.

that these were "unnecessary" as there was "already significant transparency through existing reporting arrangements". She explained:

> Every autumn, the Government submit evidence to the independent Low Pay Commission, including an assessment of the impact of the national minimum wage on the labour market. That is followed by publication of our assessment of the latest hourly earnings figures and how these are impacted by the statutory wage floor. That evidence, together with views from employers and workers, is considered by the Low Pay Commission before it makes its recommendations to Government. Parliament then debates these findings and the Government's response in advance of the new rates being introduced each October.[165]

Ian Murray intervened to suggest his party's amendment went wider than the processes the Minister had outlined. Ms Swinson reiterated her point: "I think that the existing reporting requirements are adequate and that the amendment would bring about a duplication".[166] The Minister then addressed concerns about the adequacy of the existing mechanisms to enforce the minimum wage. She explained:

> Since the national minimum wage was introduced and HMRC has been the enforcement body, that body has continually assessed how it undertakes enforcement activity and how it can be improved. It is true that the number of individual investigations has gone down, but that has been coupled with a much more efficient undertaking of investigations. In particular, HMRC often now has larger and more complex investigations as part of the risk assessment work being undertaken. Sometimes those cases take longer to complete, so there will be fewer overall cases. The number of people covered by each case, however, has been increasing.[167]

She told MPs that the number of workers helped had risen between 2009–10 and 2013–14 by more than 17 percent. She added that funding to HMRC from BIS had increased by £1 million to £9.2 million, and there was a team of 170 working in enforcement.[168] On "naming and shaming", she said that 30 companies had been named so far and there would be a "further tranche of naming and shaming shortly".[169]

Jo Swinson then responded to amendments 9 and 10 on zero-hours contracts. She highlighted research that suggested zero-hours workers were as happy as other employees and were less likely to feel they were treated badly by their employer. Responses to the consultation showed that concerns centred on exclusivity and, she stated, the Government were acting in response to that. The Government would additionally be producing guidance for employers on responsible use of zero-hours contracts. On enforcement, the Minister said that amendment 9 was unnecessary as powers of redress were already available if necessary under the order making powers set out in clause 148.[170] Jo Swinson then turned to amendment 10's proposals for compensation and contract conversions. She noted:

> Again, the order-making power in new section 27B already allows for that. The amendment also seeks to force employers to offer fixed-hours contracts once an

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[165] ibid.
[166] ibid, col 303.
[167] ibid.
[168] ibid, col 304.
[169] ibid, col 304.
[170] ibid, col 307.

> individual has worked regular hours for a continuous period, or series of continuous periods. We discussed a similar amendment in Committee. The issue is whether imposing restrictive criteria such as those could discourage some employers from creating jobs. There could certainly be some unintended consequences: at the end of a qualifying period, some people could be let go, or not offered any hours, to try to avoid having to convert a contract to a fixed-hours contract.[171]

She concluded by saying that she recognised that genuine concerns had been expressed and that there were still issues to address. However, she reminded MPs that the Government was committed to working with industry "to provide, sector by sector, specific guidance to ensure that employers can have confidence they are using zero-hours contracts responsibly".[172]

At division, amendment 8 was defeated 301 votes to 233. A division followed on amendment 10, which was also defeated 303 votes to 235.[173]

6. House of Commons: Third Reading

Following completion of report stage, the House of Commons gave the Bill a third reading, without a division, on 19 November 2014.[174]

In moving the motion, Matthew Hancock, Minister of State for Business and Enterprise, opened by thanking MPs for their contributions. He said:

> There has been considerable consensus and agreement on many of the measures, and I welcome the support from Members on both sides of the House for our doing everything we can to improve the environment for small businesses. It is a clear goal of this Government to make Britain the best place in the world to start and grow a business, and this Bill, the first of its kind, will make a significant contribution to that. Small businesses make a huge contribution to the UK, accounting for around half of UK jobs and a third of private sector turnover, and they are vital to our prosperity and to the UK economy.[175]

Mr Hancock reminded the House of the Bill's provisions and set out how the Government had sought to improve the Bill as it had progressed through its Commons stages. With regard to the defeat at report for a 'market rent only' option, he said that the Government would "reflect on the vote ahead of consideration in the other place". He also indicated that the Government would not seek to completely reverse Sheryll Murray's amendment concerning family brewers. He said: "the Government have listened and responded to the concerns about the burdens the measures would place on family brewers and removed these smaller companies from the scope of the code during the passage of the Bill".[176]

For the Opposition, Toby Perkins said that when it was introduced he had thought that the Bill was "jammed full of missed opportunities" in terms of zero-hours contracts, minimum wage, insolvency, and child care.[177] While the proposals for pubs had been improved, the Bill had still

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[171] ibid.
[172] ibid.
[173] ibid, cols 307–16.
[174] ibid, col 333.
[175] HC *Hansard*, 19 November 2014, col 320.
[176] ibid, col 323.
[177] ibid, col 324.

"missed out on a whole score of opportunities" although it was "none the less stronger than it was at the outset, so the Committee and indeed the whole House must take great credit for that". He noted that although the Government had not agreed to the wording of the Opposition amendments, it did agree with the spirit of many of them, which he found encouraging. Mr Perkins concluded by saying:

> We have come to the end of the Bill. We look forward to it coming back here. It has been strengthened in respect of prompt payment and includes the market rent only option and a pubs code that the industry has demanded for many years, but we have not seen serious action on zero-hours. We have seen a Government at the fag-end of their time in power doing the least they could on the question of zero-hours, which shows their lack of commitment to dealing with the issue. None the less, the Bill leaves Report stronger than it arrived, and the House should be very proud of that.[178]

Jonathan Djanogly, Conservative MP for Huntingdon, repeated concerns he raised at second reading with regard to the privacy implications of part 7, and the related provisions in part 8. He said he regretted he was not given time to speak to his amendments at report, adding:

> My prediction is that these part 7, clause 75 and schedule 3 provisions will not work. In many instances there will be confusion as to who or what is a shareholder with significant control—for instance, in terms of family holdings, let alone complicated trusts, with expensive advice then required. The proposed data collection method is based on self-reporting, with no verification mechanism, which could make it easy, especially for non-resident shareholders, to misreport or simply to give the shares to someone else to hold.[179]

Mr Djanogly added: "People can buy assets privately unless the asset is public, such as a listed stock. They may not want other people to know what they own; they may have cultural, security or even religious-based concerns about people knowing that they own part of a company. What evidence do the Government offer in the impact assessment to justify destroying this right of privacy? Very little".[180] Mr Hancock intervened to assure Mr Djanogly his comments had been noted and would "be considered in the consultation and, no doubt, in the other place. The key is to deliver on the agreements we have made internationally, and to do so in a business-friendly way".[181] Bill Esterson, Labour MP for Sefton Central, echoed the Opposition's perspective in his comments, stating that the Bill was "a missed opportunity". He said he still hoped "that the Government can deliver on some of the things they said in committee and on report, but we will have to wait and see".[182]

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[178] ibid, col 328.
[179] ibid, cols 328–9.
[180] ibid, col 328.
[181] ibid, col 330.
[182] ibid, col 332.