



# Library Note

## **Enterprise Bill (HL Bill 63 of 2015–16)**

The Enterprise Bill is wide-ranging, and includes proposals to:

- Establish a Small Business Commissioner, to assist in payment disputes and signpost advice services for small businesses;
- Extend the Business Impact Target to include regulators, requiring them to assess the impact to business of their practices, and modify the way in which regulators engage with the Growth Duty and Regulators' Code;
- Extend the Primary Authority Scheme;
- Introduce a target for the total number of apprentices working in public sector bodies, and protect the term 'apprenticeship';
- Introduce new measures intended to prevent the late payment of insurance claims to businesses;
- Allow the Valuation Office Agency to share business rates information about properties and ratepayers with local government;
- Reform the Business Rates Appeals system;
- Update the Industrial Development Act 1982; and
- Introduce a cap on 'exit payments' for public sector workers.

The Bill had its first reading in the House of Lords on 16 September 2015. This Note has been prepared to provide briefing material ahead of the Bill's second reading on 12 October 2015.

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## 1. Introduction

The Enterprise Bill 2015–16 was announced as part of the Queen’s Speech 2015.<sup>1</sup> Speaking to the provisions of the Bill following its publication in September 2015, the Business Secretary, Sajid Javid, said:

The Government is committed to making sure the UK continues to be the best place in Europe to do business. The Enterprise Bill will help do just that with measures to cut red tape, protect high-quality apprenticeships and deal with unfair payment practices hitting small firms.<sup>2</sup>

The Bill covers a variety of different areas and, as introduced in the House of Lords, it contains nine parts. The provisions are summarised briefly below, and then explored in greater detail in the subsequent sections of this paper.

## 2. Overview of the Bill

### Part 1: Small Business Commissioner

Part 1 of the Enterprise Bill would create a Small Business Commissioner. Intended to assist small businesses in payment disputes with larger businesses, the Commissioner would provide general advice and information related to dispute resolution and contract principles—including options for resolving disputes.<sup>3</sup> The Commissioner would also ‘signpost’ services for small businesses such as relevant sector ombudsmen, independent advice services and dispute resolution providers.<sup>4</sup> The Small Business Commissioner would also have an in-house complaints handling function, in respect of payment issues between a small business supplier and a larger business.<sup>5</sup> The Commissioner would not, however, provide advice on legal issues relating to a specific case, or advice on matters specific to dealing with a public body.<sup>6</sup>

### Part 2: Regulators

#### Business Impact Target

The Enterprise Bill would extend the Business Impact Target (BIT)—introduced via the Small Business, Enterprise and Employment Act 2015—to include the actions of national regulators. Through the BIT, present and future governments are committed to publishing an assessment of the economic impact of new legislation on business, and the Bill would also ensure that regulators have to carry out similar assessments of any changes to their regulatory policies and practices.<sup>7</sup>

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<sup>1</sup> HM Government, [Briefing: The Queen’s Speech](#), May 2015, pp 18–20.

<sup>2</sup> Gov.uk, [‘Business Backed by New Enterprise Bill’](#), 17 September 2015.

<sup>3</sup> [Explanatory Notes](#) to the Bill, p 4.

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*, p 5.

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

## Reporting Requirements

Part 2 of the Enterprise Bill would also provide for the Growth Duty (introduced by the Deregulation Act 2015, and yet to come into force) and the Regulators' Code (collectively known together as "the Duties") to be extended to all regulators.<sup>8</sup> The measures would:

- require regulators to produce an annual performance report setting out the effect that the Duties have had on the way they have exercised functions to which the Duties apply;
- require regulators to obtain the views of business on the effect that the Duties have had, and to include them in the annual performance report; and
- require a regulator to provide information that a Minister may request from time to time relating to the effect that the Duties have had on the way they exercised functions to which the Duties apply, and the views of affected businesses.<sup>9</sup>

## Part 3: Extension of the Primary Authority Scheme

The Enterprise Bill would widen access to the Primary Authority scheme, established by the Regulatory Enforcement and Sanctions Act 2008. The scheme allows businesses to form a partnership with a local authority, which then provides advice that other local authorities must take into account when carrying out inspections or addressing non-compliance.<sup>10</sup> The measures in the Enterprise Bill are intended to extend the scope of the scheme by opening it up to different types of enterprises including start-ups; simplify access to advice; enable national regulators to support Primary Authority partnerships; and simplify the administrative processes of the scheme.<sup>11</sup>

## Part 4: Apprenticeships

The Enterprise Bill would enable the Secretary of State to set targets with regard to the number of apprentices employed by public sector organisations, intended to increase the number of apprenticeships available.<sup>12</sup> The Bill would also seek to protect the term 'apprenticeship' by creating an offence for a person, in the course of business, to provide or offer a course or training as an apprenticeship if it is not a statutory apprenticeship, thus preventing apprenticeships from being confused with "lower quality training".<sup>13</sup>

## Part 5: Late Payment of Insurance Claims

Intending to address the late payment of insurance claims to businesses, the Bill would introduce into every contract of insurance a requirement on the insurer to pay sums due

<sup>8</sup> Department for Business, Innovation and Skills (BIS), [Enterprise Bill: Better Regulation Policies-Reporting Duty](#), 17 September 2015, p 1.

<sup>9</sup> *ibid*, p 1.

<sup>10</sup> BIS, [Enterprise Bill: Extension and Simplification of Primary Authority](#), 17 September 2015, p 1.

<sup>11</sup> *ibid*.

<sup>12</sup> [Explanatory Notes](#) to the Bill, p 6.

<sup>13</sup> *ibid*.

within a “reasonable time”.<sup>14</sup> The Bill would also:

- provide a non-exhaustive list of matters which may be taken into account when determining what is a “reasonable time” for payment in the particular circumstances of a case, and state that a reasonable time will always include time to investigate and assess the claim. The insurer will have a defence to a claim for breach of the implied term where it had reasonable grounds for disputing the validity or value of a claim; and
- allow for contracting out of the default rules for non-consumer insurance contracts, provided that the insurer satisfies the transparency requirements set out in the Insurance Act 2015 (unless the breach of the term is deliberate or reckless, in which case any ‘contracting out’ term will have no effect).<sup>15</sup>

## Part 6: Non-Domestic Rating

Business ratepayers are currently obligated to provide information on their property and business to both the Valuation Office Agency (VOA) and local government. The Bill would seek to streamline this process by introducing measures which aim to:

- reduce the administrative burden in the business rates system and apply the government’s “tell us once” policy to the business tax; and
- make sure ratepayers no longer have to give largely the same information to local government as they do to the Valuation Office Agency.<sup>16</sup>

The Enterprise Bill would also seek to reform the business rates appeals process, following the results of the Interim Findings of the Business Rates Administration review.<sup>17</sup> The Explanatory Notes to the Bill state that the Bill takes forward suggestions made by the review that a revised appeal system should be “built around clearly structured stages which will provide transparency and clear expectations on all sides about timescales, requirements and action”.<sup>18</sup> To that end, the Bill would provide for changes to enabling powers to allow secondary legislation to be made, which would cover:

- a new ‘Check’ stage;
- civil penalties of up to £500 for the provision of false information, and appeals against those penalties; and
- certain matters relating to appeals (including grounds for appeal, matters which may not be taken into account in the appeal, the admission of new evidence, and the payment and refund of fees).<sup>19</sup>

Details of the reformed appeal system will be set out in secondary legislation.<sup>20</sup>

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<sup>14</sup> BIS, [Enterprise Bill: Late Payment of Insurance Claims](#), 17 September 2015, p 1.

<sup>15</sup> *ibid.*

<sup>16</sup> BIS, [Enterprise Bill: Business Rates Appeals Reform](#), 17 September 2015, p 1.

<sup>17</sup> HM Treasury and Department of Communities and Local Government, [Administration of Business Rates in England: Interim Findings](#), December 2014.

<sup>18</sup> [Explanatory Notes](#) to the Bill, p 8.

<sup>19</sup> BIS, [Enterprise Bill: Business Rates Appeals Reform](#), 17 September 2015, p 1.

## Part 7: Industrial Development

The Enterprise Bill would update the provisions in the Industrial Development Act 1982, in order to assist the roll-out of telecommunications and broadband and to “reflect current economic realities”,<sup>21</sup> by:

- introducing a new section enabling the Secretary of State to make grants or loans towards the cost of improving communications facilities in any area of the UK; and
- increasing the project threshold for providing financial assistance to businesses under section 8(8) of the Industrial Development Act 1982 from £10 million to £30 million, before a resolution of the House of Commons is required.<sup>22</sup>

## Part 8: Public Sector Employment: Restriction on Exit Payments

The Bill would seek to impose restrictions on exit payments for public sector employees, by introducing measures which would place a limit on the value of exit payments individuals can receive (including a cash lump sum or employer-funded contribution to early access to pension).<sup>23</sup> Such restrictions would cover all types of payments related to exits—including voluntary and compulsory redundancy and severance payments—and apply to the list of public sector bodies set down by the Office of National Statistics (although some bodies may be exempted).<sup>24</sup>

## Part 9: General Provisions

Part 9 provides for general provisions, including that all elements of the Bill apply to England, but only selected elements do so with regard to Scotland, Wales and Northern Ireland. These areas are listed in full on pages 11–12 of the Explanatory Notes to the Bill.<sup>25</sup>

### 3. Part 1: The Small Business Commissioner

On 26 July 2015, the Government published the consultation paper, *Establishing a Small Business Commissioner*.<sup>26</sup> That paper proposed:

The creation of a Small Business Commissioner to assist small businesses in payment disputes with larger businesses—a problem that is estimated to adversely impact small businesses to the tune of £26.8bn per year. The Commissioner role is intended to empower small businesses to resolve disputes and avoid future issues by encouraging a culture change in how businesses deal with each other, promoting fair treatment for all.<sup>27</sup>

<sup>20</sup> *ibid.*

<sup>21</sup> BIS, [Enterprise Bill: Updating the Industrial Development Act 1982](#), 17 September 2015, p 1.

<sup>22</sup> *ibid.*

<sup>23</sup> BIS, [Enterprise Bill: Public Sector Employment: Restrictions on Exit Payments](#), 17 September 2015, p 1.

<sup>24</sup> *ibid.*

<sup>25</sup> [Explanatory Notes](#) to the Bill.

<sup>26</sup> HM Government, [Establishing a Small Business Commissioner](#), 26 July 2015. The consultation closed on 21 August 2015.

<sup>27</sup> [Explanatory Notes](#) to the Bill, p 4.



The issue of late payments is of significant importance to small businesses. Recent research cited by the *Daily Telegraph* which surveyed 1,000 business owners, reported that around 23 percent of small and medium-sized business had been “pushed into financial crisis” and close to insolvency as a result of late payments.<sup>28</sup> The article further noted that at the time the survey was carried out “nearly half of the invoices owed to small firms were overdue”.<sup>29</sup> Further, a recent review of late payments by Bacs Payment Schemes Limited (Bacs) found that:

SMEs [Small and Medium Sized Enterprises] are racking up a collective £10.8 billion a year in their attempts to recover overdue payments—that’s an average of almost £11,500 each, or £955 a month. That compares with a total cost of £8.2 billion in July 2014.<sup>30</sup>

The release added:

[The above is] countered by good news that the overall late payment debt appears to have peaked, and is now on its way down—Bacs’ research shows that the total amount owed to both large and small UK businesses now stands at £31.3 billion, down from £41.5 billion this time last year. The SME share of that totals £26.8 billion, down from £32.4 billion in July of last year. Despite that, overdue payments are proving a strain for the business sector. A huge 80 percent of all companies which experience late payments say they are being kept waiting one month or longer beyond their agreed terms before receiving payment.<sup>31</sup>

A number of previous reforms have been introduced to tackle late payments, which are summarised briefly below:

Late Payments of Commercial Debts (Interest) Act 1998

Among the measures included in the Act included those to allow businesses (initially limited to small businesses, but subsequently broadened) to claim interest from other businesses and the public sector on debts incurred as a result of late payments.<sup>32</sup> The Act provided some flexibility for firms in setting credit terms but if no credit period had been agreed, the Act set a default period of 30 days after which interest would apply.<sup>33</sup>

EU Directive 2000/35/EC (Transposed into UK law by the Late Payment of Commercial Debts Regulations 2002)

This Directive accelerated the introduction of the above Late Payments Act, and expanded its scope. This included by introducing a new right that, unless the debtor is not responsible for the delay to a payment, a creditor should be entitled to claim ‘reasonable’ compensation from the debtor for all relevant recovery costs incurred as a result of late payment.<sup>34</sup> The regulations also allowed representative bodies to challenge “grossly unfair” contractual terms on behalf of small businesses.<sup>35</sup>

<sup>28</sup> *Daily Telegraph*, [‘Late Payments Put a Quarter of Small Firms at Risk of Insolvency’](#), 8 August 2015.

<sup>29</sup> *ibid.*

<sup>30</sup> Bacs Payment Schemes Limited (Bacs), [‘Late Payments Costing SMEs Billions’](#), 14 July 2015.

<sup>31</sup> *ibid.*

<sup>32</sup> House of Commons Library, [‘Late Payment of Debts’](#), 20 May 2015, CBP 06640, p 10.

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*, p 11.

<sup>35</sup> *ibid.*

EU Directive 2011/7/EU  
(Transposed into UK law  
by the Late Payment of  
Commercial Debt  
Regulations 2013)

The changes made to UK law by this Directive are summarised by the Department for Business Innovation and Skills, as follows:<sup>36</sup>

*Business to business payment terms*

The period for payment fixed in the contract does not exceed 60 calendar days, unless expressly agreed in the contract and provided it is not grossly unfair to the creditor. It should therefore remain possible for parties to agree on payment periods longer than 60 calendar days provided such extension is not grossly unfair to the creditor.

*Public sector payment*

That in commercial transactions, where the debtor is a public authority, the payment period does not exceed 30 calendar days following receipt by the debtor of the invoice.

*Statutory interest rate*

Simple interest is calculated as equal to the sum of the Bank of England reference rate plus at least eight percentage points.

*Compensation for recovery costs*

The creditor is entitled to obtain from the debtor, a fixed charge of £40, £70 or £100 depending on the size of the debt (under £1,000, under £10,000, and higher), plus additional reasonable costs incurred.

*Application*

Contracts concluded before 16 March 2013 will be excluded from the amended provisions.

*Verification periods*

The maximum duration of a procedure of acceptance or verification does not exceed, as a general rule, 30 calendar days. Nevertheless, it should be possible for a verification procedure to exceed 30 days where agreed and not grossly unfair to the creditor.

Small Business Enterprise  
and Employment Act 2015

Includes measures enabling the Secretary of State to require certain companies to publish information on their payment practices, the specifics of which are to be determined by secondary legislation.<sup>37</sup>

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<sup>36</sup> BIS, [A Users Guide to the Recast Payments Directive](#), October 2014, p 4.

<sup>37</sup> House of Commons Library, [Late Payment of Debts](#), 20 May 2015, CBP 06640, p 15.

The Government intends that the Enterprise Bill will seek to address the issue of late payments by creating a Small Business Commissioner, which would tackle the “imbalance of bargaining power between small suppliers and large customers”, and bring about a “long-lasting culture change” in how businesses deal with each other.<sup>38</sup> To that end, the Bill would:

- establish a statutory Small Business Commissioner to enable small businesses to resolve disputes and avoid future issues through general advice and information, related to dispute resolution and contract principles;
- signpost small businesses to appropriate services, for example sector ombudsmen or regulators, existing independent advice services, approved alternative dispute resolution (ADR) providers or the Commissioner’s own complaints handling function; and
- consider complaints by small business suppliers about payment issues with larger businesses that they supply.<sup>39</sup>

With regard to mediation, the Government’s response to the consultation further stated:

Although there was some support for the direct provision of mediation by the Commissioner the Government does not consider that sufficient evidence has been provided of a market failure in existing mediation services. We are however persuaded of the need to raise awareness of different ways of resolving disputes, such as mediation, and that’s why the Commissioner will have an important signposting role.<sup>40</sup>

There has been limited reaction to these proposals at the time of writing, however, the Federation of Small Businesses has welcomed the announcement of a Small Business Commissioner, but stated that it must be properly funded and high profile, and has suggested that the new Commissioner should have the power to refer ‘large debtors’ to the Competition and Markets Authority.<sup>41</sup> In addition, Matthew Fell, Director for Competitive Markets for the Confederation of British Industry (CBI) said:

Late payment remains a key concern for small businesses and the new Small Business Commissioner must play a role in driving culture change throughout the business community. Resolving disputes quickly before they damage commercial relationships should be the main focus of the body.<sup>42</sup>

## 4. Part 2: Regulators

### Business Impact Target

The Enterprise Bill is intended to build on the regulatory reforms introduced by the previous Government, notably the Small Business, Enterprise and Employment Act 2015. Sections 21–27 of that Act requires the Government of the day to publish a Business Impact Target (BIT) for

<sup>38</sup> BBC News, ‘[Small Business Commissioner to Target Late Payments](#)’, 26 July 2015.

<sup>39</sup> BIS, *Enterprise Bill: Small Business Commissioner*, 17 September 2015, p 1.

<sup>40</sup> HM Government, *Small Business Commissioner: Government Response*, September 2015, p 3.

<sup>41</sup> BBC News, ‘[Small Business Commissioner to Target Late Payments](#)’, 26 July 2015.

<sup>42</sup> Confederation of British Industry, ‘[CBI Comments on Enterprise Bill](#)’, 17 September 2015.

the duration of the parliamentary term. According to those provisions, the Secretary of State must:

- Publish a target for the Government regarding the economic impact on business activities of all measures (or provisions) that fall within the definition of “qualifying regulatory provisions” and that come into force or cease to have effect between two general elections;
- Publish annual reports covering the impact of qualifying regulatory provisions in the reporting period in which they came into force or ceased to have effect and in aggregate over the period between two general elections;
- Appoint an independent verification body that must verify the assessments of economic impact of all measures in scope of the business impact target, and the classification of the regulatory provisions as qualifying regulatory provisions.<sup>43</sup>

Section 22 of the Small Business, Enterprise and Employment Act 2015 specifically describes which provisions can qualify for inclusion within the target and currently covers legislation and regulatory activity undertaken by UK Ministers, including some non-statutory regulators who exercise regulatory functions for or on behalf of UK Ministers. It is the Government’s intention that in order to “increase transparency”, the Enterprise Bill would extend the scope of the target to include the regulatory activity of all statutory regulators, as their activities have an impact on businesses.<sup>44</sup> The list of regulators subject to this measure will be specified in secondary legislation.<sup>45</sup>

### Reporting Requirements

The Regulators’ Code came into effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006 (replacing the Regulators’ Compliance Code), and provides a framework for how regulators should engage with those they regulate.<sup>46</sup> Almost all non-economic regulators, including local authorities and fire and rescue authorities, are required to have regard to it when developing policies and procedures that guide their regulatory activities.<sup>47</sup>

The ‘growth duty’ was introduced by the Deregulation Act 2015, and imposed a duty on non-economic regulators to “have regard to the desirability of promoting economic growth”.<sup>48</sup> Referred to together in the context of the Enterprise Bill as “the Duties”, neither the growth duty or the Regulators’ Code impose an express requirement for regulators to report on how they have performed their duties. The Government contends that, as a result, not all regulators currently publish such information, “which makes it very difficult to measure the effect the Duties have had and assess whether or not they benefit business”.<sup>49</sup>

Consequently, Part 2 of the Enterprise Bill would amend the Legislative and Regulatory Reform Act 2006 and the Deregulation Act 2015 to impose such reporting requirements. The Bill would also require regulators to obtain the views of business on the effect that the Duties have

<sup>43</sup> [Explanatory Notes](#) to the Bill, p 19.

<sup>44</sup> *ibid*, p 5.

<sup>45</sup> *ibid*.

<sup>46</sup> HM Government, ‘[Regulators’ Code](#)’, accessed 21 September 2015.

<sup>47</sup> *ibid*.

<sup>48</sup> Deregulation Act 2015, Section 108(1).

<sup>49</sup> [Explanatory Notes](#) to the Bill, p 5.

had, and to include them in the annual performance report; and to provide information that a Minister may request from time to time relating to the effect that the Duties have had on the way they exercised their functions.<sup>50</sup>

### 5. Part 3: Extension of the Primary Authority Scheme

Established by the Regulatory Enforcement and Sanctions Act 2008, the Primary Authority Scheme allows businesses to be involved with in their regulation. Through the scheme, businesses can form a statutory partnership with a local authority or fire and rescue authority, which then provides advice for other local regulators to take into account when carrying out inspections or addressing non-compliance.<sup>51</sup>

In a consultation document published at the same time as the Enterprise Bill, the Government suggests that the Primary Authority scheme has proved “very successful”, with takeup growing strongly:<sup>52</sup>

Since its introduction, [the scheme] has been extended, having proved very popular with business, and has grown strongly, providing assurance to 7695 businesses as of 3 September, doubling membership every year of the last Parliament. It now covers over ¼ million premises across the UK.

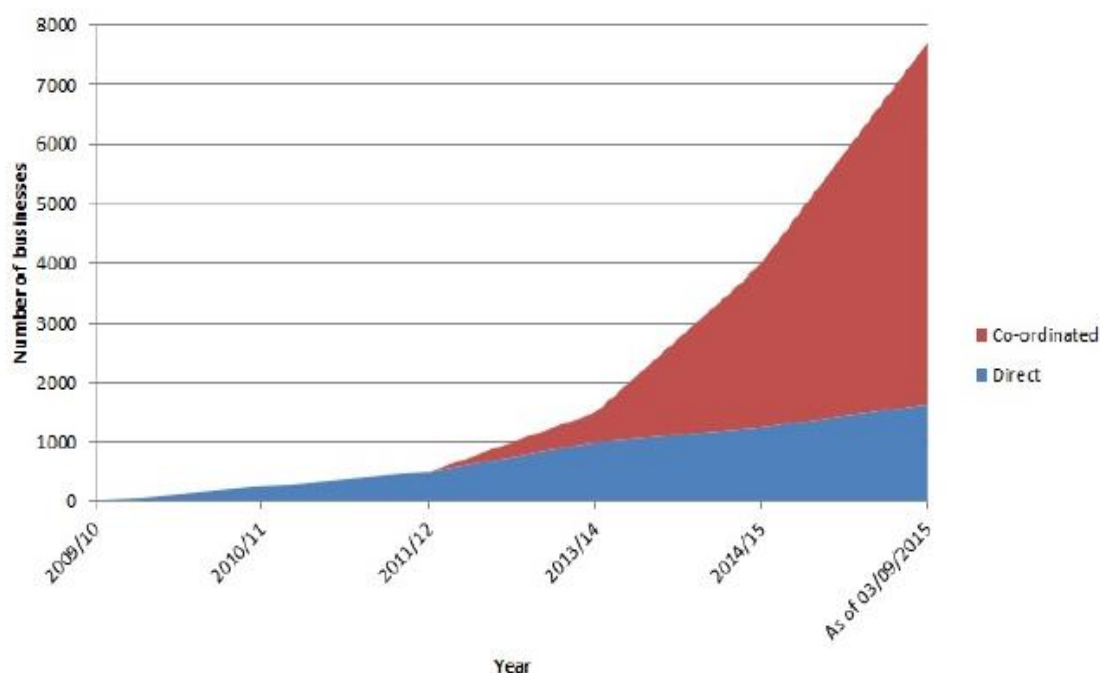


Figure 1: Primary Authority success

The Enterprise Bill would extend the scope of the scheme, following a speech by the Business Secretary, Sajid Javid, on 19 May 2015, in which he said:

Primary Authority allows a business to get advice on regulation from a single local council. This advice must then be respected by all other local councils, reducing the time and cost to businesses of having to obey multiple masters.

<sup>50</sup> BIS, [Enterprise Bill: Better Regulation Policies-Reporting Duty](#), 17 September 2015, p 1.

<sup>51</sup> BIS, [Primary Authority: Nurturing Partnerships for Growth](#), June 2015.

<sup>52</sup> BIS, [Extending and Simplifying Primary Authority: Keeping the UK Competitive](#), September 2015, p 2.

When Primary Authority came in, the purpose was to help larger firms trading nationwide. But it was so successful that we opened it to small business in 2013. Today, more than two-thirds of the businesses taking advantage of Primary Authority are small businesses.

It frees them from inconsistent and confusing red tape. It reduces their operational costs, and allows them to focus on expansion. Butchers' shops, convenience stores, restaurants, manufacturers. Thanks to Primary Authority, cheese makers don't have to display their cheddar on wooden boards in one place and on steel platters in another.

Yet only a tiny fraction of small businesses who could benefit are actually doing so. So we're going to simplify Primary Authority itself, making it far easier for small businesses to access the scheme, and we're going to extend its reach.<sup>53</sup>

Specifically, if enacted the Enterprise Bill would:

- widen access to more small businesses by opening up the scheme to pre start up enterprises and those regulated by only one local authority;
- simplify access to advice for groups of businesses such as members of a franchise or trade association;
- enable national regulators to support Primary Authority partnerships by supporting local authorities who are primary authorities to develop and issue advice, guidance and inspection plans to businesses; and
- streamline the administrative processes of the scheme for businesses, local authorities and the Government.<sup>54</sup>

The consultation on changes to the Primary Authority scheme also includes proposals which will not be enacted through the Enterprise Bill, including further suggested modifications to the scope of the scheme.<sup>55</sup>

Dr Adam Marshall, Director of Policy, British Chambers of Commerce, has welcomed the proposals, stating that:

I can see a lot of businesses being excited. If they are in a boundary area between one local authority and another they should be able to pick the one that makes it easiest for them to do business.<sup>56</sup>

Similarly, commenting after the announcement of the Enterprise Bill in the Queen's Speech, the Local Government Association said:

Councils work closely with LEPs [Local Enterprise Partnerships] and have been at the forefront of refocusing regulatory services to support business growth, provide advice

<sup>53</sup> [Speech](#) by the Secretary of State for Business, Innovation and Skills, Sajid Javid, 'Support for Small Business: Government Plans', 19 May 2015.

<sup>54</sup> *ibid.*

<sup>55</sup> BIS, [Extending and Simplifying Primary Authority: Keeping the UK Competitive](#), September 2015, p 2.

<sup>56</sup> Gov.uk, [BRDO Launches Primary Authority Discussion Document](#), 17 September 2015.

and reduce burdens, including delivering the Primary Authority scheme and Better Business for All. Good regulation helps responsible businesses as well as protecting residents, consumers and businesses from the risk of potentially dangerous or irresponsible activities and rogue traders. The extension of the primary authority scheme will increase consistency for businesses and help councils target their limited resources.<sup>57</sup>

## 6. Part 4: Apprenticeships

The Government's apprenticeship policy is explored in detail in a forthcoming House of Lords Library Note. Therefore, this paper provides only a succinct summary of key issues, focused specifically on the provisions of the Enterprise Bill.

The Government has stated that it aims to deliver 3 million apprenticeship starts in England within this Parliament; an increase on the 2.3 million achieved in the previous Parliament.<sup>58</sup> Ministers have described apprenticeships as a “national strategic priority, essential to support our employers and to aid the growth and productivity of our economy”,<sup>59</sup> and the Explanatory Notes to the Bill also highlight recent research from the Department for Business, Innovation and Skills, which reported that adult apprenticeships at level 2 and level 3 deliver £26 and £28 of economic benefits respectively for each pound of government investment.<sup>60</sup> A recent House of Commons Library Note set out the funding landscape for apprenticeships in England.<sup>61</sup>

### Apprenticeships budget

£ millions – Financial years (1 April–31 March) – England

Age of apprentice	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15*	2015/16*
16–18 (DfE)	688	751	764	679	728	801	-
19+ (BIS)	384	451	625	756	769	833	770
Total	1,072	1,202	1,389	1,435	1,497	1,634	-

Sources:	SFA, <i>Annual report and accounts 2014/15</i> , July 2015, p 65 SFA, <i>Annual report and accounts 2013/14</i> , June 2014, p 74 Young People's Learning Agency, <i>Funding statement</i> , December 2011, p 5 BIS, <i>Skills funding statement 2013–16</i> , February 2014, p 26 Education Funding Agency, <i>funding allocation letter from Peter Mucklow</i> , March 2013 SFA, <i>Allocations for the Funding Year 2015 to 2016</i> , 26 February 2015
Notes	* Minimum expected budgets for apprenticeships 2012/13 figure includes £32 million for AGE 16–24 2013/14 figure includes £42 million available as FE loans and £13 million for AGE 16–24 Includes money allocated to the Employer Ownership Programme and traineeships “-” figures not yet available 2014/15 includes an extra £40 million for Higher Apprenticeships

In order to increase the number of apprenticeships within, and “increase the capacity and capability” of, the public sector, Clause 18 of the Enterprise Bill would allow the Secretary of State to set targets for public bodies with regard to the number of apprentices who work for

<sup>57</sup> Local Government Association, [Queen's Speech: On The Day Briefing](#), 27 May 2015.

<sup>58</sup> [Explanatory Notes](#) to the Bill, p 6.

<sup>59</sup> Nick Boles, Minister of State, Department for Business, Enterprise and Skills, *HC Hansard*, 25 June 2015, [cols WA 4357](#).

<sup>60</sup> [Explanatory Notes](#) to the Bill, p 6.

<sup>61</sup> House of Commons Library, [Apprenticeships Policy, England](#), 2 September 2015, SN03052, p 11.



them.<sup>62</sup> The Government contends that this measure will allow the public sector to “lead by example” and help to ensure that it is a “model employer” with respect to apprenticeships.<sup>63</sup> The public bodies within the scope of this clause will be set out in regulations, and such bodies will be required to provide information to the Secretary of State on progress toward meeting any targets set.<sup>64</sup>

The House of Commons Library also provides a forecast of apprenticeship numbers, as below:<sup>65</sup>

### Number of funded apprentices by age (thousands)

Academic years (1 August–31 July) – England

Age of apprentice	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15*
16–18	186	203	190	181	186	240
19+	305	463	617	687	666	681
All ages	491	666	807	869	852	921

Sources: Education Funding Agency, funding allocation letter from Peter Mucklow, March 2013  
BIS, *Statistical First Release, DS/SFR20*, November 2014, p 26  
BIS, *Skills funding statement 2012-15*, December 2012, p 17

Notes \* indicates illustrative forecasts  
“-” these figures are not available  
Rounded to nearest 1,000

Clause 19 of the Enterprise Bill would also mandate that only statutory apprenticeships can be described as an apprenticeship.<sup>66</sup> Speaking to the rationale behind the move, a Government consultation on the proposals published in July 2015 stated:

As the apprenticeship brand grows, and there is an increasing focus on, and status of, apprenticeships, Government is concerned that there may be a temptation for the term ‘apprenticeship’ to be applied to lower-quality courses that do not meet the high standards of statutory apprenticeships in an effort to make them more attractive to employers or learners.

There is a risk that this could dilute the apprenticeship brand and affect the reputations of training providers of statutory apprenticeships, as well as result in negative experiences for people who undertake lower-quality courses thinking they are an apprenticeship. This would have an adverse impact on delivering apprenticeship growth and the economic and social benefits such growth will bring. At present there is no protection of the term ‘apprenticeship’ that could allow Government to take action in these instances.<sup>67</sup>

<sup>62</sup> BIS, [Enterprise Bill: Preventing Misuse of the ‘Apprenticeship’ Term](#), 17 September 2015, p 1.

<sup>63</sup> [Explanatory Notes](#) to the Bill, p 6.

<sup>64</sup> *ibid*, pp 30–1.

<sup>65</sup> Note the figures provided are the total number of individuals doing apprenticeships, not the number of apprenticeship starts. Source: House of Commons Library, [Apprenticeships Policy, England](#), 2 September 2015, SN03052, p 11.

<sup>66</sup> [Explanatory Notes](#) to the Bill, p 31.

<sup>67</sup> BIS, [Consultation on Preventing Misuse of the Term ‘Apprenticeships’ in Relation to Unauthorised Training](#), July 2015, p 4.



Clause 19 would create an offence for a person, in the course of business, to provide or offer a course or training as an apprenticeship if it is not a statutory apprenticeship.<sup>68</sup> Employers would not be able to commit the offence in relation to their employees, though the offence may be committed by a body corporate.<sup>69</sup> The offence would only be triable in the Magistrates' Court, and the maximum penalty would be a fine.<sup>70</sup>

Speaking in favour of the proposals, Leo Quinn, Balfour Beatty Group Chief Executive said they would help to “further build the status of apprenticeships”,<sup>71</sup> and David Corke, Director of Education and Skills Policy at the Association of Colleges, said that protecting the “apprenticeship brand” would help to maintain quality and ensure young people “receive the education and training they need to play a significant role in the workplace”.<sup>72</sup>

## 7. Part 5: Late Payment of Insurance Claims

Clauses 20–21 of the Bill would seek to address the issue of late payment of insurance claims to firms. The Law Commission and the Scottish Law Commission are undertaking a review of insurance contract law, and their July 2014 report, *Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment*, made recommendations for reform of the law in relation to late payment of insurance claims.<sup>73</sup> As noted in that report, under the current law in England and Wales, there is no obligation to pay valid insurance claims within a reasonable time. As a result, the Law Commissions recommended the following measures:

- An implied term in every insurance contract that the insurer will pay sums due within a reasonable time. Breach of that term should give rise to contractual remedies, including damages. In Scotland, a statutory provision would serve to confirm and clarify the position already established at common law.
- Guidance as to factors to be taken into account when considering what constitutes a “reasonable time”.
- Insurers should not be liable for delays caused by genuine disputes.<sup>74</sup>

The Enterprise Bill takes forward these recommendations. Further setting out its reasons for the measures, the Government stated:

Late payment is a major problem for businesses. Where a business has suffered a loss such as a fire or flood, it is likely to rely heavily on insurance. Any unnecessary delay in payment can have significant impacts on a business' ability to continue or re-start trading after an insured loss. However, insurers under contracts of indemnity insurance in England and Wales are under no legal obligation to pay valid claims within a reasonable time. Although Financial Conduct Authority (FCA) rules require claims to be handled

<sup>68</sup> BIS, [Enterprise Bill: Preventing Misuse of the 'Apprenticeship' Term](#), 17 September 2015, p 1.

<sup>69</sup> [Explanatory Notes](#) to the Bill, p 31.

<sup>70</sup> *ibid.*

<sup>71</sup> BBC News, ['Fake Apprenticeships—Crackdown Planned'](#), 21 September 2015.

<sup>72</sup> *ibid.*

<sup>73</sup> The Law Commission and Scottish Law Commission, [Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment](#), July 2014, Cm 8898, pp 344–5.

<sup>74</sup> The Law Commission, ['Insurance Contract Law: Business Disclosure, Warranties, Insurers' Remedies for Fraudulent Claims, and Late Payment'](#), accessed 22 September 2015.

and settled promptly, any failure to comply does not entitle a policyholder to claim damages for late payment.

The Government is committed to combating unreasonably late payment of sums due to businesses in particular. The law should incentivise insurers to pay as promptly as is reasonable, and give policyholders a legal right to enforce this.<sup>75</sup>

The Bill would insert a new section into the Insurance Act 2015, which will “imply an obligation to pay sums due within a reasonable time into all contracts of insurance”, the breach of which would give rise to the usual remedies for breach of contract, including damages for loss.<sup>76</sup> The Bill would also make provision as to what constitutes a “reasonable time”, including that it would include time to investigate and assess a claim, and depend on the circumstances of the particular case involved.<sup>77</sup> Further, an insurer would have a defence to a claim for breach of the implied term, where it had reasonable grounds for disputing the validity or value of a claim.<sup>78</sup> The Bill would also allow for contracting out of the default rules for non-consumer insurance contracts, provided that the insurer satisfies the transparency requirements set out in the Insurance Act 2015 (unless the breach of the term is “deliberate or reckless”, in which case any ‘contracting out’ term will have no effect).<sup>79</sup>

## 8. Part 6: Non-Domestic Rating

The Valuation Office Agency (VOA) is responsible for compiling and maintaining non-domestic rating list, which contain details of properties which are liable for non-domestic rates, together with their rateable values.<sup>80</sup> The VOA also collects information from businesses, such as the identity of the non-domestic ratepayer and plans of the property. At present, officers of the VOA are prevented from sharing information they collect about properties and ratepayers—under threat of criminal sanction—with other parties, including local government. As a result, businesses are currently required to provide the same information twice to both the VOA and the local authority.<sup>81</sup>

The coalition Government published *Administration of Business Rates in England: A Discussion Paper*, in April 2014, which included consideration of how to improve the sharing of non-domestic rates information in government.<sup>82</sup> The then Government subsequently published its *Interim Findings* on that review in December 2014, which stated that:

Stakeholders have said they want greater access to the information held on their behalf by the Valuation Office Agency and they also suggest that public bodies, which hold ratepayer data, should share it more efficiently between themselves in order to reduce the number of times ratepayers are asked to provide it. The government will therefore look for a suitable opportunity to change the law to allow greater sharing of information between the Valuation Office Agency and local government.<sup>83</sup>

<sup>75</sup> BIS, [Enterprise Bill: Late Payment of Insurance Claims](#), 17 September 2015, p 1.

<sup>76</sup> [Explanatory Notes](#) to the Bill, p 32.

<sup>77</sup> *ibid.*

<sup>78</sup> BIS, [Enterprise Bill: Late Payment of Insurance Claims](#), 17 September 2015, p 1.

<sup>79</sup> *ibid.*

<sup>80</sup> As noted in the Explanatory Notes to the Bill, the rateable value is, in a broad sense, the annual rental value of a property.

<sup>81</sup> [Explanatory Notes](#) to the Bill, p 7.

<sup>82</sup> HM Government, [Administration of Business Rates in England: A Discussion Paper](#), April 2014.

<sup>83</sup> HM Government, [Administration of Business Rates in England: Interim Findings](#), December 2014, p 9.

The Enterprise Bill would provide for the creation of an “information gateway” between the Valuation Office Agency and local government to allow for the “legal and safe transfer” of business rates information.<sup>84</sup>

The *Interim Findings* of the business rates review also recommended reform with regard to the business rates appeals process. The rateable values of non-domestic properties by which a ratepayer’s liability for non-domestic rates is determined are reassessed at a revaluation, which usually happens every 5 years.<sup>85</sup> Between revaluations, changes to rateable values can only be made on the basis of physical changes to the property or its locality. In cases where a ratepayer is not content with the assessment shown in the non-domestic rating list, they may challenge their rateable value by making a proposal to the VOA—if there is a disagreement between the ratepayer and the VOA as to the proposed alteration, the ratepayer can appeal to the Valuation Tribunal for England (VTE).<sup>86</sup>

The *Interim Findings* reported that “too many rating appeals are made with little supporting evidence and that they take too long to resolve”, and said that there was “widespread agreement” on urgent need to introduce a more efficient system so that businesses can be confident that their valuations are correct and that they are paying the right amount of business rates.<sup>87</sup> The review further suggested that a revised appeals system should be built around three stages—check, challenge and appeal—to “provide a structured and transparent approach” in which there are clear expectations on all sides about timescales, requirements and action.<sup>88</sup>

Consequently, the Enterprise Bill would broaden existing enabling powers of section 55 of the Local Government Finance Act 1988, to provide for:

- a new ‘Check’ stage;
- civil penalties of up to £500 for the provision of false information, and appeals against those penalties; and
- certain matters relating to appeals (including grounds for appeal, matters which may not be taken into account in the appeal, the admission of new evidence, and the payment and refund of fees).<sup>89</sup>

The Government factsheet on the provisions confirms that details of the reformed appeal system will be set out in secondary legislation, and provides the following summary of the measures:

- the ‘Check’ stage will ensure that the property’s rating assessment is based on accurate and up-to-date facts. Where it is not possible to agree facts, the disputed matters will be clearly established;
- the ‘Challenge’ stage will allow a ratepayer to challenge the rating assessment. The Valuation Office Agency will consider the case put forward by the ratepayer, and will issue a decision on whether the rating list will be changed; and

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<sup>84</sup> BIS, [Enterprise Bill: Business Rates Appeals Reform](#), 17 September 2015, p 1.

<sup>85</sup> [Explanatory Notes](#) to the Bill, p 8.

<sup>86</sup> *ibid.*

<sup>87</sup> HM Government, [‘Administration of Business Rates in England: Interim Findings’](#), accessed 22 September 2015.

<sup>88</sup> *ibid.*

<sup>89</sup> BIS, [Enterprise Bill: Business Rates Appeals Reform](#), 17 September 2015, p 1.

- the ‘Appeal’ stage will allow a ratepayer to appeal to the independent Valuation Tribunal for England, which will consider and make a decision on the case.<sup>90</sup>

Speaking prior to the publication of the Bill, the Local Government Association said that it welcomed new powers for the Valuation Office Agency to share data with councils, which “will be good for councils and ratepayers”.<sup>91</sup> Graeme McDonald, Director of the Society of Local Authority Chief Executives & Senior Managers, told the *Local Government Chronicle* that the proposals in the Bill amounted to “tweaks” of the appeal system rather than reform, adding:

We would have liked to have seen a system of voluntary assessment built into the business rates process so that business could assess themselves and therefore share the risk of appeal, rather than the risk all being placed on the local authority. [...] The government wanted to change the system to benefit businesses and they have done that marginally but not fundamentally and neither does it help councils in their planning of their finances over the medium to long-term so it’s a real missed opportunity and a bit of a damp squib.<sup>92</sup>

In addition, the *Local Government Chronicle* reported that Andrew Burns, President of the Society of County Treasurers, said the proposals were “a step in the right direction but we’d like it to go further”, stating that:

The problem we’re trying to solve is to give billing authorities the appropriate amount of time and the appropriate amount of information to enable them do good financial plans based on business rates income.<sup>93</sup>

Finally, Chief Executive of the Chartered Institute for Public Finance and Accountancy, Rob Whiteman, told the *Chronicle* that changes to the appeals system should mean fewer challenges are made because businesses should have more confidence in the accuracy of their bill.<sup>94</sup> Mr Whiteman also welcomed the move to allow the VOA to share information with local authorities which would reduce the administrative burden by allowing information to be shared digitally. However, Mr Whiteman called for the government to explore “further reform”, including how “powers over rates could be devolved more fully to boost local economies”.<sup>95</sup>

## 9. Part 7: Industrial Development

The Industrial Development Act 1982 allows financial support to be provided by Government to industry. An annual joint report by the Secretary of State for Business, Innovation and Skills, the First Minister of Scotland and the Welsh Ministers describes the exercise of powers under

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<sup>90</sup> *ibid.*

<sup>91</sup> Local Government Association, [Queen’s Speech: On the Day Briefing](#), May 2015, p 4.

<sup>92</sup> *Local Government Chronicle*, [“Damp Squib’ Business Rates Reform Bill Branded ‘Missed Opportunity’](#), 22 September 2015.

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*

<sup>95</sup> *ibid.*

the Act, the most recent of which was in July 2015.<sup>96</sup> The powers provided by the 1982 Act include:

- Section 8 (Selective Financial Assistance: general powers)—this enables the Secretary of State to provide financial assistance in any part or area of the UK, subject to certain conditions. Section 8(8)-(9) caps the amount that can be paid in respect of any one project at £10 million. Financial assistance over this limit to any one project requires a resolution of the House of Commons. Section 8 applies to the whole of the UK;
- Section 13 (Improvement of basic services)—this allows a Minister in charge of any Government Department to make grants or loans towards the cost of improving basic services in development areas or intermediate areas (now commonly known as Assisted Areas), with the intention of developing industry in that area. Basic services cover the provision of facilities such as power, water or transport, and the section applies to Great Britain.<sup>97</sup>

It is the Government's contention that in the 30 years since the Industrial Development Act 1982 was enacted the business environment has changed, and amendments are needed to the Act to bring it up to date.<sup>98</sup> The previous government consulted on potential reforms, and the Explanatory Notes to the Enterprise Bill note that:

The consultation on Revision of the Industrial Development Act 1982 closed on 2 November 2011, having received 31 responses. The Government response (Revision of the Industrial Development Act 1982) to the consultation was published on 28 June 2012, noting that there was strong support for these two proposals from those who commented, and committed to bring forward legislation as and when Parliamentary time allowed. The measures in the Enterprise Bill updating the Industrial Development Act 1982 build on the response to the consultation.<sup>99</sup>

Specifically, the Enterprise Bill would increase the threshold amount of financial assistance that can be provided under section 8 of the Industrial Development Act 1982 from £10 million to £30 million, before a resolution of the House of Commons is required.<sup>100</sup> The Government assert that this would reflect UK inflation since 1982.<sup>101</sup> The threshold will not be increased from £10 million in cases where the power is exercised by Scottish Ministers.<sup>102</sup>

The Enterprise Bill would also insert a new clause into the 1982 Act to confer on the Secretary of State the power to make grants or loans towards the costs of improving electronic communications and broadband facilities, networks and services, to “support the roll out of [such provision] across the UK”.<sup>103</sup>

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<sup>96</sup> Joint Report by the Secretary of State for Business, Innovation and Skills, the First Minister of Scotland and the Welsh Ministers, [Industrial Development Act 1982: Annual Report](#), July 2015.

<sup>97</sup> [Explanatory Notes](#) to the Bill, p 8.

<sup>98</sup> *ibid.*

<sup>99</sup> *ibid.*, pp 8–9; HM Government, [Revision of the Industrial Development Act 1982: Consultation](#), June 2012.

<sup>100</sup> [Explanatory Notes](#) to the Bill, p 34.

<sup>101</sup> *ibid.*

<sup>102</sup> BIS, [Enterprise Bill: Updating the Industrial Development Act 1982](#), 17 September 2015, p 1.

<sup>103</sup> *ibid.*, pp 34–5.

## 10. Part 8: Public Sector Employment: Restrictions on Exit Payments

In July 2015, the Government published a consultation paper on restricting exit payments from the public sector.<sup>104</sup> Setting out its rationale for such a change, the paper stated:

Exit payments associated with loss of employment including redundancy are important to employers' ability to reform and react to new circumstances, and provide important support for employees as they find new employment. Equally it is important that these payments are proportionate and offer value for money.

Between 2011–12 and 2013–14 the cost of exit payments in the public sector was around £6.5 billion. More than £1 billion of this cost came as a result of exit payments costing more than £100,000.

The government does not believe that six figure exit payments, which are far in excess of those available to most workers in the public sector or wider economy, are fair or offer value for money to the taxpayer who funds them.

The government therefore proposes to introduce a cap of £95,000 on the total value of exit payments.<sup>105</sup>

The Enterprise Bill would introduce such proposals, specifically the Bill would enable regulations to be made to impose a restriction on exit payments payable to an employee of prescribed public sector authority or holder of a prescribed public sector office, as a consequence of them leaving employment or office. Such restrictions would apply to an aggregate of all exit payments made to the individual within a period of 28 days, and that the initial value of the restriction will be £95,000.<sup>106</sup> The proposed regulations made under this clause would also prescribe what payments to an employee or post holder are within the scope of the restriction, and provide that certain payments or category of payments are exempt.<sup>107</sup> The provisions of the Bill are intended to apply broadly across the public sector as defined by the list of public sector bodies set down by the Office of National Statistics (although some bodies may be exempted), and the Bill would also allow for a waiver to be made in “exceptional circumstances”, subject to approval by the relevant Minister.<sup>108</sup>

Reaction prior to the conclusion of the consultation focused on the exclusion of organisations such as the BBC, the Bank of England and Channel 4 from the provisions,<sup>109</sup> and the concerns expressed by some trade unions such as the FDA and Public and Commercial Services Union about the proposals.<sup>110</sup> In particular, the Assistant General Secretary of the FDA, Rob O'Neill, said:

[These proposals] could affect a lot people in middle ranks, people like nurses, people like firefighters and others across the public sector. £95,000 sounds like a lot of money but if people are volunteering to go and have been in public service a long time and have

<sup>104</sup> HM Government, [Consultation on a Public Sector Exit Payment Cap](#), July 2015.

<sup>105</sup> *ibid*, p 3.

<sup>106</sup> [Explanatory Notes](#) to the Bill, p 35.

<sup>107</sup> *ibid*.

<sup>108</sup> BIS, [Enterprise Bill: Public Sector Employment: Restrictions on Exit Payments](#), 17 September 2015, p 1

<sup>109</sup> *Financial Times*, 'George Osborne Proposes to Cap Public Sector Pay-offs at £95,000', 31 July 2015; *Daily Telegraph*, 'BBC Escapes Ban on Six-Figure Public Pay Offs', 30 July 2015.

<sup>110</sup> *Civil Service World*, [Unions Voice Concern Over Plan to Cap Public Sector Payouts](#), 27 May 2015.

built up a pension, that's not always the case. You will end up with more compulsory redundancies and create a situation that most employers would want to avoid.<sup>111</sup>

The Local Government Association also stated, prior to the publication of the Bill, that:

The LGA agrees that excessive redundancy payments are unacceptable and notes that the vast majority of councils have taken their own action to limit the scope for such payments in recent years in a way that puts local government well ahead of the NHS and other parts of the public sector. However, great care needs to be taken with legislation in this area to avoid penalising hard working experienced staff with many years of service behind them. The exact rules around capping will need to take account of pension entitlements and so forth and so will be extremely complex potentially.<sup>112</sup>

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<sup>111</sup> *ibid.*

<sup>112</sup> Local Government Association, [Queen's Speech: On the Day Briefing](#), May 2015, p 4.