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Small Business, Insolvency and Redundancy

This paper provides background to some prevailing areas of concern in the current economic context.

The Pre-Budget Report delivered on 24 November 2008 announced various measures with the aim of helping small business.

The small and medium business sector currently accounts for 59% of enterprise employment. The ongoing contraction in credit availability affects small business start up, growth and cash flow. There have also been gloomy predictions about the economic pressures small firms will face in the coming period. Various announcements have been made by the Government on measures to support them.

The paper looks at the current law on insolvency as well as various aspects of employment law on redundancy, including: minimum entitlements, age related aspects, insolvent employers, pensions, unemployment benefits and the relevant provisions on the transfer of undertakings (TUPE).

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Summary of main points

The Pre-Budget Report on 24 November 2008 made various announcements affecting small and medium sized businesses (SMEs).¹ There were significant measures aimed at addressing the ability of small firms to access finance, for example government support for up to £1 billion of bank lending; a separate £1 billion guarantee facility to support bank lending to small exporters, as well as loan money from the European Investment Bank.

The issue of difficulties faced by small business in gaining access to finance has a long historical pedigree, once well known as the “Macmillan Gap”. The Bolton Report in 1971 assessed the apparently “powerful case” for government intervention but did not recommend this since it was not believed that there were significant numbers of deserving businesses who could not get finance from the normal sources.² The current government loan guarantee scheme still leaves loan applications to the commercial discretion of banks. However, in the current economic conditions the question arises as to the level of legitimate unsatisfied demand. There is a perception that this category of clearly deserving businesses unable to raise finance on reasonable terms may be growing. On 11 November 2008 the Government set up a panel to monitor bank lending to small business comprising Department for Business and HM Treasury officials together with representatives of the Bank of England.³

The small and medium sized business sector is statistically defined in various ways. If the sector is defined as enterprises with between 0 and 249 employees, then in the UK they currently account for 99% of all enterprises and 52% of total turnover. Small and medium sized businesses also provide 59% of enterprise employment.

Company liquidations in England and Wales increased 26.3% in Q3 2008 compared to the same quarter one year ago, and by 10.5% compared to the previous quarter (seasonally adjusted data) according to data published by the Insolvency Service.⁴ Not all small firms are incorporated and complete statistics on insolvency for the sector are difficult to compile.

In October 2008, the number of people claiming Jobseeker's Allowance in the UK rose to 980,900 on a seasonally adjusted basis. This was 36,500 higher than the previous month and 154,800 higher than October 2007.⁵ There is also anecdotal evidence from employers' help lines of rising demand from employers for advice on implementing redundancies, in some cases reports of a threefold increase.⁶ Employment law in the area of redundancy is fairly settled, although there are still areas where individuals and lawyers say that improvements are required. There is a government scheme that covers certain statutory and other entitlements of employees where their employer is insolvent. There have been calls for a scheme to underwrite unpaid employment tribunal awards in general.

¹ [Pre-Budget Report 2008](#), page 67

² [Cmnd 4811](#) November 1971

³ BERR, [Panel launched to monitor Banks' small business lending](#), 11 November 2008

⁴ Insolvency Service, [Insolvencies in the third quarter 2008](#), 7 November 2008, Q4 data released on 6 February 2009

⁵ Information on Jobseeker's Allowance claimants by parliamentary constituency is provided in Library [Research Paper 08/83, Unemployment by Constituency October 2008](#)

⁶ “Demand for job cut advice surges”, *Financial Times*, 5 November 2008

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I Small business ⁷

A. Government policy on supporting small business

1. Pre Budget Report 2008 ⁸

The November 2008 Pre-Budget Report set out that from “early 2009” the Government, with support of Regional Development Agencies, will launch the Small Business Finance Scheme. This is detailed as “a new temporary guarantee scheme to enable up to £1 billion of new Government supported lending by banks.”⁹ Other measures to improve availability of finance were summarised:

- the Export Credits Guarantee Department, in conjunction with the banks, will introduce a temporary guarantee scheme to support a £1 billion facility providing smaller exporters with better access to short-term working capital. Also, the Fixed Rate Export Finance Scheme will continue for another year after the end of 2008;
- the Government will also make available a capital fund of £50 million providing equity or quasi-equity to SMEs who are overleveraged. This will be funded from the existing Mezzanine Fund, Enterprise Capital Funds and a £10 million RDA contribution;
- earlier in November 2008, Advantage West Midlands launched a transition loan fund for viable SMEs facing financial difficulties. Other RDAs will launch similar loan funds, now totalling £25 million, to help businesses over the next six months. The package of measures above includes £110 million of contribution from RDAs; and
- early in 2009, the Government will launch, with Business Link, a new easily accessible portal, to direct credit-worthy SMEs who are experiencing problems accessing credit to the scheme appropriate for them.¹⁰

In addition to the domestic Small Business Finance Scheme a further £1 billion of lending from European Investment Bank will be available:

4.8 In addition to domestic measures, UK small businesses should also be able to benefit from around £4 billion of lending from the European Investment Bank (EIB) between 2008 and 2011. Following proposals by the Government, the EIB has increased by 50 per cent the total amount of lending available to small firms, and it has significantly simplified its approach to increase the attractiveness of its lending. The Government welcomes the commitment of UK lenders to approach the EIB to access these funds. As a first step towards this, following negotiations between UK banks and the EIB, £1 billion of EIB funds will be available to SMEs in the UK by the end of 2008. The Government is also working with the UK banks and EIB on its commitment to share greater risk with commercial banks lending to small businesses.

⁷ By Louise Smith and Vincent Keter, Business & Transport Section

⁸ HM Treasury, [Pre Budget Report 2008](#)

⁹ HM Treasury, [Pre-Budget Report](#), November 2008, box 4.1

¹⁰ HM Treasury, [Pre-Budget Report](#), November 2008, box 4.1

4.9 The Government has asked the EIB to offer additional help to large businesses through this difficult period, including to Private Finance Initiative (PFI) projects. In the medium to longer term, the Government, working with European Union (EU) partners, is encouraging the EIB to continue lending more, to lend faster and to take on more risk. This includes significantly increasing its volume of financing on infrastructure, for example projects that contribute towards the UK's and EU's energy security, and on projects that contribute towards a low-carbon economy.

2. Enterprise Strategy: Budget 2008

The Government's Enterprise Strategy was announced in Budget 2008.¹¹ This is described as follows on the Treasury website:

The Enterprise Strategy sets out how the Government will encourage further business start up and growth. Focusing on small and medium sized businesses the strategy outlines a new framework for Government action and details five enablers of Enterprise (Culture, Knowledge and Skills, Finance, Innovation and Regulatory framework). Highlights include:

- Improving access to finance for SME's
- A consultation on the introduction of regulatory budgets, which would cap the new annually recurring cost of regulation for business, including whether to pilot this approach on SME's or a particular sector;
- Increased focus in minimising the impact of regulation on SME's
- Independent review of regulatory guidance
- Further development of enterprise education on secondary schools and extension of it, where possible, into primary and further education (underpinned by a £210 million funding package, as agreed at the 2007 CSR); and
- Establishment of a National Enterprise Academy (NEA)

The Government's strategy for enterprise is stated in terms of "five enablers":

Culture The Government wants to develop a culture in which talent can be unlocked and flourish, recognising differences in enterprise culture across different social groups, reducing the fear of failure that holds enterprise back and giving everyone the opportunity to be entrepreneurial.

Knowledge and skills The Government wants to ensure that individuals and businesses have access to and are able to develop the best possible knowledge and skills to support the growth of their business.

Access to Finance The Government wants to ensure that people starting or growing a business have access to the appropriate level of finance, and the necessary skills and advice to make their business 'investment ready'.

Regulatory Framework Recognising that unnecessary or overly complex regulation can stifle enterprise and has a disproportionate impact on small firms,

¹¹ HM Treasury, [Enterprise: unlocking the UK's talent](#), 12 March 2008

the Government will build on its targeted net reduction in the administrative burden of regulation of 25 per cent by 2010.

Business Innovation The Government will reinforce the role of innovation as a driver of enterprise, complementing the new Innovation Strategy published by the Department for Innovation, Universities and Skills (DIUS). The Department for Business, Enterprise and Regulatory Reform will work with DIUS to promote and incentivise greater investment in research and development (R&D) and encourage more innovation partnerships between businesses and between business and universities.¹²

As this indicates, an important focus of the strategy is on access to finance for small firms:¹³

The Government is building on the range of initiatives already in place to help businesses finance their ambitions to start-up and grow.

SME lending in the UK has remained stable in the face of recent financial market disruption. However Government is committed to ensuring that businesses who are starting up and those seeking to expand and grow are not constrained in obtaining finance as a result of any financial market disruption and is therefore proposing to strengthen the Small Firms Loan Guarantee by:

- a 20 per cent uplift in lender allocations for one year; and
- extension to the eligibility of SFLG to businesses with growth ambitions that are more than five years old, including, but not limited to, those that have changed ownership.

Further, to help bridge the finance gap for growth businesses, Government is proposing the following measures:

- Commitment of £12.5million for a capital fund focussed primarily on investing in women led businesses.
- Additional £30million capital commitment to stimulate the delivery of mezzanine finance through Enterprise Capital Funds (ECFs) but also through SFLG. Commitment to stimulate delivery through SFLG
- Removal of clauses in public procurement contracts that might prevent the use of factoring and invoice discounting as a means of finance, thereby enabling SMEs to compete.
- Development of a national framework for the delivery of investment readiness support, including targeted support for underrepresented groups such as women.
- Support and work with British Business Angel Association to develop and build capacity in UK's Business Angel sector.
- Launch of a third round of Enterprise Capital Funds, with around £50m available to invest. Further £100million available to commit in two subsequent rounds.

¹² BERR, [Enterprise – Unlocking the UK's Talent](#), March 2008

¹³ HM Treasury, [Enterprise: unlocking the UK's talent](#), 12 March 2008

Equally significant were the proposals intended to increase support for business innovation, in particular to:

- Investigate the role that innovation vouchers can have in encouraging firms to innovate in liaison with universities.
- Refocus Small Business Research Initiative (SBRI) co-ordinated by the Technology Strategy Board.
- Offer a 3-month trial period for new firms registering on supply2gov.uk Government will do more to encourage public sector buyers to register and post opportunities on the site.
- Through the National Council for Graduate Entrepreneurship establish university enterprise networks.¹⁴

In the debate on the Budget Resolutions the Minister, John Hutton, referred to the enterprise investment scheme:¹⁵

The enterprise investment scheme has raised more than £6.1 billion, which is now invested in more than 14,000 smaller, higher-risk companies. To help even more businesses prosper, we will now increase the investor limit from £400,000 in one tax year to £500,000 from April, and we will consult on the simplification of that scheme. Those changes will all ensure greater simplicity, fairness and growth for more businesses, rewarding entrepreneurs and risk takers and rightly recognising the importance of wealth creation.

We are also bringing forward new ideas and investment to deepen the culture of enterprise in the UK. We are committed to spending a further £30 million to extend enterprise education into primary schools and tertiary colleges, bringing the total spending in this area to more than £200 million over the comprehensive spending review period.

Of background relevance to these developments is the *Government Action Plan for Small Business* published in 2004.¹⁶ A status report on this was published in July 2007.¹⁷

3. Bank lending¹⁸

There has been a rising tide of complaints about banks either not lending or charging more for loans and overdrafts to small firms. Shortage of credit is largely behind concerns over the prospect of economic recession and is of obvious concern for small firms, both in terms of start-ups and ongoing financial needs for business growth.

The Federation of Small Businesses (FSB) produced a statistical leaflet profiling small business in the context of the current economic conditions. It found:

- Almost half of FSB members have found it increasingly hard to gain access to finance in the last year;

¹⁴ HM Treasury, [Enterprise: unlocking the UK's talent](#), 12 March 2008

¹⁵ [HC Deb 18 March 2008 cc 761-2](#)

¹⁶ BERR, [Government Action Plan for Small Business](#)

¹⁷ BERR, [Status Report on the Government Action Plan for Small Business](#), July 2007

¹⁸ By Timothy Edmonds, Business & Transport Section

- Small businesses are suffering from:
 - Hikes in interest rates for loans and overdrafts;
 - Poor treatment despite good credit histories;
 - Behavioural inconsistencies from strategic to branch level;
 - The imposition of facility fees;
 - Reneging on promised finance;
- The FSB has proposed a £1billion Small Business Survival Fund open to all small businesses which would encompass the Small Firms Loan Guarantee and funds from the European Investment Bank (EIB);
- Only three banks are currently licensed to supply EIB funds, Barclays, Alliance and Leicester and Close Brothers.¹⁹

Complaints about the banks are set against the background of the Treasury's plan to recapitalise banks announced on 13 October 2008. It is suggested that in return for government money the banks should 'do their bit' to support the wider economy.

Articulating such sentiments, the Treasury announced that, as part of its plan to recapitalise banks, it would require participating banks to maintain "over the next three years, the availability and active marketing of competitively-priced lending to homeowners and to small businesses at 2007 levels".²⁰

This was interpreted by some as an "aspiration"²¹ and, if implemented, would lead to a large increase in the volume of loans made in 2008. Other commentators expressed doubts about whether the Government could reasonably enforce such conditions. The Government clarified its intent in a Lords debate on 22 October. With regard to the requirements on banks to maintain lending, Lord Hunt wondered how "anyone can judge whether they are genuinely seeking to do so at 2007 levels". In response to this criticism Lord Mandelson said that this would not amount to actually directing the banks to make loans:

We need to be clear: availability is not a requirement to lend at 2007 volume levels. We cannot and should not, first of all, pre-empt the banks' judgment. We cannot anticipate what demand there will be. All we are saying is that, as a condition for our stake in the recapitalisation, we are asking the banks to make available the resources at 2007 levels and to offer a wide range of products at competitive rates to be made available to the customers they judge to be creditworthy. We are not pre-empting or second-guessing the banks but asking them to maintain the availability of funds for lending to SMEs and to publicise this availability to SMEs.²²

¹⁹ FSB, [Number Crunching the Credit Crunch, Small Business statistics](#)

²⁰ HM Treasury, [Treasury statement on financial support to the banking industry](#), 13 October 2008

²¹ BBC News, [Mortgage plan is 'an aspiration'](#), 13 October 2008

²² HL Deb 22 October 2008 cc1149

It has been reported that Alistair Darling has pressed banks to change their voluntary code on lending to small businesses to ensure that small business customers are given reasonable notice before loans and overdrafts are withdrawn or made more expensive.²³

Political pressure on the banking sector to respond has continued to grow. The Chancellor is reported to be "exasperated by the 'moral failure' of banks to help small firms and families". The Chairman of the Treasury select committee, John McFall, was less restrained. He called for major banks to start lending to small business or face increased public pressure for nationalisation if they do not:

There is growing anger at the apparent reluctance of banks to pass on cuts in interest rates to mortgage holders or free up credit to small businesses -- particularly after several participated in the government's 37 billion pound bailout scheme.

"Despite having been pulled back from the brink, the banks appear reluctant to launch their sizeable recapitalisation lifeboat and start lending again to households and businesses," McFall said.

"It would seem that they are instead navel gazing and looking warily at each other instead of concentrating on their customers, many of whom are still in peril on a sea of uncertainty."

McFall said that if the banks fail to comply, there could be "nuclear option" of full-scale nationalisation.²⁴

Responding to the criticism the Chief Executive Director of the British Bankers' Association, Angela Knight, denied that banks are deliberately choosing not to lend to small businesses:

She said the basic problem is that "the economy has turned down quite dramatically" and that most institutions are reacting to this by making a "proper assessment of the risk" of lending in this climate.

The Financial Times reported that the Shadow Chancellor, George Osborne has called for the Government to:

...consider acting as a bank - offering direct loans to business as a "radical" last resort if banks continue to starve companies of credit.

Mr Osborne also said ministers might have to step in to insure bank loans to the corporate sector...

[...]

...he said his focus was on creating conditions for the Bank of England to cut interest rates and on putting in place mechanisms - such as state-backed credit insurance - to ensure cuts are passed on to consumers and business.²⁵

²³ "Darling in plea to UK banks on lending" *Financial Times*, 30 October 2007

²⁴ "UK govt may force banks to lend to firms-reports", *Reuters News*, 21 November 2008

²⁵ "Osborne calls for state to act as bank" *Financial Times*, 21 November 2008

4. European Investment Bank (EIB)

The Government has said that money from the EIB will be made available in the UK to banks to make loans:

The government has brokered contact between the European Investment Bank (EIB) and UK banks to ensure that the £24 billion facility announced by EIB over four years is made available for immediate access in the UK. The four largest UK banks have now signalled their initial interest to negotiate loans totalling about £1bn.²⁶

Further details about this scheme, including eligibility criteria, are given in a press release on the EIB website:

Who is eligible for an EIB loan for SMEs?

All autonomous firms with fewer than 250 employees. Subsidiaries and holding companies of industrial groups are not eligible as these EIB loans are reserved for small and medium-sized enterprises.

To finance what?

EIB loans for SMEs can support all types of investment or expenditure necessary to grow a small business. Hence, the investment can be:

- tangible, i.e. the purchase of plant or real estate. In principle, the purchase of land is ruled out unless it is vital for the investment while the purchase of agricultural land is totally excluded.
- intangible, such as the financing of expenditure directly related to research and development, building up or taking over distribution networks, including in another EU Member State, the filing or acquisition of patents or the costs incurred in the transfer of an enterprise enabling the continuation of economic activity (where the buyer and the enterprise up for sale are SMEs and the amount required to finance the transfer does not exceed EUR 1m).
- the permanent increase in working capital required to develop an expanding SME.

In practically all sectors of the economy:

EIB loans for SMEs can support investment in any economic sector except arms, gambling, tobacco, activities involving animal testing, activities whose environmental impact cannot be mostly mitigated or offset, sectors that are morally or ethically controversial (such as human cloning) and pure property development.

Also excluded are purely financial transactions (e.g. company takeovers) with the exception of transfers of businesses in the specific circumstances described above.

For how much and on what terms?

²⁶ BERR, [Helping small and medium sized businesses through the economic slow down](#), 21 October 2008

EIB loans for SMEs can support investment for any amount ranging from very small projects to investments costing up to EUR 25m. EIB finance can be obtained for loans of generally between 2 and 12 years. The actual length of the loan will depend on the economic life of the project financed. The maximum amount provided by the EIB may not exceed EUR 12.5m per loan.

EIB loans for SMEs will be provided throughout the European Union via commercial banks, which will be responsible for evaluating each loan application submitted by a SME. For most operations, it will be entirely up to the intermediary bank to decide whether or not to grant a loan to the SME. The EIB's participation serves to enhance the financial terms of such loans and the EIB will ensure that the SMEs concerned are clearly informed of these favourable terms.

For certain operations, the EIB can also share the risks with the banking partner or provide mezzanine finance. The practical arrangements for these two options will be spelt out at a later date.²⁷

Contact details for the financial intermediaries²⁸ in the UK with access to these loans are provided on the [European Investment Bank website](#).²⁹

The Federation of Small Businesses (FSB) expects the UK share of the EIB facility to be around £4billion and has called for the Government to deliver this through Regional Development Agencies.³⁰ The Pre-Budget Report 2008 detailed that £1 billion of EIB funds will be available to SMEs in the UK by the end of 2008.³¹

A press article on 21 November 2008 reported that the EIB may itself face problems:

The European Investment Bank, the world's largest multilateral lender, has seen its arrears rate surge over recent weeks, prompting concern over its ability to fulfil its new role as the spearhead of Europe's spending blitz.

The bank said its ratio of non-performing loans has already rocketed from almost zero earlier this year to "nearer 1pc" in October as a result of the "current financial crisis", suggesting that recent expansion into Eastern Europe may have come at a price. A spokesman said the EIB could not elaborate until the audited books are published next year.³²

5. Other recent announcements

On 21 October the Government announced a package of measures to help small businesses in the wake of the credit crunch:

The Government will:

- Build on its commitment to pay firms within 10 days by working with NHS trusts in England, local authorities and other public sector employers in

²⁷ European Investment Bank, [EIB launches new loans for SMEs](#), 3 October 2008

²⁸ Believed to be Barclays, Alliance and Leicester and Close Brothers (see above)

²⁹ European Investment Bank, [Financial intermediaries in the United Kingdom](#)

³⁰ FSB, [European Investment Bank Proposition](#), October 2008

³¹ HM Treasury, [Pre-Budget Report](#), November 2008, para 4.8

³² "Hedge funds wait as EIB arrears grow As Europe suffers, there are concerns the bank might have over-extended itself" *Daily Telegraph*, 21 November 2008

England to seek opportunities to extend the payment target. Regional Development Agencies in England, which spend around £750m per year with suppliers, have today signed up to this target.

- Offer free "Health Checks" in England for businesses through its Business Link support service to help identify problems early and to survive in the current financial climate.
- Prioritise training for SMEs in England under its Train to Gain initiative to ensure employees have the skills and business knowledge they need.
- Provide financial information, produced by the Institute of Credit Management, to help UK businesses to maintain cash flow, secure finance and limit problems caused by late or non-payment.³³

In addition to these measures, a statement to both Houses of 22 October gave further indications of how government intends to ease the position of small business:

- HM Revenue and Customs will publicise and give importance to its existing "policy of flexibility in dealing with struggling businesses".³⁴
- The bank recapitalisation of RBS, HBOS and Lloyds TSB entailed a commitment on the part of the banks (which make up 50% of small business lending) to "maintain the availability and active marketing of competitively priced lending to SMEs at a level at least equivalent to that of 2007" with the expectation that other banks would follow suit.³⁵
- The Government has been actively involved in steps currently being taken by the four largest banks to negotiate loans totaling £1 billion from the European Investment Bank to lend to UK SMEs.
- Possible further action through the National Economic Council.³⁶

a. *Late payment of commercial debts*

The issue with late payments is not a new problem. However, there is evidence that it is getting worse.³⁷ Legislation was introduced to tackle this issue: the *Late Payment of Commercial Debts (Interest) Act 1998* and the *Late Payment of Commercial Debts Regulations 2002*, SI No. 1674. The 1998 Act gave small firms with 50 or less employees a statutory right to interest for the late payment of commercial debts. The 2002 regulations extended this statutory right to interest to all businesses and public sector bodies. It gave four basic entitlements: the right to claim interest for late payment; the right to claim reasonable debt recovery costs, unless the supplier has acted unreasonably; the right to challenge contractual terms that do not provide a substantial

³³ BERR, [Helping small and medium sized businesses through the economic slow down](#), 21 October 2008

³⁴ HL Deb 22 October 2008 cc1144

³⁵ HL Deb 22 October 2008 cc1144

³⁶ HL Deb 22 October 2008 cc1145

³⁷ "Late payers pile on debt for business" *Financial Times*, 22 November 2008

remedy against late payment; and the right for “representative bodies” to challenge contractual terms that are grossly unfair on behalf of SMEs.³⁸

However, there have been regular reports that problems with late payments remain an issue for small businesses despite the legislation and that many firms avoid imposing penalties for fear it could jeopardise long-standing business relationships.³⁹ A policy paper of August 2007 by the Institute of Directors (IOD), *The SME Glass Ceiling Growth Obstacles in 2007* found that a large issue for concern of small business is late payments:

IoD data is not alone in raising the fact that late payment continues to affect UK SMEs. In a Forum of Private Business (FPB) document released in May 2006 it was shown that 90% of respondents felt late payment had an adverse affect on their business. In fact, citing 2006 data from credit analysis company Experian, the IoD discovered that the average UK payment time had slipped to a woeful 60 days. This 60-day average for 2006 payment was two days later than the average shown in Experian’s 1997 data, so if anything the situation is getting worse.

The deterioration is particularly alarming given the Government’s introduction of the Better Payment Practice Group in 1997 and subsequent introduction of late payment legislation in 1998 - a process that was meant to reduce the incidence of late payment in the UK.⁴⁰

b. Late payments in the public sector

The Government has also outlined an objective that various public sector bodies would set a target of 10 days for payment of private sector suppliers to help ease problems with late payments of commercial debts. The Economic Secretary to the Treasury, Ian Pearson described this as follows:

On the subject of prompt payment, the hon. Gentleman should be aware that Government Departments report annually on their progress in meeting payment targets. Yes, it is an ambitious target that Government Departments pay within 10 days—although I think that the majority of payments are already made within 10 days. If we can get this right, it could be a big boost to help small companies, but we are paying with taxpayers’ money and we need to make sure, when we are safeguarding the public purse, that the goods and services have been delivered and the invoice is right. We will then do everything we can to ensure that it is paid within 10 days.⁴¹

Despite the prompt payment from Government Departments however, the *Financial Times* reported that that contractors are not passing the payments on to their subcontractors.⁴² Concern was expressed that this would cause some businesses to fail, despite the main contractors being paid on time. The Federation of Small Business has

³⁸ Business Link, [A user’s guide to late payment legislation](#), undated and see also [The Better Payment Practice Campaign website](#)

³⁹ “It pays only to give credit where it’s due” *The Sunday Times*, 21 October 2007

⁴⁰ Institute of Directors (IOD), [The SME Glass Ceiling Growth Obstacles in 2007](#), August 2007

⁴¹ [HC Deb 22 October 2008 c309](#)

⁴² “Suppliers call for action over cash squeeze” *Financial Times*, 17 November 2008

called on the Business Secretary to enforce more strictly requirements for companies to disclose how long they are taking to pay suppliers.⁴³

c. Training

The measures announced on 21 October concerning training relate to the Train to Gain scheme and the availability of £350 million in funding that was hitherto not accessible by small firms. This involves a focus on SMEs as a “top priority” and a relaxation of the rules on spending under this scheme. Lord Mandelson described this as follows:

My right honourable friend the Secretary of State for Innovation, Universities and Skills yesterday announced that small businesses are the focus of £350 million of government funds to help them get through the tougher economic climate by building the skills and enterprise of their workers. The Government are making improvements to Train to Gain that will deliver advice and funding for training, with the minimum of bureaucracy or delay.

For the first time, training at Level 2 will be free for all SME employees, regardless of whether they already have qualifications at that level, and there will be free bite-size courses in business-critical areas, including business improvement techniques and customer service, in order to raise productivity. Management and leadership training will also be opened up to the smallest employers so that it is now available to employers with between five and 250 employees.⁴⁴

When asked if this was all new funding he clarified that:

... the £350 million for training is additional training money for small businesses. It is existing money, but it was not previously available to small companies.⁴⁵

The PBR 2008 announced that building upon this package, the Government will route “further resources from within existing budgets through Train to Gain and Apprenticeships in future years if individual and employer demand allows.”⁴⁶

d. Business Link

The free business health check aims to provide personalised support and confidential advice for all businesses, regardless of their size or sector, on: maximising cash flow; marketing; and business planning. According to a press notice qualified experts will help firms draw-up business action plans designed to “shore up their businesses and avoid the potential pitfalls of the economic slowdown”.⁴⁷ Business Link will also provide follow-on and monitoring to ensure the plan is working.

6. Credit insurance

A significant and increasing problem facing business is a restriction in the availability of credit insurance. This protects suppliers from the risk of default in commercial contracts

⁴³ “Suppliers call for action over cash squeeze” *Financial Times*, 17 November 2008

⁴⁴ HL Deb 22 October 2008 cc1145

⁴⁵ HL Deb 22 October 2008 cc1155

⁴⁶ HM Treasury, [Pre-Budget Report](#), November 2008, para 4.40

⁴⁷ Department for Business, Enterprise and Regulatory Reform, [Helping small and medium sized businesses through the economic slow down](#), 21 October 2008

when their clients pay on credit. If the credit insurer is not willing to provide insurance this may prevent entire contracts from proceeding. A Financial Times article explained the current difficulties being experienced as follows:

The credit insurers are themselves victims of the general downturn in the economy. They do not want to provide cover against failing businesses going under. As Kelly Ostler-Coyle, spokesperson for the ABI, says: "It would be like trying to take out flood damage cover when your house has already been flooded." Atradius say it is "reacting prudently to our view of current economic conditions".

Insurers have seen their claim figures rise steeply as more companies have gone into liquidation and are now simply trying to cover their position. Figures released today by the ABI show that UK insurers faced £97m in claims over the third quarter, a 41 per cent jump from the last quarter.

But it is a vicious circle. When times are bad, insurers retreat to cut losses. That retreat further blocks credit lines and takes struggling companies closer to the wall.

It could get worse still. Not only should businesses watch out for how much cover the insurers provide, they should also keep an eye on those insurers' credit ratings. If banks offer a loan based on bills due to be paid that have then been insured, that loan is less secure if the insurer is not regarded as sufficiently creditworthy to honour its commitments.

So banks put a covenant on their loans relating to the credit rating of the insurer. If breached, companies can see interest on that loan escalating fast.⁴⁸

B. Opposition Policy

A recent report commissioned by and written for the Conservatives examined small business support. It set out recommendations for improvement and reform focusing on the Government's simplification programme which aims to cut the number of support schemes from 3,000 to 100 by 2010. The British Chambers of Commerce welcomed the report, so long as its proposals "do not disrupt the schemes businesses are currently accessing".⁴⁹ With regard to access to finance for small firms the report produced the following recommendations:

Access to Finance

We propose an extension of the Enterprise Investment Scheme (EIS) to include loans as well as pure equity finance. Under current regulations the benefits of the EIS do not extend to Non Executive Directors who join the Boards of EIS qualifying companies to share with them their experience. We should help businesses that want to align their advisors with the risks and rewards experienced by management. It is further proposed that the Conservative Party

⁴⁸ "Credit cover pull-out threatens businesses", *Financial Times*, 24 November 2008

⁴⁹ BCC, [Richard report offers encouraging proposals for business support but must not lead to unnecessary disruption](#), 13 May 2008

should consult with other providers of capital such as hedge funds, VCTs and individuals to determine structures that could expand the pool and flexibility of small business loan provision and encourage these suppliers of capital to enter the Small Firm Loan Guarantee (SFLG) process.

Banks. Further, the Task Force is disappointed with the low level of equity/quasi equity/subordinated debt engagement from the major banks. We propose that the Conservative Party should establish a business finance group to work with the banks in recommending how greater involvement could be achieved.

Alternative Investment Market. The success of AIM as an effective small cap market has been a major contributor to the UK's economic success and is attracting IPOs from around the world. The withdrawal of tax support for VCTs has made it harder for UK businesses to access AIM and the LSE as a source of major growth capital, and hit liquidity. The Task Force proposes that the Conservative Party explore ways of engaging the power of the London market to aid UK small businesses.⁵⁰

The main focus of Liberal Democrat policy for small business has been on taxation and the burden of regulation.⁵¹ In response to the Pre-Budget Report Vincent Cable welcomed the action on small business lending. However, he was critical of the approach taken by the Government to fiscal stimulus.⁵²

C. The Small Firms Loan Guarantee Scheme (SFLG)

1. Outline of the scheme

The SFLG is a joint venture between the Department for Business, Enterprise and Regulatory Reform (BERR) and a number of participating lenders. It was set up because many viable small businesses require funding, but face difficulties in raising this through a conventional loan because they do not have assets to offer as security.⁵³ To help overcome this difficulty, the Government in partnership with lenders developed the Small Firms Loan Guarantee, which provides a government guarantee against default in certain circumstances. Participating lenders administer the eligibility criteria and make all commercial decisions regarding borrowing.⁵⁴

The cost of the guarantee is two per cent per year on the outstanding amount of the loan, payable to BERR quarterly.

The main features and criteria of the scheme are given on the BERR website as:

- A guarantee to the lender covering 75 per cent of the loan amount, for which the borrower pays a two per cent premium on the outstanding balance of the loan.

⁵⁰ Doug Richard, [Small Business and Government: The Richard Report, Submission to Shadow Cabinet](#), 13 May 2008

⁵¹ Libdems.org, [Big on Small Business, Liberal Democrats: Supporting small businesses and cutting red tape](#), August 2007

⁵² [HC Deb 24 November 2008 c508](#)

⁵³ BERR, [Sources of Finance for Small Businesses](#)

⁵⁴ BERR, [Small Firms Loan Guarantee](#)

- The ability to guarantee loans of up to £250,000 and with terms of between two and ten years.
- Availability to qualifying UK businesses with an annual turnover of up to £5.6 million.
- Available to businesses in most sectors and for most business purposes, although there are some restrictions.⁵⁵

A [list of approved lenders](#) is given on the BERR website and it is the lenders themselves that should be approached in order to apply for the loan.

2. Review

The 2003 Pre-Budget Report announced an independent review of the SFLG led by Teresa Graham after criticism that the SFLG was often: a tale of frustration and delay; its objectives were not well understood and its impact on UK productivity even less so; its availability patchy; and its administrative structure showing its age.⁵⁶ In response to this criticism the report recommended that the SFLG should focus on those most in need of support and those who would benefit most: namely start up and young businesses. It also recommended deregulation of the scheme's administration, removing complex eligibility and rules and simplifying those that remain; and that lenders should be free to make SFLG loans without prior approval.⁵⁷ In response to the review, the Government on 4 October 2004 accepted these key recommendations.⁵⁸ However, criticism of the SFLG still remains. In February 2007 the House of Commons Public Accounts Committee reported that more than one-third (35 per cent) of loans under the SFLG scheme end in default, compared with only 4 per cent of commercial loans to small businesses.⁵⁹

The Small Firms Loan Guarantee Scheme (SLFG) *Annual Report for financial year 2007/08* speculates on the effects of the credit-crunch for the SLFG in the current financial year:

Banks advise that the rate at which they have received new SME lending propositions has declined over the last year. The credit crunch and less certain market conditions have made both lenders and borrowers more risk-averse, which may be expected to result in lower SFLG take-up. On the other hand, greater caution in lending, for example the application of lower loan-to-value ratios than previously when property is offered as security, would imply that there is increased need for SFLG in particular situations.

Against this background SFLG lending has declined further to 2,619 loans annually, despite informed feedback from lenders suggesting that, with SFLG being available to enable lending to businesses up to five years old, take-up of around 4,000 loans per annum might be expected.⁶⁰

⁵⁵ BERR, [Small Firms Loan Guarantee](#)

⁵⁶ Graham Review of the Small Firms Loan Guarantee, *Final Report*, September 2004, p1

⁵⁷ Graham Review of the Small Firms Loan Guarantee, *Final Report*, September 2004, p2

⁵⁸ HMT/ DTI Press Release, [Government To Offer More Generous And Targeted Support For Small Firms](#), 4 October 2004

⁵⁹ Public Accounts Committee, [Supporting Small Businesses](#), HC 262 session 2006-07, 6 February 2007

⁶⁰ Small Firms Loan Guarantee [Annual Report for Financial Year 2007/08](#), July 2008, p1

3. Access to finance

A report by the CBI in July 2006, *Improving access to finance: Enabling the enterprise revolution*, said that there is an emerging gap in the finance market: that raising finance for innovation which is unlikely to raise high levels of return is becoming an increasing problem.⁶¹ The report identified 20 recommendations that it thought would improve the situation. The key recommendation was that government should begin working with finance providers to look at how business demand for finance can be catered for over the coming years.⁶² Similarly, the Association of Chartered Certified Accountants (ACCA) published a policy briefing in March 2006, *Improving access to finance for small firms*. It found that the finance markets do not always fully meet the needs of small firms who can find it harder than large firms to acquire finance that is accessible, appropriate and affordable.⁶³ This 'equity gap', where businesses with viable investment propositions are unable to attract investment from informal investors or venture capitalists, was also identified by the 2003 HM Treasury report, *Bridging the finance gap: next steps in improving access to growth capital for small businesses*.⁶⁴

4. Transport sector

A significant number of small forms and self-employed people operate within the transport sector. Recent figures indicate that there are 297,550 small businesses in the transport, storage and communication sector.⁶⁵ Many of these may be excluded from the Small Firms Loan Guarantee Scheme. A guide from what was then the DTI Small and Medium Enterprise Policy Directorate about the Loan Guarantee Scheme shows that transport has been an excluded sector since 22 March 1996 due to European State Aid Rules.⁶⁶ This was shown in answer to a PQ in May 2001:

Mr. Gill: To ask the Secretary of State for Trade and Industry for what reason hauliers are excluded from access to the Small Firms Loan Guarantee Scheme. [160405]

Ms Hewitt: The Small Firms Loan Guarantee Scheme operates under the European Commission Block Exemption Regulations on de minimis aid to small and medium-sized enterprises. This specifically excludes the transport sector.⁶⁷

The BERR guidance on the Small Firms Loan Guarantee Scheme confirms that "transport" is a restricted sector:

All forms of road, rail, water and air transport are ineligible. This includes taxi and cab hire, house removals and businesses run as tourist attractions and living museums.⁶⁸

⁶¹ CBI, *Improving access to finance: Enabling the enterprise revolution*, July 2006 p1

⁶² CBI, *Improving access to finance: Enabling the enterprise revolution*, July 2006 p3

⁶³ Association of Chartered Certified Accountants (ACCA), [Improving access to finance for small firms](#), March 2006

⁶⁴ HM Treasury, [Bridging the finance gap: next steps in improving access to growth capital for small businesses](#), December 2003

⁶⁵ See also: Library Research paper 08/68, [The Road Haulage Industry: costs and taxes](#), 31 July 2008

⁶⁶ DTI Small and Medium Enterprise Policy Directorate, *Loan Guarantee Scheme*, update 22 March 1996

⁶⁷ HC Deb 8 May 2001 c68W

Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises, details the conditions under which state aid can be given to certain small businesses. It specifically states that the transport sector is excluded from this regulation “In the light of Community overcapacity in the transport sector.”⁶⁹

D. Tax issues⁷⁰

The Government set out its position on small businesses’ tax burden in two recent PQs:

Mr. Carswell: To ask the Chancellor of the Exchequer if he will bring forward measures to reduce the burden of tax on small businesses.

Ian Pearson: The Government have acted in recent weeks to provide support to small businesses, including aiming to make payments to small businesses within 10 days. The measures that the Government announced on 8 and 13 October included agreements with the banks who used the Bank Reconstruction Fund that over the next three years they would maintain the availability and active marketing of competitively priced lending to small businesses at 2007 levels. The Government keeps all taxes under review and considers fiscal measures as part of the PBR and Budget process.

Mr. Jim Cunningham: To ask the Chancellor of the Exchequer what recent fiscal steps he has taken to assist small businesses in the current economic situation.

Mr. Timms: In addition to the measures set out in the 2008 Enterprise Strategy, Government have announced a package to help smaller businesses including:

- £350 million to support smaller employers to train their workforces;
- A target to pay suppliers as soon as possible and within 10 days;
- Free “Health Checks” for businesses through Business Link;
- Provision of new finance guides produced by the Institute of Credit Management.⁷¹

The Economic Secretary, Ian Pearson, made a statement to the House on 22 October on the Government’s measures to help small business, in which he mentioned help from the revenue authorities:

I recognise the essential role that the approach of Her Majesty’s Revenue and Customs to business tax compliance can play in managing the economic downturn. HMRC already has a policy of flexibility in dealing with struggling businesses, and I know that the Treasury will continue to impress upon it the importance of implementing and publicising that policy in the current climate.⁷²

⁶⁸ Department for Business, Enterprise and Regulatory Reform, [SFLG Graham Review Implementation Project](#)

⁶⁹ [Commission Regulation \(EC\) No 70/2001](#) of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises, para 13

⁷⁰ By Antony Seely, Business & Transport Section

⁷¹ HC Deb 30 October 2008 c1189W

⁷² HC Deb 22 October 2008 c306

Further to this, another recent PQ gave more details of these arrangements; an extract is reproduced below:

HMRC currently offers 'time to pay' arrangements to viable businesses facing temporary financial difficulties. These allow outstanding tax to be spread over a period (usually of months) based on what a business can genuinely afford to pay. Interest applies but the rates are competitive compared to commercial lending. This approach is designed to ensure otherwise viable businesses are not driven into insolvency by HMRC, both supporting business and in turn maximising tax recovery. Similar "time to pay" arrangements apply to individuals who are not classed as "in business".⁷³

In the 2008 Pre-Budget Report, the Government confirmed that HMRC will launch a new Business Payment Support Service to offer enhanced support to businesses finding it difficult to make tax payments on time. The PBR confirms that this includes corporation tax, VAT, PAYE, income tax and national insurance contributions.⁷⁴

Alongside the temporary reduction in the standard rate of VAT, the PBR also announced that plans to amend the sectoral rates of the VAT Flat Rate Scheme in line with the standard rate reduction, which it estimates will allow "180,000 small businesses in the scheme to benefit from the rate reduction."⁷⁵

The PBR also announced the temporary extension of the carry-back of up to £50,000 of losses to be set against taxable profits from the last three years. The temporary measure will apply from one year from 24 November 2008 for companies, and for the 2008-09 tax year for unincorporated business.⁷⁶

Further progress on tax simplification to help businesses was also summarised in the PBR:

- VAT rules and administration review: from 1 April 2009, the Government will help small businesses reduce their administrative burdens by simplifying the eligibility tests for the Flat Rate Scheme and require fewer large retailers to agree a bespoke VAT accounting scheme by increasing this threshold to £130 million. From early 2009, the Government will make it easier to tax otherwise exempt supplies of land and property;
- anti-avoidance legislation review: the Government will simplify certain rules on Employment-Related Securities and repeal an outdated and complex anti-avoidance provision on transactions between associated persons;
- corporation tax rules for related companies review: the Government will continue its discussions with business about further simplification of the associated company rules and also intends to consult on proposals for the simplification of group aspects of corporate gains in 2009; and

⁷³ HC Deb 28 October 2008 c876W

⁷⁴ HM Treasury, [Pre-Budget Report](#), November 2008, box 4.2

⁷⁵ HM Treasury, [Pre-Budget Report](#), November 2008, para 4.12

⁷⁶ HM Treasury, [Pre-Budget Report](#), November 2008, box 4.3

- corporation tax calculations and returns for smaller companies review: following initial discussions with stakeholders, the Government publishes alongside the 2008 Pre-Budget Report emerging ideas for further discussion.⁷⁷

1. Phased increase in small companies rate of corporation tax

The 2007 Budget announced a staged increase in corporation tax for small companies from 19 per cent to 20 per cent from April 2007, 21 per cent from April 2008 and 22 per cent from April 2009:

Re-focusing the incentives for small companies

- a phased increase in the small companies' rate from 19 per cent to 20 per cent from April 2007, 21 per cent from April 2008 and 22 per cent from April 2009 to reduce the differential between incorporated and unincorporated businesses;
- the 50 per cent first year allowance for small enterprises will continue to April 2008;
- the introduction of an Annual Investment Allowance (AIA) available to all businesses regardless of size and regardless of their legal form. This new allowance will mean that 100 per cent of expenditure up to £50,000 on general plant and machinery (other than cars) can be offset against taxable profits. The AIA will be effective from April 2008 and will target support on all businesses that are investing for growth. It will be particularly beneficial to small and medium sized businesses.⁷⁸

The reasoning behind this was given as “a means to reduce the differential between incorporated and unincorporated businesses”, effectively discouraging one-man businesses from incorporating to reduce their tax burden, and to “refocus investment incentives for small businesses”.⁷⁹ An article in the *Financial Times* following this announcement highlighted Conservative party opposition to this policy, and dissatisfaction from small businesses.⁸⁰

The above package of reforms was confirmed in the 2008 Budget, along with further changes to the capital allowance regime in response to consultation.⁸¹

The November 2008 Pre-Budget report however, detailed that in order to provide “further support for small companies” Government would defer, for one year, the planned increase in the small companies' rate of corporation tax, so that it will remain at 21 per cent during 2009-10.⁸²

The staged increase in the small companies rate, along with the introduction of the new Annual Investment Allowance, stems from the four year history of the zero rate of corporation tax, introduced in April 2002. Many commentators argued the new zero

⁷⁷ HM Treasury, [Pre-Budget Report](#), November 2008, box 4.26

⁷⁸ HC 342 March 2007 p 51

⁷⁹ HM Treasury, [Budget 2007](#), HC 342, March 2007 para 3.23

⁸⁰ “Sole traders among chief losers of Brown's budget”, *Financial Times*, 23 March 2007

⁸¹ HC 388 March 2008 para 3.13

⁸² HM Treasury, [Pre-Budget Report](#), November 2008, para 4.14

starting rate would provide a substantial incentive for individuals to incorporate their businesses, and so it proved. The Government's attempt to deal with the problem with a new minimum rate of corporation tax on distributed profits in April 2004 was highly controversial, and both this new rate, and the zero starting rate, were abolished in April 2006.⁸³

2. Withdrawal of Capital Gains Tax (CGT) 'taper relief' ⁸⁴

In spring 2007 the activities of private equity funds, and certain tax advantages exploited by executives at these firms, came under intense public scrutiny. One concern was the use of taper relief on business assets to mitigate the CGT charge on 'carried interest' – so that executives paid tax on these rewards at only 10%. In his 2007 Pre Budget statement on 9 October Alistair Darling announced a major reform of CGT, in part to ensure individuals working in private equity would pay a "fairer share" in tax: the withdrawal of taper relief and indexation relief, and the introduction of a single rate of tax set at 18%, to take effect from 6 April 2008.⁸⁵ The changes were expected to raise £750 million by 2009-10.

Following this announcement there was a large amount of comment in the press about the impact of this reform on small businesses. Further to this a group of business leaders⁸⁶ wrote an open letter to the Chancellor which set out the potential effect on small businesses:

The net effect will be to set back the growth of the economy over coming years, by discouraging longer-term investment and risk-taking. Owners of small enterprises, who have toiled over years to build up an asset, are now faced with selling up before April or facing a substantial dent to their investment. The 1.7 million ordinary employees who are in company share schemes could also face an 80% increase in their tax bill and a serious disincentive to taking up and retaining share options in the future ... Business angels and venture capital funds say they too will be discouraged from taking risk and investing for the long game. Many of those affected have already made investment decisions. The retroactive nature of this move has undermined their reasonable expectations.⁸⁷

There were also concerns about the lack of consultation before the PBR, and the uncertainties faced by taxpayers about how to plan for the changes, given that full details of the reform would not be published until the 2008 Budget.

On 24 January 2008 the Chancellor announced that a new 'entrepreneurs relief' would be introduced as part of the new tax structure, to mitigate its impact on small business owners. CGT would be charged at 10% on qualifying gains, up to a cumulative lifetime total of £1 million. It was estimated the relief would cost the Exchequer around £200 million a year.⁸⁸ Despite this concession the proposed reforms remain controversial.⁸⁹

⁸³ See Library standard note: *Taxing small businesses: recent developments*, SN/BT/4009, 24 April 2008.

⁸⁴ For more information about this issue see Library Standard Note, [Capital gains tax \(CGT\) : reforms from April 2008](#), SN/BT/4652, 22 April 2008

⁸⁵ HM Treasury, 2007 Pre-Budget Report and Comprehensive Spending Review, October 2007 para 5.79

⁸⁶ British Chambers of Commerce, CBI, Federation of Small Businesses and Institute of Directors

⁸⁷ Open Letter to the Chancellor of the Exchequer, 15 October 2007;

⁸⁸ HC Deb 24 January 2008 cc1627-8

In his 2008 Budget speech on 12 March Mr Darling confirmed that “the new capital gains tax regime will come in next month including the entrepreneurs relief that I announced in January. That will benefit over 80,000 businesses and investors in the next year alone: 90 per cent. of them will continue to pay capital gains tax at 10 per cent., one of the lowest rates in the world.”⁹⁰ Further details were published alongside the Budget report,⁹¹ and information for taxpayers is collated on HM Revenue & Customs internet site.⁹²

3. Local authority rates⁹³

Another range of issues affecting small business was raised in debates on the statement of 22 October referred to above.⁹⁴ These concern local authority rates and their application to small business. One issue concerns the scheme for small business rate relief; others relate to changes to the system of rating empty property and to the proposed introduction of a power to levy a supplement on business rates.

The PBR 2008 detailed that the Government will increase the threshold at which an empty property becomes liable for business rates. For financial year 2009-10, empty properties with a rateable value of less than £15,000 will be exempt from business rates.⁹⁵ The PBR also stated that Government will legislate to give businesses more time to pay certain backdated business rates bills issued before 31 March 2010: “businesses facing such bills will be able to pay their liability for previous years in equal interest-free instalments over 8 years, rather than immediately.”⁹⁶

a. Small business rate relief

Business rates are paid by most occupiers of business property as a way of contributing towards the cost of local services. Although the local authority issues the bill and collects the business rates, the total amount collected across the country goes into a central rate pool for England. This is then redistributed to local authorities as part of the government grant system.

Small business rate relief was introduced on 1 April 2005 and gives eligible businesses with rateable values of below £5,000, 50% rate relief on their liability. This relief decreases on a sliding scale by 1% for every £100 of rateable value over £5,000, up to £10,000. Fuller information is given in the summary of rate reliefs at the end of this section. There are concerns that a number of small businesses may be unaware of small business rate relief. It has been reported that the Local Government Association estimated that 500,000 small firms had not claimed the relief.⁹⁷ In the debate on 22 October Lord Hunt of Wirral called for:

⁸⁹ For example, “Business on attack after concessions”, *Financial Times*, 25 January 2008

⁹⁰ HC Deb 12 March 2008 c292

⁹¹ HM Revenue & Customs Budget Note BN48, 12 March 2008

⁹² HM Revenue & Customs, [Capital Gains Tax](#)

⁹³ With contributions from Keith Parry, Parliament and Constitution Centre

⁹⁴ HL Deb 22 October 2008 cc1144

⁹⁵ HM Treasury, [Pre-Budget Report](#), November 2008, para 4.15

⁹⁶ HM Treasury, [Pre-Budget Report](#), November 2008, para 4.16

⁹⁷ “Small firms fail to claim tax break”, *The Daily Telegraph*, 13 June 2006

... a concerted promotion of the small business rate relief to which many are entitled but for which not all apply.⁹⁸

b. Empty properties

The Chancellor announced in the March 2007 Budget that rating relief for empty non-domestic property would be reformed and reduced in order to encourage the owners of empty premises to bring them back into use. As from 1 April 2008, rates on empty property were to be increased from 50% to 100% of the occupied rate. The initial rate-free period of 3 months was to be retained; industrial and storage premises were to be given an initial rate-free period of 6 months (formerly they were exempt indefinitely). Empty property owned by charities would be zero-rated. These and other changes were implemented by means of the *Rating (Empty Properties) Act 2007* and by amendments to regulations.

A number of Members have attacked the measures arguing that the economic downturn is making it difficult, if not impossible, to find buyers or tenants for such properties. For example:

Sir Patrick Cormack (South Staffordshire) (Con): Does the Minister accept that for many small and medium-sized businesses the last straw in these difficult times is having to find the money to pay the rates on empty properties? Please will the Government recognise that as an urgent problem?

Angela Eagle: We are aware of the worries about empty property relief, but it is important to remember that the vast majority of that relief went to the City of London and four other areas. We are looking into the matter, and we understand the difficulties, but it is also important to remember that when 100 per cent. relief was given, buildings remained empty for a very long time and therefore were not recycled, which is economically inefficient, and that the areas that had the most access to the relief had some of the highest rents in the world.⁹⁹

A ratepayer may apply for hardship relief although the local authority must have regard to the interests of local council tax payers who have to foot most of the bill. Such relief is normally only given in cases of severe hardship and where the business in question is important to the local community. This is not easy to justify where there is no longer a business in the premises.

c. Business rate supplements

Sir Michael Lyons advocated the introduction of a power for local authorities to levy a supplement on the local business rate. Where such a levy was introduced this would be with the agreement of local business, and the money would be earmarked for spending on economic development.¹⁰⁰ In October 2007, the Government published its proposals in *Business rate supplements: a White Paper*.¹⁰¹ It proposed that upper tier authorities, and in London the Greater London Authority, should have the power to raise and retain

⁹⁸ HL Deb 22 October 2008 cc1147

⁹⁹ HC Deb 30 October 2008 cc1030-1

¹⁰⁰ Lyons Inquiry into Local Government, [Final report - Place-shaping: a shared ambition for the future of local government](#), March 2007

¹⁰¹ HM Treasury, [Business rate supplements: a White Paper](#), CM 7230, October 2007

local supplements on the national business rate. A national upper limit of 2p in the pound would be set. No ballot of business would be required except where the supplement supported more than one third of the total cost of a project.

The proposals did include protection for smaller businesses. Business premises with a rateable value of £50,000 or less would be exempted from any supplement, and this threshold would apply across England. Nevertheless, there was concern among small businesses that a) the threshold for exemption might be lowered at some point in the future, and b) a supplement would increase costs without any correlation to a business's profitability or ability to pay.¹⁰² However, an article in the *Financial Times*, argued that the plan was "modest", had "merit" and came "laden with safeguards."¹⁰³ A Bill giving effect to business rate supplements is expected in the 2008-09 session of Parliament.

d. Rate reliefs in brief

These are summarised in a guide published by the Department for Communities and Local Government.¹⁰⁴ They are also described on the Business Link website as follows:

Business rates reliefs

In England small businesses are generally entitled to small business rate relief if the rateable value of their premises is less than £15,000 (£21,500 in London). Additional properties with rateable values below £2,200 are disregarded when considering applications for small business rate relief. However, the rateable value for such properties are included in determining whether the threshold criterion has been met.

In small business rate relief the amount of relief depends on the rateable value.

If the rateable value of the property is less than £ 5,000, the rates are calculated using the small business multiplier, which for 2008/09 is 45.8 pence, and reduced by 50 per cent.

If the rateable value is from £5,000 to £9,999, the reduction decreases on a sliding scale of 1 per cent for every £100. For example, if the rateable value is £7,500, the rates are reduced by 25 per cent.

If the rateable value is from £10,000 to £14,999 (£21,499 in London), rates are also calculated using the small business multiplier. For 2008 /09, the small business multiplier is 45.8 pence (instead of the standard 46.2 pence).

In Wales the small business rate relief scheme provides relief of 50 per cent for business with a rateable value of £2,000 or less. Businesses with a rateable value between £2,001 and £5,000 will receive 25 per cent rates relief. Find more information about the small business rates relief scheme in Wales on the Welsh Assembly Government website - [Opens in a new window.](#)

¹⁰² "The "codswallop" Chancellor enrages small companies", *Independent On Sunday*, 14 October 2007

¹⁰³ "The wrong battle – business organisations should accept supplementary rates", *Financial Times*, 22 October 2007, p12

¹⁰⁴ DCLG, [Business Rates - A Guide](#) 16 June 2008

In Northern Ireland, there is a hardship relief scheme for small businesses. Hardship relief provides support to businesses in crisis because of exceptional circumstances or unforeseen events that may have affected the business badly and which could not be avoided. The scheme removes the need to pay rates during that time.

Since 1 April 2008, empty business properties have been exempted from business rates for the first three months that they are empty. Industrial and warehouse properties qualify for a further three months' exemption from business rates. After that, full business rates are normally payable.

Other reliefs

Charities and community amateur sports clubs can get their business rates bills reduced by 80 per cent. In some areas, this could be reduced even further.

Other non-profit organisations can apply for up to 100 per cent discretionary relief.

Certain rural businesses, such as village shops and petrol stations, may be able to claim rate relief.

You may be able to get hardship relief if you are finding it difficult to pay. This is normally only available to businesses that are important to the local community.¹⁰⁵

E. Business Support

1. Start-ups

In general the most widely used government sponsored source for advice on starting up new businesses is the Business Link website.¹⁰⁶ This offers practical advice for business on all matters from starting-up, finance, employing people, health and safety issues, to sales and marketing. The BERR website states that it spends £40 million assisting business through grants, loans and subsidised consultancy.¹⁰⁷ The site also includes listings of organisations providing advice to new small and medium sized enterprises (SMEs), and a search engine for businesses interested in attracting national or regional government assistance.¹⁰⁸

Tailored information is available at J4B, the internet-based directory of local, national and European grant sources.¹⁰⁹ This provides a search engine which allows the site to provide specific grant information depending on the type of business. On the regulatory requirements placed on businesses, it is worth noting the *No-nonsense guide to government rules and regulations* available free from Business Link.¹¹⁰ Advice on finance and other issues would also be available from a local Business Link.

Recent report commissioned by the Conservative party was critical of the Business Link services:

¹⁰⁵ Business Link, [Business rates](#)

¹⁰⁶ [Business Link](#)

¹⁰⁷ BERR, [Business Support Solutions](#) website

¹⁰⁸ Business Link, [Grants and Support Directory](#)

¹⁰⁹ [J4B](#) website

Small business shows little support for the State-run service. A recent survey of SMEs showed that less than one half of one percent (0.5%) of small businesses both used the Government for advice and were satisfied with the advice provided.¹¹¹

A Written Answer on 20 November stated that the total number of “customers helped” was 798,031 in 2007-08 and that there had been 151,000 inquiries to the national phone number.¹¹²

The BERR website also has a general section on [sources of finance for small businesses](#).¹¹³ This includes details about: Early Growth Funds; Enterprise Capital Funds; Regional Venture Capital Funds; and the Small Firms Loan Guarantee.

2. Business Support Simplification Programme

Budget 2006 stated that the estimated 3,000 publicly funded business support schemes in place across the UK would be reduced to 100 or less by 2010. The Business Support Simplification Programme is working with businesses and the government to streamline the existing amount of publicly funded business support schemes.¹¹⁴ Businesses have told the Government that they are confused by this array of schemes, which can put them off seeking support.¹¹⁵ In June 2007 a consultation paper proposed to address this issue by simplifying business support in England to no more than 100 schemes by 2010 and ensure publicly-funded business support is: simple for business to understand and access; good value for money; and has impact on economic and other public policy goals.¹¹⁶ In October 2008 BERR announced that a streamlined package of support called ‘Solutions for Business – funded by government’ would be in place by March 2009. This package includes 30 national support products with a common look and feel accessible via Business Link. Detail of the products is contained in [Solutions for Business: Supporting Success](#). Some products detailed have already been launched; some will be launched between now and March 2009.

The “Richard Report” commissioned by the Conservative party offered the following negative assessment of the simplification programme:

The Government’s own simplification programme is a sham. It decided in advance that there should be 100 schemes by 2010. It has spent the last two years unsuccessfully trying to work out how to reach that target. Just 10 of the 3,000 schemes have been scrapped and now DBERR is instead seeking to rename schemes ‘products’ and group them under ‘portfolios’ in order to get close to the 100 target. The whole exercise has cost £3m to date and DBERR expects to spend another £2m by 2010.¹¹⁷

¹¹⁰ Business Link, [No-nonsense guide to government rules and regulations](#), May 2006

¹¹¹ Doug Richard, [Small Business and Government: The Richard Report, Submission to Shadow Cabinet](#), 13 May 2008

¹¹² HC Deb 20 November 2008 c 791-2W

¹¹³ BERR website, [sources of finance for small businesses](#)

¹¹⁴ BERR, [Simplifying Business Support website](#)

¹¹⁵ BERR, [Simplifying Business Support: A Consultation](#), June 2007 p3

¹¹⁶ BERR, [Simplifying Business Support: A Consultation](#), June 2007

¹¹⁷ Doug Richard, [Small Business and Government: The Richard Report, Submission to Shadow Cabinet](#), 13 May 2008

3. Procurement - access to public sector contracts

As part of response to criticism that too many small businesses were missing out on central and local government contracts, in 2003 the Office of the Deputy Prime Minister published a *National Procurement Strategy for Local Government*.¹¹⁸ The Strategy stressed that Small and Medium-sized Enterprises (SMEs) are a powerful engine for economic growth, are a crucial part of the UK economy and that small businesses can provide best value in procurement. It stated that local authorities should consider engaging small businesses directly or through sub-contracting.

Following the Strategy, a *Small Business Friendly Concordat: Good Practice Guidance*, was published by the Local Government Association, the Department of Trade and Industry and the Office of the Deputy Prime Minister in March 2005.¹¹⁹ The Concordat is a voluntary, non-statutory code of practice. It sets out what small firms and others supplying local government can expect when tendering for local authority contracts. It does not give smaller suppliers an automatic competitive advantage when tendering for local government contracts but does set out to ensure that suppliers of all kinds are treated equally. The Concordat states:

Both the Concordat and the Good Practice Guide represent a commitment from Local Government to encourage and develop appropriate levels of competition in local government markets in order to increase value for money and foster innovation, particularly from those businesses/suppliers who may find it difficult to break into this market. These may include small and medium-sized enterprises (SMEs), which themselves could include local businesses, ethnic and minority owned businesses (EMBs), women-owned businesses, social enterprises and voluntary and community organisations (VCOs). These are all sectors of the business community that can find themselves under-represented in local Government procurement. It may also include suppliers that prefer not to use e-Procurement on religious and other grounds.¹²⁰

On 9 April 2008 the Department for Communities and Local Government published the [National Procurement Strategy for Local Government - Final Report](#). It details that 65% of councils have now adopted the Small Business Friendly Concordat.¹²¹

Launched in June 2006 supply2.gov.uk is a Government-created portal which aims to provide small businesses with access to lower-value public sector contracts for contracts typically below £100,000.

The PBR 2008 announced that contracts worth more than £20,000 will be advertised in a single free online portal alongside measures to reduce bureaucracy:

¹¹⁸ Office of the Deputy Prime Minister/Local Government Association, [National Procurement Strategy for Local Government](#), October 2003

¹¹⁹ Local Government Association, the Department of Trade and Industry and the Office of the Deputy Prime Minister, [Small Business Friendly Concordat: Good Practice Guidance](#), March 2005

¹²⁰ Local Government Association, the Department of Trade and Industry and the Office of the Deputy Prime Minister, [Small Business Friendly Concordat: Good Practice Guidance](#), March 2005, page 7

¹²¹ Department for Communities and Local Government published the [National Procurement Strategy for Local Government - Final Report](#), 9 April 2008, p6

The Government will advertise Government contracts worth more than £20,000 in a single free online portal, it will introduce measures to reduce bureaucracy and will make opportunities more transparent for small businesses. In addition, it will standardise qualification criteria and encourage innovation by increasingly specifying outcomes rather than prescribing solutions. It will also help SMEs get a fair deal when they are sub-contractors.¹²²

The PBR also set out that Government will implement reform of the Small Business Research Initiative (SBRI) to “provide better access to research and development procurement opportunities for innovative SMEs, as recommended by the Sainsbury Review.”¹²³ It detailed that pilots have been launched with the Ministry of Defence and the Department of Health (DH), and the Technology Strategy Board (TSB) and stated that Government Departments have committed over £15 million to the scheme.¹²⁴

4. Ethnic minorities

There are an estimated 275,000 black and minority ethnic (BME) SMEs in the UK, contributing an estimated £20 billion to the UK economy per year- five per cent of total SME GVA (£369bn). They make up six per cent of all SMEs in the UK, across a diverse range of industries.¹²⁵

An article in the Sunday Times in October 2007 reported that migrants are responsible for 10% of new business start-ups.¹²⁶ The article set out some of the problems that ethnic minorities in small businesses can face:

According to its research, entrepreneurs from ethnic minorities can face particular problems when starting and expanding a business.

Typically their businesses are very small and they seldom grow larger.

They are often concentrated in low entry-threshold activities and face difficulties moving into more advanced and profitable business fields. The mortality rate of such businesses is higher than average.

These entrepreneurs tend to rely almost exclusively on their social networks when starting their businesses. These provide access to markets, customers, finance, advice and labour, but they can also be socially closed, with little circulation of new information from the outside business community. This makes it more difficult to access mainstream markets and also limits growth.

Because these business initiatives tend to be small, they are less attractive to banks.

¹²² HM Treasury, [Pre-Budget Report](#), November 2008, para 4.36

¹²³ HM Treasury, [Pre-Budget Report](#), November 2008, para 4.47

¹²⁴ HM Treasury, [Pre-Budget Report](#), November 2008, para 4.47

¹²⁵ BERR, [Ethnic Minority Enterprise](#)

¹²⁶ “An open door for the enterprising”, *The Sunday Times*, 28 October 2007

Consequently, proprietors tend to rely on networks of people from a similar background to their own for initial financing. In that instance, the level of funds available may be small.¹²⁷

The BERR website states that it has a commitment to raise the self-employment rate of under-represented ethnic minorities relative to that of other groups.¹²⁸ In 2000 the Ethnic Minority Business Forum was created as an agency of the DTI to advise government on policies and practices as they relate to ethnic minority business across England. In 2005 it published a report, *The Way Forward 2005-2008*.¹²⁹ The report sets out progress that has been made to assist ethnic minorities in business. This has included: work with the Bank of England on issues relating to awareness for ethnic minority businesses and entrepreneurs of access to finance options; the Small Business Service undertaking an ethnic minority survey; and Business Link Operators formulating delivery plans related to the support of ethnic minority business in England.¹³⁰ The report states the need to engage with Government on a much wider front to ensure that policy clearly recognises the nature and needs of ethnic minority business.¹³¹

The BERR website also details further action that Government is taking to assist ethnic minority enterprise:

- The Ethnic Minority Business Task Force was launched in June 2007. The Task Force will help foster growth among firms and boost economic participation by entrepreneurs. It will also ensure that BME entrepreneurs have access to quality, appropriate business support. One of its tasks will be to investigate BME businesses face additional barriers in access to finance.
- Make Your Mark - the Government is funding the Make Your Mark campaign run by Enterprise Insight. Enterprise Insight is building a bank of accessible champions and ambassadors, who will act as role models for young people in our ethnic minority communities. The opportunities for young people presented by enterprise will be built into existing Enterprise Insight events and specific activities.
- Children's Centres - pilot to test the potential for Business Link to reach hard to reach groups eg Pakistani and Bangladeshi women through Children's Centres in Rotherham.
- Prince's Trust – Government is going to further develop its work with the Prince's Trust, a UK charity with a proven track record of helping young people realise their potential and strong and established links with disadvantage communities. Government has provided the Prince's Trust with funding to identify role models and raise awareness of the benefits of enterprise amongst some of our most disadvantaged young people.
- Ethnic Minority Ambassadors – The Women's Enterprise Ambassador Network has been successful in promoting enterprise amongst women. We will explore how this could be extended to BME entrepreneurs.¹³²

¹²⁷ "An open door for the enterprising", *The Sunday Times*, 28 October 2007

¹²⁸ BERR, [ethnic minorities](#)

¹²⁹ Ethnic Minority Business Forum, [The Way Forward 2005-2008](#), 2005

¹³⁰ Ethnic Minority Business Forum, [The Way Forward 2005-2008](#), 2005 p8-9

¹³¹ Ethnic Minority Business Forum, [The Way Forward 2005-2008](#), 2005 p20

¹³² BERR, [Ethnic Minority Enterprise](#)

5. Women

An article in the Independent in December 2007 reported that, as a consequence of inflexible working practices in many firms, many women have instead chosen to set up their own small business.¹³³ The BERR website states that just over a million women are self-employed, which corresponds to 28% of all the self-employed in the UK.¹³⁴ It states that, despite this progress in recent years, the gap between male and female entrepreneurship in the UK remains stubbornly wide – men are still almost twice as likely to start businesses as women, and the gap is wider still for young women.

As announced by the Chancellor in the 2006 Budget, the Women's Enterprise Task Force (WETF) was launched by Government in February 2007. Its aims are to encourage an increase in the quantity and scalability of women's enterprise over the next three years.¹³⁵ The WETF website sets out some of the barriers to women in starting a new business: fear of debt as the single largest barrier to entrepreneurship; that women in the UK are twice as likely to live in poverty as men and they have more to risk by coming off benefits: that on average, benefits and tax credits comprise one fifth of women's income and less than one tenth of men's.¹³⁶ Similarly, an article in the *Telegraph* reported that women are also at a disadvantage in start-up capital, that the average funding available to them is around £10,000 compared with £15,000 for men.¹³⁷

The WETF will seek to encourage women's enterprise by advising central Government, Regional Development Agencies, Devolved Administrations and the Private Sector on how the economic contribution of women's enterprise can be increased in the UK. It is hoped that this will be achieved by identifying issues and barriers and how they might be addressed; and providing advocacy. The members of the Task Force will lobby and raise the profile of the women's enterprise agenda individually and collectively.¹³⁸

¹³³ Business Misses The Female Touch, *The Independent*, 7 December 2007

¹³⁴ BERR, [Women's Enterprise](#)

¹³⁵ [Women's Enterprise Taskforce website](#)

¹³⁶ Women's Enterprise Taskforce website, [Key Women's Enterprise Statistics and Trends](#)

¹³⁷ "Entrepreneurs 1,000 women 'to inspire others'," *The Daily Telegraph*, 13 February 2007

¹³⁸ Women's Enterprise Taskforce website, [Women's Enterprise Task Force Terms of Reference](#)

F. Small business statistics ¹³⁹

BERR publish *National Statistics* each year on Small and Medium Enterprises (SMEs).¹⁴⁰ It is estimated that there was 4.7 million enterprises in the UK at the start of 2007. Regional data is published every two years and data for 2007 is available in the release.

Information is available on the number of enterprises, the level of employment and turnover. The main source for the statistics is the *Inter-Departmental Business Register*, but information on very small businesses is estimated using the *Labour Force Survey* and the *HM Revenue & Customs Survey of Personal Incomes*. The current data relates to the start of 2007; data for 2008 will be available in mid-summer 2009 (there is a lag of approximately 18 months). Other sources of information on business formation and closure such as VAT registrations do not necessarily capture the very small businesses such as self-employed owner-managers.

1. Number of Enterprises

Table 1 below shows the number of enterprises, level of employment and turnover broken down by the number of employees. The definitions of small and medium enterprises depend on a number of factors, however in presenting the data below a small enterprise is defined as one employing between 0 and 49 employees and a medium enterprise as one employing between 50 and 249 employees. A large number of enterprises have no employees; these are small enterprises consisting of only the self-employed owner-manager(s), or sole employee director.

The data covers the private sector (including public corporations and nationalised bodies), but excludes central and local government as well as non-profit organisations.

¹³⁹ By Ed Potton, Economic Policy and Statistics Section

¹⁴⁰ <http://collections.europarchive.org/tna/20090203174207/http://stats.berr.gov.uk/ed/sme/> for 2007 press release see: <http://collections.europarchive.org/tna/20081105172636/http://stats.berr.gov.uk/ed/sme/smestats2007-ukspr.pdf>

Table 1 - Number of enterprises, employment and turnover in the private sector, UK*By number of employees, start 2007, includes public corporations and nationalised bodies*

	Number			Percent		
	Enterprises	Employment (000s)	Turnover ^(a) (£million)	Enterprises	Employment	Turnover ^(a)
All enterprises	4,679,080	22,734	2,794,684	100.0	100.0	100.0
With no employees ^(b)	3,460,360	3,774	222,382	74.0	16.6	8.0
All employers	1,218,720	18,961	2,572,303	26.0	83.4	92.0
1-4	811,700	2,313	243,235	17.3	10.2	8.7
5-9	207,595	1,450	169,976	4.4	6.4	6.1
10-19	111,165	1,541	176,328	2.4	6.8	6.3
20-49	55,655	1,724	233,663	1.2	7.6	8.4
50-99	17,145	1,191	166,758	0.4	5.2	6.0
100-199	7,950	1,106	158,525	0.2	4.9	5.7
200-249	1,595	356	69,424	0.0	1.6	2.5
250-499	3,000	1,045	213,669	0.1	4.6	7.6
500 or more	2,920	8,234	1,140,726	0.1	36.2	40.8
SMEs (0-249 employees)	4,673,165	13,455	1,440,291	99.9	59.2	51.5

Notes: (a) Excludes financial intermediation.

(b) "With no employees" comprises sole proprietorships, partnerships comprising only the self-employed owner-manager(s), and companies comprising only an employee director.

Numbers of enterprises are rounded to avoid disclosure; columns may not sum

Source: BERR, SME Statistics 2007, available at:

<http://stats.berr.gov.uk/ed/sme/>

As shown in table 1, small and medium enterprises accounted for over 99% of all enterprises, 59% of enterprise employment and 52% of total turnover. Large enterprises account for only 0.1% of enterprises, but 41% of employment and 48% of turnover.

2. Enterprises by size and industry

Table 2 provides a breakdown of enterprises by employees and industry. Once again this table only covers the private sector, public corporations and nationalised enterprises.

Table 2 - Number of enterprises in the private sector, UK*By number of employees and industry section, start 2007, includes public corporations and nationalised bodies*

	Number of Businesses	Number of employees (percentage of total)			
		None ^(a)	1 - 49	50 - 249	250 or more
All industries	4,679,080	74.0	25.3	0.6	0.1
A, B Agriculture, Hunting and Forestry; Fishing	168,495	61.5	38.4	0.1	0.0
C, E Mining and Quarrying; Electricity, Gas and Water Supply	13,025	90.8	7.8	0.8	0.5
D Manufacturing	348,250	69.2	28.4	2.0	0.5
F Construction	978,065	85.4	14.4	0.2	0.0
G Wholesale and Retail Trade; Repairs	562,030	55.9	43.1	0.8	0.2
H Hotels and Restaurants	149,765	22.4	76.0	1.4	0.2
I Transport, Storage and Communication	297,550	84.5	14.9	0.5	0.1
J Financial Intermediation	67,275	70.0	28.5	1.1	0.5
K Real Estate, Renting and Business Activities	1,130,890	72.5	26.9	0.5	0.1
M Education	162,540	91.3	8.4	0.2	0.1
N Health and Social work	273,570	80.2	18.9	0.8	0.1
O Other Community, Social and Personal Service Activities	527,625	82.5	17.2	0.2	0.1

Notes: (a) "None" comprises sole proprietorships, partnerships comprising only the self-employed owner-manager(s), and companies comprising only an employee director.

Numbers of enterprises are rounded to avoid disclosure.

Source: BERR, SME Statistics 2007, available at:

<http://stats.berr.gov.uk/ed/sme/>

The table shows that as may be expected, larger firms are more likely to be in financial services and industries such as mining and quarrying and the utilities. Small employers (those enterprises with 1 to 49 employees) are more likely to occur in the wholesale and retail trade as well as hotels and restaurants.

3. Employment by size of enterprise and industry

Table 3 shows employment in enterprises broken down by industry. While the vast majority of companies are small, total employment is more equally distributed between small medium and large businesses. The sectors with the largest proportion of employment in small firms employing more than one person are agriculture, hotels and restaurants and health and social care. The sectors with the highest numbers of people employed in firms employing between 1 and 49 people are wholesale and retail trade (and repairs) and real estate, renting and business activities. Financial services and mining and quarrying/utilities have the lowest proportion of workers in small enterprises.

Table 3 - Level of employment in the private sector, UK

By number of employees and industry section, start 2007, includes public corporations and nationalised bodies

	Employment (000s)	Percentage by number of employees				
		None ^(a)	1 - 49	50 - 249	250 or more	
All industries	22,734	16.6	30.9	11.7	40.8	
A, B	Agriculture, Hunting and Forestry; Fishing	448	32.9	61.3	3.6	2.1
C, E	Mining and Quarrying; Electricity, Gas and Water Supply	183	7.0	5.0	6.4	81.5
D	Manufacturing	3,231	8.5	25.8	21.5	44.2
F	Construction	2,151	40.3	34.3	9.2	16.3
G	Wholesale and Retail Trade; Repairs	4,881	7.5	29.3	9.1	54.1
H	Hotels and Restaurants	1,669	2.4	42.9	11.7	43.0
I	Transport, Storage and Communication	1,739	15.4	16.8	8.2	59.7
J	Financial Intermediation	1,117	4.7	10.6	6.5	78.1
K	Real Estate, Renting and Business Activities	4,301	20.6	35.1	12.6	31.7
M	Education	344	45.0	27.3	11.8	15.8
N	Health and Social work	1,311	18.5	43.2	15.2	23.1
O	Other Community, Social and Personal Service Activities	1,359	33.9	33.2	7.3	25.6

Notes: (a) "None" comprises sole proprietorships, partnerships comprising only the self-employed owner-manager(s), and companies comprising only an employee director.

Numbers of enterprises are rounded to avoid disclosure.

Source: BERR, SME Statistics 2007, available at:

<http://stats.berr.gov.uk/ed/sme/>

II Impact of insolvency on a small business

A. Insolvency Statistics ¹⁴¹

Company liquidations in England and Wales increased 26.3% in Q3 2008 compared to the same quarter one year ago, and by 10.5% compared to the previous quarter (seasonally adjusted data) according to data published by the Insolvency Service.¹⁴² Between 1998 and 2007, the highest number of company liquidations recorded was in

¹⁴¹ By Ed Potton, Economic Policy and Statistics Section

¹⁴² Insolvency Service, [Insolvencies in the third quarter 2008](#), 7 November 2008, Q4 data released on 6 February 2009

2002 when there were 16,306. To date in 2008 (excluding Q4), there have been 11,010. In 2007 there were 12,507. Further detail is shown in the table and chart below.

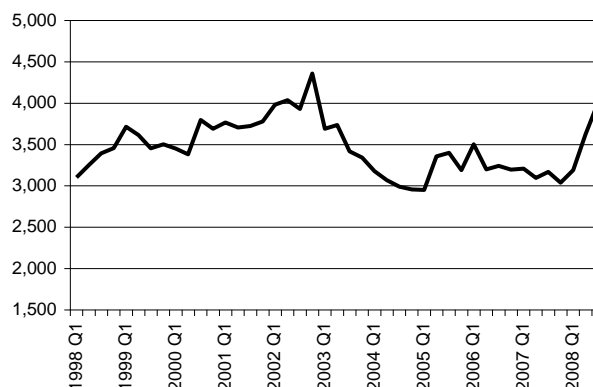
Company Liquidations, England and Wales

	Compulsory Liquidations	Creditors' Voluntary Liquidations	Total
2005	5,233	7,660	12,893
2006	5,418	7,719	13,137
2007	5,165	7,342	12,507
2007 (sa) Q3	1,277	1,890	3,167
Q4	1,162	1,877	3,039
2008 (sa) Q1	1,106	2,084	3,189
Q2	1,337	2,285	3,622
p Q3	1,483	2,518	4,001
Q3 Annual % change	16.1	33.2	26.3

Notes: (sa) - Quarterly data is seasonally adjusted
Q3 data is provisional

Source: Insolvency Service

Company liquidations (quarterly), England and Wales, seasonally adjusted



Source: Insolvency Service

There were a further 1,444 other corporate insolvencies in England and Wales in Q3 2008 (not seasonally adjusted data), an increase of 64.7% compared to the same quarter a year ago. These 'other' insolvencies are made up of 270 receiverships, 1,007 administrations and 167 company voluntary arrangements.¹⁴³ A proportion of individual insolvencies (bankruptcy orders) relate to self-employed people; in Q2 2008 11.2% of bankruptcy orders related to self-employed people (1,828 orders).¹⁴⁴

Separate insolvency data is published for Scotland. This shows a rise in company liquidations of 1.6% in Q3 2008 compared to the same quarter a year previously. This is shown in the table below. There was a further 64 other corporate insolvencies in Scotland in Q3 2008, an increase from 16 in the same quarter a year ago. In the first three quarters of 2008 there were 186 'other insolvencies' compared to 76 in the first three quarters of 2007, an increase of 144.7%.¹⁴⁵

Data for Northern Ireland is also available from the Insolvency Service release.¹⁴⁶

¹⁴³ Ibid, for further detail see table 3 of the release.

¹⁴⁴ Ibid, table 2a

¹⁴⁵ Ibid, tables 4 and 5

¹⁴⁶ Ibid, table 6

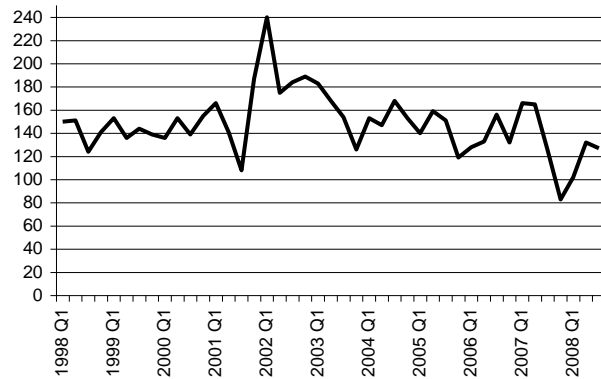
Company Liquidations, Scotland

		Compulsory Liquidations	Creditors' Voluntary Liquidations	Total
2005		420	149	569
2006		416	133	549
2007		439	100	539
2007	Q3	105	20	125
	Q4	71	12	83
2008	Q1	95	7	102
	Q2	111	21	132
	Q3	111	16	127
Q3 Annual % change		5.7	-20.0	1.6

Notes: All data not seasonally adjusted
Q3 data is provisional

Source: Insolvency Service

Company liquidations (quarterly), Scotland, not seasonally adjusted



Source: Insolvency Service

B. Different business structures and liability for debts ¹⁴⁷

The majority of small businesses will be set-up as either a sole trader, a limited liability company or as a partnership. In determining its legal structure, much would depend on the size and type of business, how finance will be raised, and its day-to-day operation and management.

Insolvency may be defined either as having insufficient assets to meet all debts, or being unable to pay debts as and when they fall due. The impact of insolvency on a small business and liability for business debts will depend to a large extent on how the small business was set-up – its legal structure.

1. Sole trader

The simplest way of setting up a small business is as a sole trader. Effectively, the owner of the business is self-employed and as such, is responsible for making all business decisions, raising investment and keeping his own records and accords. All profits of the business belong to the sole trader.

A sole trader has the advantage of independence; he alone manages the business and all the profits go to him. The major disadvantage is that the sole trader has unlimited liability; he is personally liable for any business debts. This could mean that the sole trader’s home or other personal assets may be at risk if the business experiences financial difficulty.

2. Limited liability company

Aside from sole trader status, most small businesses are set-up as limited companies. The two main types of limited liability companies are:

¹⁴⁷ By Lorraine Conway, Home Affairs Section

- private limited companies – which are allowed to have one or more members (e.g. shareholders) but are not allowed to offer shares to the public; and
- public limited companies (plcs) – which must have at least two shareholders and must have issued shares to the public to the value of at least £50,000 before it can trade.¹⁴⁸

Limited liability companies are incorporated (registered at Companies House) with at least one director (two if it is a plc) who may also be a shareholder. A director or board of directors are responsible for the day to day running of the company. Profits are distributed to shareholders in the form of dividends, apart from profits retained in the business as working capital.

Some small businesses may be wary of setting up as a limited liability company because this structure brings with it a range of extra legal duties, for example, the maintenance of the company's public records and the filing of accounts. However, the major attraction of this type of business structure is that the firm's finances are treated as being legally separate from the personal finances of its owners (unlike the sole trader arrangement). In law, a limited liability company has its own legal identity; it exists in its own right. This means that directors and shareholders are not responsible for company debts. Their personal liability is limited to how much they invested in the business (as shareholders) and to any guarantees they may have given to secure business financing.

3. Partnership

In a partnership, two or more people share the risks, responsibilities, costs and profits of being in business. A partner can be an individual or a company (known as a corporate member). Usual characteristics of a partnership are that the partners usually manage the business themselves and raise finance for the business out of their own assets.

Importantly, a partner is personally liable (usually without limit) for the debts of the partnership. Therefore a creditor can pursue one or more of the partners personally, as well as the partnership itself, for a partnership debt. In this respect, a partner (like a sole trader) is vulnerable.

C. Different insolvency procedures

Different insolvency procedures apply to different business structures. The relevant legislation is the *Insolvency Act 1986* (IA 1986), the *Enterprise Act 2002* (EA 2002), and the *Insolvent Partnerships Order 1994* (IPO 1994).

¹⁴⁸ There are also private unlimited companies but these are rare and usually created for very specific reasons

1. Sole trader

a. *Compulsory bankruptcy*

A sole trader has unlimited liability; he is personally liable for any business debts. This means that if his business runs into financial difficulty, a creditor who is owed at least £750 may petition for his bankruptcy (i.e. begin personal insolvency proceedings against the sole trader).

Once a bankruptcy order has been made by the court against the sole trader, creditors can no longer pursue him for payment; the payment of debts becomes the responsibility of his trustee in bankruptcy. However, the trustee in bankruptcy is legally entitled to seize all assets in the bankrupt's possession at the time of the bankruptcy order. Under section 436 of the IA 1986, the term 'property' is defined widely. Freehold or leasehold interest in land owned by the bankrupt generally falls within his bankrupt estate and can be sold by the trustee (subject to any mortgage).

For the sole trader, bankruptcy will mean:

- lost of control of all his assets (for example, any bank or building society accounts must no longer be used);
- inability to obtain credit for over £250 without permission from the lender;
- being prohibited from acting as a company director;
- being prohibited from taking any part in the promotion, formation or management of a limited company (LTD) without the permission of the court; and
- being prohibited from trading in any business under any other name unless the sole trader informs all persons concerned of the bankruptcy

These constraints end when the sole trader is discharged from bankruptcy, usually after a maximum period of 12 months.¹⁴⁹ This period will be shorter if the official receiver concludes his enquiries into the debtor's affairs sooner and files a notice in court.

After discharge the bankrupt is released from the bankruptcy debts and any property he acquires after his discharge is his; the trustee cannot lay claim to it. However, the property comprised in his estate at the time of the bankruptcy order remains under the control of his trustee. Discharge does not return ownership or control of bankruptcy assets to the bankrupt or prevent the bankrupt's trustee from carrying out any of his remaining functions in relation to the bankrupt's estate.¹⁵⁰ The only exception is the trustee's ability to deal with the family home; the EA 2002 now imposes a limitation period on the trustee's ability to deal with this asset.

In effect, there may still be assets that were owned either when the bankruptcy began or which were acquired before discharge, which the trustee has not yet dealt with. These

¹⁴⁹ In some cases the discharge from bankruptcy could be suspended (postponed), for example, where the debtor has not fully co-operated with his trustee or the case is complex

¹⁵⁰ The bankrupt also has a continuing obligation to attend on and provide information to the trustee

may include property, insurance or pension policy, an interest in a will or trust fund etc. These assets remain under the control of the trustee, who can deal with them in the future. However, any assets that are acquired by the bankrupt after discharge may usually be kept.

b. Alternatives to bankruptcy

In certain circumstances, the sole trader may be able to avoid bankruptcy and rescue his business by reaching some form of compromise with his creditors. This may include:

- An informal arrangement (or family agreement) – this is where the debtor negotiates an informal agreement with his creditors. To have any hope of success, the debtor should include a timetable of when he will repay each creditor.
- An individual voluntary arrangement (IVA) - an IVA is a formal legal agreement between the debtor and the creditors. An IVA proposal sets out how the debtor intends to repay the creditors over a specified period of time (usually five years). For an IVA, the debtor would need to apply to the court with the help of an authorised insolvency practitioner who would supervise the arrangement and pay the debtor's creditors in line with the accepted proposals.
- An administration order – this is a court order which covers the debtor's outstanding debts. Under this order, the debtor makes regular payments to the court for the benefit of the creditors. While the debtor is paying the administration order, his creditors can't take any further action against him to get their money, without asking the court first. Generally, the debtor will not have to pay any interest on his debts. However, he will have to pay a fee for the administration order, but this will be added to the money he already owes and not charged separately.

2. Limited liability companies

It is the company directors' responsibility to know whether or not the limited liability company is trading whilst insolvent and they can be held legally responsible for continuing to trade in that situation (the offence of wrongful trading). The procedures open to an insolvent limited company fall into three main categories. They are:

1. liquidation
2. administration (including 'pre-pack administration')
3. administrative receivership

The distinction is that liquidation involves closing down the business for good. Administration and administrative receivership provide for the potential rescue of the company or its business. A brief outline of each procedure is outlined below.

a. Liquidation

Liquidation (or 'winding up') applies to companies or partnerships (see below). It is the process by which a company stops trading. It involves the realisation and distribution of company assets to creditors (who often will not be paid in full) and usually the closing down of the business.

The High Court, or a county court with the appropriate jurisdiction, may order the winding-up of a company. This may be, for example, on the petition of a creditor or creditors on the grounds that the company cannot pay its debts. A company is regarded as unable to pay its debts if:

- a creditor is owed more than £750;
- presents a written demand in the prescribed form (known as a statutory demand) to the company; and
- the company fails to pay, secure or agree a settlement of the debt to the creditor's reasonable satisfaction.

The court may also order the company to be wound up on the petition of:

- the company itself;
- the company's directors or one or more members;
- the Secretary of State for Trade and Industry;
- the Financial Services Authority; or
- the Official Receiver.

Compulsory liquidation is the only insolvency procedure which any creditor can instigate unilaterally regardless of the company's wishes. In all other procedures, the company has to participate to some extent in the process.

Once the liquidation order has been made by the court, the liquidator takes control of the company. His role is to collect in and sell all company assets and distribute the proceeds to creditors according to a prescribed order set out in the IA 1986. When the liquidation process is complete, the company is struck off the Companies Register and ceases to exist.

In many cases, there will be insufficient company assets to pay all creditors in full. However, shareholders and directors will not usually be responsible for the short full provided no personal guarantees were given in respect of company loans and there was no wrong doing. This is a consequence of the company having a separate legal identity. In effect, the company's liability to creditors is limited to its own assets (irrespective of the personal assets of its shareholders and directors). However, any moneys owing to the limited company by its shareholders (in respect of bought but unpaid for shares) must be paid to the liquidator for the benefit of creditors.¹⁵¹

b. Company rescue

In certain circumstances, it may be possible to rescue a company that is still viable but experiencing financial difficulties. An obvious rescue route would be administration.

¹⁵¹ Further detailed information on the different insolvency procedures is available from [The Insolvency Service](#)

Administration

A new administration procedure was introduced on 15 September 2003 under the EA 2002.¹⁵² At its heart, administration is a company rescue procedure.

The primary objective of administration is to rescue the company as a going concern (i.e. with as much of its business as possible). The procedure is designed to hold a business together while plans are formed to put in place a financial restructuring to rescue the company. However, if the business cannot reasonably be saved, the administrator can perform his functions with the aim of achieving a better return for creditors than would be achieved in liquidation. For example, a better return may result from trading on for a period whilst seeking to sell off the business and or assets. Administration can also now be used where neither of these objectives can be achieved, simply as a mechanism to liquidate assets and distribute the proceeds to secured or preferential creditors, but this is not its primary purpose. The primary aim of the new administration procedure is to get the company out of financial difficulty and trading again if possible.

A company goes into administration when an administrator is appointed to manage the company's affairs, business and property. Since 15 September 2003 (when the corporate insolvency provisions of the EA 2002 came into force) an administrator may be appointed by any of the following:

- the court – an administration order may be made by the court on application from a creditor or directors of the company
- the holder of a qualifying floating charge over the assets of the company¹⁵³
- the company or its directors

Under the new provisions of the EA 2002, floating charge-holders, companies and directors of those companies will be able to appoint an administrator simply by filing a Notice of Appointment at court, without a court application and hearing.¹⁵⁴

In all cases the administrator appointed will be an insolvency practitioner and an officer of the court, subject to the court's supervisory jurisdiction. Most importantly, the administrator has a duty to all the company's creditors. The appointment of an administrator expires after just one year. This time limit is intended to make administration more accessible, particularly to smaller firms and to give greater certainty to creditors and those dealing with companies under administration. The administrator is under a duty to perform his functions as quickly and efficiently as possible. However, the administrator's 12-month appointment may be extended with the consent of creditors or the court.

¹⁵² When the corporate insolvency provisions of the *Enterprise Act 2002* came into force

¹⁵³ A floating charge is a charge held over general assets of a company. The assets may change (such as stock) and the company can use the assets without the consent of the secured creditor until the charge "crystallises" (becomes fixed). Crystallisation occurs on the appointment of an administrative receiver, on the presentation of a winding-up petition or as otherwise provided for in the document creating the charge.

¹⁵⁴ In specified circumstances they will have to give notice before filing such a Notice of Appointment

Once in administration, the company is placed under the day-to-day control and management of the administrator. It is his responsibility to formulate proposals and present these to the creditors to vote on. No later than 8 weeks after the company enters administration, the administrator must make a statement setting out proposals for achieving the purpose of the administration or explaining why they cannot be achieved. It is not unusual for proposals to include a voluntary arrangement or a compromise with creditors.

A company put into administration is protected; there is a moratorium on insolvency and on other legal proceedings. In practice, this means that while rescue proposals are being prepared, no creditor can take steps (without the administrator's agreement or the court's permission) to disturb the business or recover any assets.

A company in administration cannot go into liquidation (i.e. be wound up) except in very limited circumstances. This means that any pending winding-up petitions will be dismissed or suspended. Where the company is already in liquidation (i.e. in the process of being wound up) the company cannot go into administration unless:

- In the case of a voluntary winding-up, the court makes an administration order upon the application of the liquidator.
- In the case of a compulsory winding-up, the court makes such an order for administration upon the application of the liquidator or holder of a floating charge. However, it must first discharge the compulsory winding-up order.

At the end of the administration, there are various options as to what could happen to the company:

- If the company with its business has been rescued, it could enter into a Company Voluntary Arrangement (CVA).¹⁵⁵
- The company could move straight into a Creditors' Voluntary Liquidation (CVL).¹⁵⁶ This could only happen if the administrator thought that each secured creditor was likely to be paid and a distribution would be made to unsecured creditors. The company would then be wound up.
- The company could move into dissolution. This could happen if the administrator thought that a company had no property with which to make a distribution to its creditors. In effect, the company would no longer legally exist.

In Scotland, the choice of exit route also includes compulsory liquidation with the court appointing the administrators as liquidators immediately on discharge of the administration order.

¹⁵⁵ A company voluntary arrangement (CVA) is a legal procedure under the provisions of the *Insolvency Act 1986* that enable a company to enter into a binding agreement with its creditors detailing how the company's debts and liabilities will be dealt with, and allows the directors to retain control of the company.

¹⁵⁶ A CVL occurs where the shareholders, usually at the directors' request, decide to put the company into liquidation because it is insolvent.

Pre-pack administration procedure

Very briefly, when a business needs to be rescued there are often worries about maintaining value – both for existing creditors and for prospective purchasers trying to save the business. As a result, the practice of ‘pre-packaging’ the administration process has developed. In a pre-pack process a company is placed into administration and the business is sold shortly after the appointment of the administrator. Often, the insolvency practitioner, the directors and the bank will have obtained valuations, agreed a sales price and drafted contracts to enable the business to be sold immediately after appointment.

Commenting on how pre-packs work in practice, the Association of Business Recovery Professionals (known as ‘R3’) has said:

If the conditions are appropriate, a pre-pack can be advantageous for all involved, and can be the best way of extracting value from a dire situation.

Pre-packs are not new. They have often been used to sell businesses in insolvencies where commercial pressures require urgent action. However, there has been an increase in the number of pre-packs recently. This partly reflects the greater variety of insolvent businesses over the last few years.¹⁵⁷

However, R3 also points out some disadvantages to pre-packs:

The main criticism of the pre-pack is that there is a lack of transparency in the process. Marketing of the business may take place but it isn’t necessarily visible. In general creditors feel they are presented with a done deal. They say they haven’t been kept informed of developments or been able to influence the Insolvency Practitioners’ actions.

[...] There are no specific regulations which deal with pre-packs, which can lead to a lack of confidence in the openness of the procedure.¹⁵⁸

In effect, the perception of some creditors is that assets may have been sold at an undervalued price or that goodwill has not been fully valued because of the speed of the sale. However, the statutory and practical limitations under which the administrator has to act should not be ignored. Insolvency practitioners are officers of the court, and as such, are under a duty to obtain the maximum return for creditors. Moreover, insolvency processes are under the ultimate control of the court. If an insolvency practitioner is found by the court to have acted improperly he may be made liable for misfeasance. If he is judged to have acted improperly by his professional body, he will be subject to that body’s disciplinary proceedings.

c. Administrative receivership

In certain circumstances, it may be possible to rescue a company through administrative receivership, although administration would be a more obvious rescue route. It is fair to say that the main concern of an administrative receiver is to recover the money owed to

¹⁵⁷ The Association of Business Recovery Professionals (R3), [Briefing on pre-packs](#)

¹⁵⁸ Ibid

the secured creditor who appointed him - rescuing the failing company would be a secondary consideration.

Briefly, an administrative receiver is appointed under a charge (i.e. debenture or loan agreement) which covers the bulk of the company's assets, including its goodwill. This type of charge is referred to as a 'floating charge'. The holder of the charge (i.e. the lender) is often referred to as the secured creditor. This may be one lender or sometimes a consortium of lenders. Once the company defaults on the loan, the administrative receiver takes control of the whole, or a substantial part, of the company's property under the terms of a lender's floating charge security arrangements. With administrative receivership, there is no court involvement and the process can be invoked very quickly.

The appointed administrative receiver, who must be an insolvency practitioner, has wide powers over the business. He may sell the assets piecemeal, or sell the business as a going concern to pay off the secured creditor and the costs of the receivership. At first glance, it may seem that the administrative receiver is simply a debt collector for the lender who appointed him and to whom he has a primary duty, with a few legal obligations to people such as preferential creditors. In fact, he will also seek to obtain the best value for all creditors, although not at the floating chargeholder's expense.

The receiver can continue trading and will often do so – at least for a limited period – in the hope of selling the business as a going concern. If successful, this will usually achieve a higher price than one would get by breaking up the assets. It also gives the business a chance to survive and succeed under new management. If the business is sold, the buyer receives the business free of debt and the sale proceeds goes to the receiver to distribute to secured and preferential creditors. If a buyer for the business cannot be found and there are insufficient assets to pay the secured creditor, in all probability the company will pass into compulsory liquidation (i.e. be dissolved).

Since 15 September 2003 the EA 2002 has introduced certain restrictions on the ability of floating chargeholders to appoint administrative receivers. For floating chargeholders whose charges were not created until after 14 September 2003, administrative receivership is in most cases no longer an option – instead they must appoint an administrator.

3. Partnership

As already mentioned, the personal assets of a partner are vulnerable if the business runs into financial difficulty. A partner is personally liable (usually without limit) for the debts of the partnership. This means that a creditor can pursue one or more of the partners personally, as well as the partnership itself, for a partnership debt. In effect, the partnership can be wound up and bankruptcy orders can also be made against the individual partners.

In practice, the creditor of a partnership can apply to the court for an order for either:

- the winding up of the insolvent partnership as an unregistered company with no action taken against the individual partners (under Article 7 of the *IPO 1994*); or

- the winding up of the insolvent partnership as an unregistered company where bankruptcy petitions are also presented against one or more of the partners (under Article 8 of the *IPO 1994*)¹⁵⁹

However, a creditor can only apply for a winding-up order against the partnership if the partnership has traded in England or Wales at any time in the 3 years before the petition is presented.

- Importantly, as the partners are personally liable for the debts of the partnership, a creditor of a partnership can petition (apply) for the bankruptcy of one or more of the partners, without petitioning for the partnership to be wound up.

Where a winding-up order is made against the partnership, partnership assets will be realised and distributed to creditors in the same way as in the liquidation of a limited company. Where bankruptcy orders are made against individual partners, the bankruptcy procedure followed will be exactly the same as with the bankruptcy of a sole trader. In certain circumstances, it may be possible to rescue a partnership that is in financial difficulty through administration. The administration procedure used in respect of a partnership is exactly the same as that used in respect of a failing company.

III Redundancy ¹⁶⁰

A. Policy

The Pre-Budget Report announced the following measures to support people facing redundancy:

- an additional £1.3 billion to continue delivering effective support for the unemployed to find a new job;
- a National Employment Partnership, bringing together the Government and major employers to tackle rising unemployment; and
- refocusing Train to Gain to provide support in pre-redundancy situations, expanding the Rapid Response Service to target small and large scale redundancies and extending Local Employment Partnerships to focus on the short-term unemployed.¹⁶¹

In terms of opposition policy, a speech given by David Cameron on 10 November 2008 expressed a commitment to combat mass unemployment:

Britain is facing some very difficult economic circumstances. Banks that people thought were a permanent part of our landscape have gone under, the pound is falling, inflation is rising and so is unemployment.

[...]

¹⁵⁹ An unregistered company is a company which is not registered with the Registrar of Companies (Companies House). Examples can include a partnership or an association.

¹⁶⁰ By Vincent Keter, Business & Transport Section

¹⁶¹ [Pre-Budget Report 2008](#), page 83

But the biggest worry for so many people right now is redundancy. Unemployment is rising at its fastest rate for 17 years. Between June and August the number of people without work soared by 164,000 – taking the total to 1.79 million. It's got worse since then, and predictions for next year are grim.

Today I want to speak to you about what our approach to unemployment will be during this recession. Because before people hear your policies, they want to know what values and attitudes you bring to the table, and that's what I'm going to set out.

You don't need a long memory in this country to remember the trauma of mass unemployment. As a recession sets in, hundreds of thousands of people are at risk of losing their jobs, and as recessions go on, long-term unemployment soars.

That is a tragedy for the people involved, and it's a tragedy for us, too – for all of society. There's a certain approach to this which says that however painful this may be, large-scale unemployment is an unavoidable consequence of recession, that because it's the natural movement of the markets, all that government can do is stand by and pick up the pieces.

I am not one of those people. In fact, I wholly disagree.

Today I want to say that the Conservative party will not stand aside and allow unemployment to claim livelihoods and ruin lives on a massive scale. We will not walk on by while people lose their jobs. And there are three reasons for this.¹⁶²

The Liberal Democrats published an advisory note this month setting out their proposals to deal with the possibility of rising unemployment in the near future:

Stimulating the economy to ward off increasing unemployment

We believe that the best way to alleviate rising unemployment in the economy is to stimulate demand. We would do this by reducing the basic rate of income tax by 4p in the pound, giving nearly £1,000 back in income tax to a worker on £30,000 a year. This would be funded by closing tax loopholes enjoyed by the very wealthy and by increasing some green taxes.

We believe that poor families need money in their pockets, right now. Cutting taxes for those on low and middle incomes will encourage increased consumer spending, helping struggling retail and manufacturing industries.¹⁶³

B. Employment rights

1. Minimum redundancy pay entitlement

For many employees redundancy pay is set out in their employment contract. However, all employees who qualify are entitled to statutory minimum payments calculated in

¹⁶² Conservatives, Speech by David Cameron: [We will not walk on by while people lose their jobs](#), 10 November 2008

¹⁶³ Liberal Democrats, Advisory note, [Government unprepared for rising unemployment](#), 12 November 2008

accordance with Part XI of the *Employment Rights Act 1996* (ERA). Under the Act, employers must pay redundant employees a minimum redundancy payment made up as follows:

- (i) for each year's service aged 41- 64 (inclusive).....1.5 weeks' pay
- (ii) for each year's service aged 22 - 40 (inclusive).....1 week's pay
- (iii) for each year's service aged 18 - 21 (inclusive).....0.5 weeks' pay

However, there is a maximum of 20 years' service which counts and a limit on the amount of a week's pay which counts. This is currently set at £330. Thus the maximum statutory redundancy payment is currently £9,900.¹⁶⁴ Generally, pay is the level of pay the employee was entitled to at the time notice of redundancy was given. Further details of how to calculate minimum statutory redundancy payments are contained in a BERR leaflet, *Redundancy entitlement - statutory rights. A guide for employees* URN No: 07/613.¹⁶⁵ The Business Link website also has an online tool for calculating the number of weeks' pay due.¹⁶⁶

To qualify for any redundancy payment, one must have been continuously employed by the same employer for at least two years. Until the House of Lords judgment on 3 March 1994 in the case of *Regina v Secretary of State for Employment ex parte Equal Opportunities Commission and Another*, people who worked between 8 and 16 hours a week had to have worked for the same employer for 5 years to qualify, and those who worked less than 8 hours a week never qualified. The situation is now changed and all employees, regardless of hours worked, qualify for payments after two years.

The limit on a week's pay will be increased every year in line with inflation, under provisions contained in section 34 of the *Employment Relations Act 1999*. Before these provisions came into force, there was no obligation to increase the limit annually, merely an obligation to review it.¹⁶⁷

2. Work and Families Act 2006

The *Work and Families Act 2006* allows a one-off change to be made to the statutory cap on the level of a week's pay used for calculating various statutory entitlements such as redundancy pay.¹⁶⁸ It is not clear what the adjustment would be or even whether the power will definitely be used. It now appears that the power will be used to implement a commitment made by the Government to Trade Unions in the Warwick Agreement to uprate redundancy pay.¹⁶⁹

The TUC has been calling for an increase the weekly limit on statutory redundancy pay toward restoring the equivalent value of the limit when it was first introduced in 1965:

¹⁶⁴ £330 x 1.5 x 20 = £9,900

¹⁶⁵ BERR, [Redundancy entitlement - statutory rights. A guide for employees](#), URN No: 07/613

¹⁶⁶ Business Link, [Calculate the statutory redundancy pay due to your employee](#)

¹⁶⁷ Section 208 of the *Employment Rights Act 1996* required the Secretary of State, in each calendar year, to undertake a review of various limits and to decide whether limits should be varied.

¹⁶⁸ Clause 14, Bill 60 of 2005-06

¹⁶⁹ Michael Millar, "Redundancy time-bomb in Work & Families Bill", [Personnel Today](#), 17 January 2006:

When redundancy pay was introduced for the first time in 1965 the limit was set at £40, more than twice the average wage (£19.60). If the limit had been updated in line with prices it would now be a little over £500, and if increased in line with earnings it would now be in excess of £1,000.

TUC General Secretary Brendan Barber said: 'Now is the right time to start to restore the value of redundancy pay. When it was introduced the big majority of the workforce had all their wages counted when working out their redundancy pay, but now more than half the workforce would lose out.

'The Government pledged in its manifesto for the last election to boost redundancy and that pledge should be implemented. A one off rise to £500 and a link to earnings rather than prices in future is the minimum we need to see to start to restore some fairness.'¹⁷⁰

3. Employment tribunals: enforcement of awards

Employees who are made redundant may be forced to take tribunal proceedings to establish that the reason for their dismissal was in fact redundancy and that they are therefore entitled to redundancy pay. In many cases this will not be in dispute as the employer will have acknowledged redundancy. If a tribunal makes a redundancy award and the employer still does not pay there are two options open to the employee. Where the employer is insolvent they may be able to claim payment from a government scheme (see below); otherwise they must pursue the outstanding award in a civil court.

There have been longstanding calls to improve the position of successful claimants in employment tribunals who face employers' non-payment of their awards. Employment tribunals have no power to enforce their own awards. Instead, under section 51(1) of the *Employment Tribunals Act 1996*, any cash award made by an employment tribunal must be enforced through the county court 'as if it were payable under an order of that court' as a county court judgement (CCJ). Similar rules apply for Scotland.

After a CCJ has been obtained and remains unpaid, it will be necessary for the claimant to take further enforcement measures. There is a variety of such measures ranging from charges on property to orders in respect of bank accounts. They are in themselves costly to pursue and the circumstances of the average employment tribunal claimant may mean that there is a commercial incentive for employers to withhold payment.

In response to opposition amendments to the *Employment Bill 2007-08* the Minister in charge confirmed that the Government recognise the need to do more.¹⁷¹ In this regard the Ministry of Justice is undertaking research to explore the extent of non-payment; and forthcoming regulations under the *Tribunals Courts and Enforcement Act 2007* will allow unpaid awards and legally binding agreements brokered by ACAS to be automatically registered as county court orders without requiring payment of court fees.¹⁷²

¹⁷⁰ TUC, [Time to restore redundancy pay value](#), 28 February 2008

¹⁷¹ PBC Deb 16 October 2008 (afternoon) c106

¹⁷² PBC Deb 16 October (afternoon) c106

At Second Reading of the *Employment Bill* in the Commons, Sarah Teather framed the problem in terms of risk:

The issue is really about using the state to take the risk that at the moment is borne by individuals. At the moment, individuals have to pay to go through the county court process. They will get the money back, if they win, but I want the Government to consider whether the state could take on the risk for very low-paid individuals. The state would get the money back, but the burden of risk would be shifted from the individual to the state. NACAB has suggested using High Court enforcement officers.¹⁷³

4. Age discrimination

The *Employment Equality (Age) Regulations 2006 SI No.1031* were made on 3 April 2006 and came into force on 1 October 2006.¹⁷⁴ They arise out of the need to implement the *EC Directive establishing a general framework for equal treatment in employment and occupation (2000/78/EC)* adopted on 27 November 2000. The purpose of this directive, commonly called the “Employment Directive” or “Framework Employment Directive”, is to prohibit discrimination in employment on the grounds of religion or belief, disability, age or sexual orientation. There are two age discrimination issues that arise in respect of statutory redundancy pay: age related differences in entitlements and the abolition of upper age limits.

a. Pay bands

Whilst the initial proposal was to abolish the three age related bands in favour of a single multiplier, government abandoned this approach in favour of retaining the present system. The Government believes that retaining the age differences in statutory redundancy entitlement will not contravene EU law since the Directive allows domestic legislation to provide for different treatment on the grounds of age, “where this difference of treatment is objectively and reasonably justified by a legitimate aim, including employment policy”. A statement on 2 March 2006 explained:

Statutory Redundancy Payments Scheme

The Parliamentary Under-Secretary of State for Trade and Industry (Mr. Gerry Sutcliffe): The Government have been considering what amendments might be needed to the statutory redundancy payments scheme to bring it into line with the EU Employment Directive, which requires Member States to outlaw discrimination on the grounds of age, among other things, in the employment field. The current scheme contains three age bands and directs greatest financial support to older workers and those with long service.

We have been discussing the way forward with key stakeholders over the last few months, including the CBI, EEF and TUC. In the course of those discussions the Government became concerned that a system using a single multiplier might not meet our overall policy aims. We have therefore carefully examined the rationale

¹⁷³ [HC Deb 14 July 2008 c64](#)

¹⁷⁴ [Employment Equality \(Age\) Regulations 2006](#) SI No.1031

for the current scheme, and come to the conclusion that this provides the best fit with our aims.

Evidence the Government have gathered demonstrates that younger, prime age and older workers fall into three distinct economic categories, with older workers facing a particularly difficult position in the employment market. Young workers tend not to be out of work for long, and see only a small fall in pay when switching jobs. Older workers are much more likely to become long-term unemployed, and to experience a substantial fall in pay when finding a new job. Prime age workers fall into the middle. We therefore believe that it is sensible for the level of support provided through the scheme to reflect these three categories. A system using a single multiplier would leave a significant group of older workers substantially worse off than at present, and we believe this would be unacceptable. Even if a substantial amount of money were injected into the scheme so as to leave older workers no worse off, the enhanced benefits to younger workers are not justified by their position in the employment market.

The Directive provides for the possibility of Member States providing for different treatment on the grounds of age, where this difference of treatment is objectively and reasonably justified by a legitimate aim, including employment policy. We have looked at this question very closely and are confident that retaining the age bands is permitted by the Directive.

The Government have however decided to remove the lower and upper age limits in the redundancy scheme (at 18 and 65 respectively) and the taper at the age of 64 because we believe, as employees are living and working longer, these cannot be justified under the Directive. A small group of amendments to the scheme will be set out in the forthcoming age regulations, which will be laid before Parliament shortly.¹⁷⁵

b. Upper limits

The effect of the age discrimination regulations has been to abolish the upper and lower age limits that formerly applied to statutory claims for redundancy pay and unfair dismissal respectively.¹⁷⁶ Under these provisions those under 18 or over 65 were not entitled to the minimum statutory redundancy pay. Under section 211(2) ERA service before a person's 18th birthday did not count for statutory redundancy pay calculations. This was in contrast to the calculation of the basic award in unfair dismissal claims, which has not been subject to a lower age limit but did have an upper limit. Similarly, an employee made redundant after their 65th birthday did not qualify for statutory redundancy pay under section 156 ERA. The DTI guidance at that time on redundancy explained how the entitlement formerly tailed off after the age of 64:

12. If you are aged 64 or over

If you are aged 64 or over, we have to reduce your redundancy payment by one-twelfth for each complete month you worked after your 64th birthday. This means that if you are 65 or over, you are not entitled to a redundancy payment. You may

¹⁷⁵ HC Deb 2 Mar 2006 cc39-40WS

¹⁷⁶ DTI, [Equality and Diversity: Coming of Age](#), July 2005

still be entitled to compensation for notice pay, unpaid wages or holiday pay you are owed.¹⁷⁷

5. Tax on redundancy pay

There are two types of redundancy pay - statutory and non-statutory. Statutory redundancy pay is the legal minimum which an employer is obliged to pay an employee.¹⁷⁸ This type of payment is distinct from ex-gratia or non-statutory redundancy payments; that is, those which an employer chooses to make, which are not made under a contractual obligation. Statutory redundancy pay is exempt from income tax,¹⁷⁹ whereas ex-gratia payments are not.¹⁸⁰ However, individuals are eligible to receive the first £30,000 of their **total** redundancy pay tax-free.¹⁸¹ Although statutory redundancy pay is not assessable for income tax purposes, when applying the £30,000 threshold it is included in the calculation of someone's total redundancy pay.¹⁸² Ex-gratia payments in excess of the £30,000 limit are treated as taxable income. Only the excess over £30,000 is taxed.

HM Revenue & Customs publish a factsheet setting out the tax rules for redundancy payments, which is available from their site.¹⁸³ Detailed guidance on the tax treatment of all types of termination payments and benefits is provided in the department's online *Employment Income Manual*.¹⁸⁴

The £30,000 was last increased by £5,000 to £30,000 in the 1988 Budget, with effect from 6 April 1988.¹⁸⁵ Although there have been calls for this limit to be increased in recent years,¹⁸⁶ the Government has not given any indication that it has plans to do so.¹⁸⁷

C. Redundancy and insolvency¹⁸⁸

1. Employment rights on employer insolvency

a. Overview

The following employment rights can be relied on by employees in cases where their employer becomes insolvent:

¹⁷⁷ The Insolvency Service, [Redundancy and Insolvency: A guide for employees](#), 2007

¹⁷⁸ Guidance on the law is given in, Department for Trade and Industry, [Redundancy entitlement: statutory rights: a guide for employees](#) - URN No: 08/640, 2008.

¹⁷⁹ Under section 309 of the *Income Tax (Earnings and Pensions) Act (ITEPA) 2003*

¹⁸⁰ Under ss 401-416 of *ITEPA 2003*

¹⁸¹ Under section 403 of *ITEPA 2003*.

¹⁸² It is worth noting that under current rules the maximum amount of statutory redundancy pay someone can receive is far lower than £30,000.

¹⁸³ Inland Revenue, [Redundancy factsheet](#), March 2005

¹⁸⁴ paragraphs EIM12800-13995. The Manual is available [online](#). The issue is also discussed in, "Terminate, terminate...", *Taxation*, 4 September 2008

¹⁸⁵ Inland Revenue press release, *Tax relief for redundancy etc payments*, 15 March 1988. This change was made under section 74 of the *Finance Act 1988*.

¹⁸⁶ In May 2002 Helen Jones put down an EDM supporting an increase in the threshold which attracted 54 signatures (EDM 1313 of 2001-02, *Tax threshold for redundancy pay*, 15 May 2002).

¹⁸⁷ The issue has come up in a number of PQs; for example, HC Deb 17 July 2003 c 462W; HC Deb 10 March 2004 c 1550W; HC Deb 16 March 2005 c 295W.

¹⁸⁸ By Vincent Keter, Business & Transport Section

- Employees dismissed by administrators or administrative receivers may look to them for payment of certain claims which arise during the period of administration or receivership.
- Under the *Employment Rights Act 1996* (ERA) employees may be entitled to have some of the debts owed to them by their insolvent employer covered by the state. This is done via the Redundancy Payments Scheme operated by BERR.
- In some cases, under ERA, an employee who belongs to an occupational pension scheme may have unpaid employer's contributions paid by the state. Furthermore, under the *Pensions Act 2004*, defined benefit pension schemes that wind up under-funded on the insolvency of the employer may be covered by the Pension Protection Fund (see below).
- An employee's entitlement to certain statutory payments such as statutory sick pay and maternity, paternity and adoption pay may be covered by HM Revenue and Customs.
- Employees are treated as preferential creditors under the *Insolvency Act 1986* in respect of unpaid wages owed in the four months before the date of the insolvency order.

There is no requirement for a qualifying period of continuous employment for any of these rights. However, merchant seamen and share fishermen, as well as crown and parliamentary staff, are excluded from the rights in Part XII of the ERA to have certain debts and pension contributions guaranteed by the state.

b. Administrators and contracts of employment

An administration order is an order directing that the affairs, business and property of a company shall be managed by a person appointed by the court.¹⁸⁹ On a petition by the company, its directors or creditors, an "administrator" will be appointed, or an "administrative receiver" in the case of an appointment by debenture holders.¹⁹⁰

An administrator receiver is deemed to have adopted an employee's contract of employment if they maintain the employment for 14 days.¹⁹¹ This will provide employees with protection by making the administrator:

personally liable ...[to the extent of any qualifying liability,] on any contract of employment adopted by him in the carrying out of those functions

The personal liability only arises in respect of "qualifying liabilities" with reference to employment after the adoption of the contract, being:

¹⁸⁹ *Insolvency Act 1986*, section 8(2)

¹⁹⁰ Since 15 September 2005 the right to appoint an administrative receiver is generally limited to debenture holders whose charge existed at that date

¹⁹¹ Section 44(2) of the *Insolvency Act 1986* (IA 1986)

- liability to pay wages (including sick pay and holiday pay); and
- liability to pay pension contributions to an occupational pension scheme.

If a company goes into liquidation this normally has the legal consequence that all employees will be regarded as being immediately dismissed.¹⁹² However, the appointment of a receiver by debenture holders or of a liquidator of a solvent company by shareholders or the making of an administration order by the court does not involve such automatic dismissal of employees.¹⁹³ It is important to note that in both cases employees will still have the right to claim in an employment tribunal for statutory redundancy pay and other statutory or contractual employment rights against the company.

2. Payments covered by the State

a. Redundancy Payments Scheme

Under the *Employment Rights Act 1996* (ERA), as amended by the *Employment Rights (Increase of Limits) Order 2007*, SI No.3570, the Redundancy Payments Office (RPO) operated by the Insolvency Service must pay certain debts owed by an insolvent employer to his employees.¹⁹⁴ The debts covered are:¹⁹⁵

1. Arrears of pay up to £330 a week for a maximum of eight weeks. This payment includes: commission, overtime and guarantee payments.
2. Statutory payments for time off work; or suspension on medical or maternity grounds.
3. Any 'protective award' made by an employment tribunal if an employer has failed to inform or consult worker's representative about a collective redundancy.
4. Holiday pay, for unused holidays and for holidays actually taken but not paid, up to a weekly limit of £330 for a maximum of six weeks. Holiday pay may include holiday carried over from the previous year if the contract of employment allows this.
5. A compensatory payment for failure to give proper statutory notice, up to a weekly limit of £330.
6. An unpaid basic award made by an employment tribunal of compensation for unfair dismissal (unfair dismissal awards are usually made up of two components: a basic award calculated according to age, length of service and pay, and a compensatory award determined by the tribunal to take account of the actual loss sustained. These provisions cover only the basic award.)

¹⁹² *Reid v Explosives Company Limited* [1887] QBD 264

¹⁹³ *Re Mack Trucks (Britain) Limited* [1967] 1WLR 780; also under IA 1986 section 44(1)(a) administrator is an agent for the company.

¹⁹⁴ BERR, [Redundancy Payments Offices](#)

¹⁹⁵ Section 184 of the *Employment Rights Act 1996*

7. Reasonable reimbursement of apprentices' or articulated clerks' fees or premiums. Unlike holiday pay and compensation, the full amounts can be recovered.¹⁹⁶
8. Statutory redundancy payments. The amount of a statutory redundancy payment is the employee's weekly pay (up to a limit currently set at £330 a week) multiplied by a number of 'qualifying weeks' depending on how long the employee has been in the job (see section III(B)1 above).¹⁹⁷

Complaints about the Department's failure to make such payments are dealt with by employment tribunals.¹⁹⁸ In the case of redundancy payments, (but not arrears of wages etc) the RPO may also assume responsibility where the

employee has taken all reasonable steps (other than legal proceedings) to recover the payment from the employer and ... the employer has refused or failed to pay it.¹⁹⁹

The definition of insolvency for these purposes is contained in section 183 ERA:

183 Insolvency

- (1) An employer has become insolvent for the purposes of this Part—
 - (a) where the employer is an individual, if (but only if) subsection (2) is satisfied,
 - (b) where the employer is a company, if (but only if) subsection (3) is satisfied, and
 - (c) where the employer is a limited liability partnership, if (but only if) subsection (4) is satisfied.

- (2) This subsection is satisfied in the case of an employer who is an individual—
 - (a) in England and Wales if—
 - (ai) a moratorium period under a debt relief order applies in relation to him,
 - (i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors, or
 - (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986, and
 - (b) in Scotland if—
 - (i) sequestration of his estate has been awarded or he has executed a trust deed for his creditors or has entered into a composition contract, or
 - (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors.

¹⁹⁶ An "articled clerk" was someone in work-based training in a firm of solicitors or accountants. For solicitors these professional arrangements have changed and are now referred to as "training contracts" and such individuals are now called "trainee solicitors". The Act does not define this term.

¹⁹⁷ BERR, [Redundancy entitlement - statutory rights. A guide for employees](#) URN No: 07/613

¹⁹⁸ Section 188 of the *Employment Rights Act 1996*

¹⁹⁹ Section 166(1)(a) of the *Employment Rights Act 1996*

- (3) This subsection is satisfied in the case of an employer which is a company—
- (a) if a winding up order has been made, or a resolution for voluntary winding up has been passed, with respect to the company,
 - (aa) if the company is in administration for the purposes of the Insolvency Act 1986,
 - (b) if a receiver or (in England and Wales only) a manager of the company's undertaking has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or
 - (c) if a voluntary arrangement proposed in the case of the company for the purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.
- (4) This subsection is satisfied in the case of an employer which is a limited liability partnership—
- (a) if a winding-up order, an administration order or a determination for a voluntary winding-up has been made with respect to the limited liability partnership,
 - (b) if a receiver or (in England and Wales only) a manager of the undertaking of the limited liability partnership has been duly appointed, or (in England and Wales only) possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the limited liability partnership comprised in or subject to the charge, or
 - (c) if a voluntary arrangement proposed in the case of the limited liability partnership for the purposes of Part I of the Insolvency Act 1986 has been approved under that Part of that Act.

Ex employees wishing to make a claim under these provisions should apply to their employer's representative (for example, the receiver, liquidator or trustee) for an application form (RP1). The completed form should be sent to the RPO. Form RP1 together with full details of how to apply are also contained in a leaflet, available on the BERR website.²⁰⁰

Employees who have outstanding claims which are not covered by this scheme must submit a claim to the employer's representative who will consider it separately as part of the insolvency proceedings.

b. Pensions Contributions²⁰¹

Under section 124 of the *Pension Schemes Act 1993*, the trustees of an occupational pension scheme may apply in writing to the Secretary of State claiming that an insolvent employer has failed to pay pension contributions (either on their own account or on

²⁰⁰ The Insolvency Service, [Redundancy and Insolvency - A Guide for Insolvency Practitioners to employees' rights on the insolvency of their employer](#), URN 08/550

²⁰¹ By Djuna Thurley, Business & Transport Section

behalf of the employee) into the scheme during the 12 months preceding the date on which the employer became insolvent.²⁰²

The Insolvency Service guidance gives practical information about how such claims are handled:

Unpaid pension scheme contribution

Section 124 of the Pension Schemes Act 1993 (as amended) provides for the payment of certain contributions that are owed to an occupational or personal pension scheme when an employer becomes insolvent. "Persons competent to act" under the trust deed or rules of a scheme (for example, the trustees) may apply for payment to a scheme.

The following contributions are payable:

- unpaid contributions on behalf of an employee, i.e. contributions which have been deducted from the pay of the employee, but which have not been paid into the resources of the scheme, up to a maximum of the amount deducted from the employee's pay in respect of his/her contributions to the scheme during the 12 months ending on the day before the employer became insolvent;
- unpaid contributions payable by the employer on its own account, to a limit of whichever is the least of:
 - the balance of the employer's contributions relating to the 12 months ending on the day before the employer became insolvent;
 - the amount certified by an actuary as necessary for the scheme to meet its liability on dissolution for payment of benefits to the employees (this condition does not apply to "money purchase" schemes);
 - an amount equal to 10% of the total pay of the employees concerned for the 12 months ending on the day before the employer became insolvent.

The trustees or administrators of the scheme should apply for payment from the NI Fund on form RP15 enclosing form RP16 (actuarial certificate) if appropriate. Since the amount payable in respect of the employer's contributions does not depend on the result of a preferential claim, the completion of form RP16 need not await the declaration of a preferential dividend. You should agree the claim with the scheme's trustees or administrators, complete Part 2 of form RP15 and send it to the RPO with form RP16 if appropriate. The RPO will make the payment directly to the pension scheme's bank account or that of the trustee or administrator. Please ensure that the correct pension scheme reference number is put on the RP15.

Booklet IL2 "Insolvency of employers: safeguard of pension scheme contributions" gives further information.²⁰³

²⁰² Insolvency Service, leaflet IL2 (Rev 2): *Insolvency of Employers: safeguard of occupational pension scheme contributions* (URN 02/594). A hard copy of the leaflet is available from BERR publications

²⁰³ Insolvency Service, [Redundancy and Insolvency - A Guide for Insolvency Practitioners to employees' rights on the insolvency of their employer](#) (URN 08/550)

c. Payments covered by HM Revenue and Customs

If an employee is unable to obtain her statutory maternity pay because her employer is insolvent, she will be entitled to be paid by HM Revenue and Customs (HMRC).²⁰⁴ Similarly, liability to pay statutory sick pay transfers to the Commissioners where an employer is insolvent.²⁰⁵

In the same way, liability to pay statutory paternity pay or statutory adoption pay under the *Social Security Contributions and Benefits Act 1982* falls upon the Commissioners of Revenue and Customs in circumstances where the employer is insolvent.²⁰⁶

3. Insolvency proceedings²⁰⁷

a. Provable debts

When an insolvency order is made, all creditors (including employees) have to formally register their claim in the insolvency, which is done by notifying the official receiver (OR) (or trustee or liquidator other than the OR) of their claim in writing, backed by evidence if required. In liquidations, generally all debts are provable. This means that the liquidator will 'admit' the claim in the liquidation as long as he is satisfied that the debt is owed.

b. Payment of creditors' claims

Generally, assets of an insolvent company are sold and the proceeds used to pay company debts. The order in which debts are paid is prescribed by the *Insolvency Act 1986* and is as follows:

1. Any creditor holding a fixed charge over the asset
2. The expenses of the liquidation/bankruptcy
3. Preferential debts
4. Any creditor holding a floating charge over an asset
5. All unsecured creditors
6. In company cases, the shareholders

Employees of an insolvent company have a degree of preference under the IA 1986. Each category of debtor is described in more detail below.

c. Fixed charge holder

Under a fixed charge a specific building or asset (such as a piece of machinery) is used as security for a business loan or mortgage. If the borrower fails to repay the loan, the asset in question is forfeit. In effect, the holder of a 'fixed charge' (often referred to as a 'secured creditor') will sell the asset that has been secured rather than rely on the insolvency process to recover payment of his debt.

²⁰⁴ Regulations 7(3), 7(4), 30 of the *Statutory Maternity Pay (General) Regulations 1986 SI No. 1960*

²⁰⁵ Regulation 9B of the *Statutory Sick Pay (General) Regulations 1982 SI No. 894* (as amended)

²⁰⁶ *Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 SI No. 2822*

²⁰⁷ By Lorraine Conway, Home Affairs Section

d. Preferential creditors

Preferential debts are unsecured debts which, by statute, are to be paid in priority to all other unsecured debts. In addition, where debts are paid out of assets subject to a floating charge, preferential debts are paid in priority to claims secured by any floating charge (see section c below).

The categories of preferential debts for all forms of insolvency are listed in Schedule 6 to the IA 1986. In respect of employees, preferential debts include money owing for:

- PAYE;
- social security contributions;
- occupational pension scheme contributions; and
- remuneration (including holiday pay, guarantee payment and pay for time off work if for trade union duties, ante-natal care or medical suspension required by statute).

When an insolvency officer comes to make a distribution from the insolvent company's estate, amounts due in respect of preferential debts are paid after amounts secured by a fixed charge, but before all other liabilities.

With effect from 15 September 2003, the *Enterprise Act 2002* (EA 2002) abolished the Crown's preferential rights to recover unpaid taxes ahead of other creditors. In practice this means that amounts due to the Inland Revenue in respect of income tax and National Insurance Contributions in the 12 months prior to the insolvency, and amounts due to HM Customs and Excise including VAT in the six months prior to the insolvency, will no longer be treated as preferential debts. In corporate insolvencies, assets released as a consequence of the abolition of Crown preference are ring-fenced for unsecured creditors. However, in any insolvency proceedings where the petition was presented before 15 September 2003, the Crown's preferential rights still stand.

Other categories of preferential debt remain unchanged by the EA 2002. This means that the preferential status of certain claims by employees in insolvency proceedings in respect of wages and holiday pay within certain limits will remain preferential.

e. Floating charge holder

A floating charge holder is usually a bank which takes the floating charge as security for its financial exposure to the company. Unlike a fixed charge, a floating charge does not attach to a specific item of company property. Instead it is a charge on those company assets which are constantly changing (e.g. stock, book debts and work in progress). If the company defaults on the terms of the loan, then the floating charge is said to 'crystallize'. At that stage the floating charge is converted to a fixed charge over the assets which it covers at that time.

f. Unsecured creditors

Unsecured creditors, often referred to as ordinary creditors, are creditors who do not hold any security for the money owed to them. Unsecured creditors have no legal title to

specified assets of the company and in insolvency proceedings are subordinate to secured creditors, preferential creditors and those with a floating charge.

4. TUPE and insolvency

The *Transfer of Undertakings (Protection of Employment) Regulations 1981*, commonly known as TUPE, implemented an EC directive – the *Acquired Rights Directive* – in the UK. The directive was amended in 1998 to allow Member States more flexibility in how it was implemented and the Government made use of these new flexibilities to address problems connected with service provision changes and insolvencies. On 10 September 2001, the Government issued a consultation paper on changes to TUPE and a further consultation on draft regulations in March 2005.

New regulations came into force on 6 April 2006 and contained special provisions making it easier for insolvent businesses to be transferred to new employers. The Government hoped to:

give a significant boost to our promotion of the 'rescue culture' by introducing new flexibility into the Regulations' application in relation to the transfer of insolvent businesses.²⁰⁸

For example, after insolvency proceedings a transferee will not be liable for pre-existing unpaid employment debts that are met from the government scheme. The Insolvency Service has produced guidance on the criteria the Secretary of State will apply in determining whether the Government is liable to make payments under the *Employment Rights Act 1996* in the context of the 2006 TUPE Regulations.²⁰⁹

An article in September 2006 registered continuing concerns among insolvency practitioners about the application of TUPE in insolvency situations. There remains some uncertainty over what kind of insolvency procedures are covered by TUPE.²¹⁰ The regulations probably do not apply after a compulsory winding up of a company but may apply to other insolvency procedures.

5. The Pension Protection Fund²¹¹

During the first few years of the 21st century, more and more cases came to light of people finding that their occupational, Defined Benefit, pensions were not guaranteed, particularly in the event of the insolvency of the employer. Individuals near to retirement suddenly found themselves without the level of occupational pension they had expected. This highlighted, among other things, how dependant members of such schemes were on the viability of the sponsoring employer. In response, the *Pensions Act 2004* introduced the Pension Protection Fund (PPF). Following parliamentary pressure during the passage of the legislation, the *Pensions Act 2004* also established a separate

²⁰⁸ DTI Press Release P/2005/92 [DTI consults on TUPE](#), 15 March 2005

²⁰⁹ Insolvency Service, [TUPE, Redundancy and Insolvency Payments](#), 3 April 2006

²¹⁰ John McMullen, *TUPE flaws*, *Employers' Law*, 12 September 2006; republished in [Personnel Today](#)

²¹¹ By Djuna Thurley, Business & Transport Section

scheme – the Financial Assistance Scheme (FAS) – to provide some help to members of schemes that started to wind up between 1 January 1997 and 5 April 2005.²¹²

In a statement on the publication of its 2003 Pensions White Paper, then Secretary of State for Work and Pensions, Andrew Smith, set out the rationale for establishing the PPF:

if people expect their holiday provider or motor insurer to be covered if the firm goes bust, there is no cover for something as important as an occupational pension. We will therefore legislate to set up a pension protection fund. That fund will take over the schemes of insolvent companies to ensure not only that pensions in payment are protected, but that those still working can be sure of getting 90 per cent. of what they were promised. It will be paid for by a fixed-rate levy and an additional risk-related premium, which, together with a salary cap, will minimise perverse incentives and moral hazard. The fund will be a non-Government body. It will meet its obligations through the power to set and vary the level of charge without recourse to public funds. Taken with the other measures, that is a big extension of pension security, for the first time guaranteeing protection if a company scheme goes bust.²¹³

The Statutory Authority for the PPF is Part 2 of the *Pensions Act 2004* (sections 107-220 and schedules 5-9) and regulations made under it.

The PPF commenced operations on 6 April 2005 and applies to schemes that started winding up after that date. Its Annual Report for 2007/08 explains that:

It was established to pay compensation to members of defined benefit and hybrid occupational pension schemes where an employer has become insolvent, and where there are insufficient assets in the pension scheme to cover Pension Protection Fund levels of compensation. Providing certain conditions are met, the Pension Protection Fund will take over the assets of a pension scheme and pay compensation to eligible individuals. It is funded from the assets of schemes transferred to the Fund, investment returns and by an annual levy on defined benefit and hybrid pension schemes.

In addition, in September 2005, the Board of the Pension Protection Fund took over the role of the former Pension Compensation Board to pay compensation to defined benefit and defined contribution pension schemes where these schemes have suffered a loss that is attributable to dishonesty.²¹⁴

The PPF provides two levels of compensation, depending on a person's status at the start of the scheme's PPF assessment period:

Your Compensation will be at 100% level of Compensation as at assessment date, if at the start of the Assessment Period you:

- Had reached the scheme's Normal Pension Age; or
- Were receiving a survivors' pension; or
- Were receiving a pension on the grounds of ill-health.

²¹² For more detail, see Library Standard Note [SN/BT/3917](#), *Pension Protection Fund*; [SN/BT/3085](#), *Financial Assistance Scheme, 2008-*; [SN/BT/2010](#), *Financial Assistance Scheme – developments to 2007*

²¹³ HC Deb, 11 June 2003, cc683-684

Your Compensation will be at 90% level of Compensation as at assessment date and subject to the Compensation Cap, if at the start of the Assessment Period you:

- were below the scheme's Normal Pension Age; and
- you were not receiving a survivors' pension or pension on the grounds of ill-health.

Please note that in extreme circumstances the levels of Compensation could be reduced by the Secretary of State on the recommendation of the Pension Protection Fund.²¹⁵

The compensation cap is adjusted according to age when compensation payments begin. For the financial year running from April 2008 the compensation cap is set at £30,856.35 at age 65.²¹⁶

Detailed information can be found on the PPF website at:

www.pensionprotectionfund.org.uk

D. Jobcentre Plus Rapid Response Service ²¹⁷

The Rapid Response Service (RRS) provides information, advice and other assistance to help those unemployed as a result of large scale redundancies. The RRS brought together the Job Transition Service and the Rapid Response Fund in April 2002.

The stated goal of the service is to "... assist workers that are affected by 'significant' redundancies to make the transition to new jobs (or other appropriate labour market outcomes such as further training or education) as efficiently and effectively as possible".

A 'significant' redundancy is defined as a 'large scale' redundancy that is deemed to have a significant impact on the local area/labour market within which the proposed redundancies are to take place. Jobcentre Plus District Managers are able to declare a redundancy 'large scale', thereby enabling affected individuals to take advantage of 'fast track' access to Jobcentre Plus services. Once the redundancy is announced the local Jobcentre Plus manager may call on a national pool of additional resources (financial and human) to ensure the increased volume of clients are effectively served. A 'significant' redundancy situation can be declared in cases where it is felt that early access to standard Jobcentre Plus services would be inadequate to assist redundant workers to move into new jobs.

The definition of a 'significant' redundancy is not a fixed one, and is not related solely to the number of workers that are likely to lose their jobs. A redundancy that is relatively small numerically, but is taking place within a small community with few alternative employment opportunities, may be deemed significant. Conversely, a redundancy affecting large numbers of workers may be deemed large-scale but not significant if it is felt that sufficient job opportunities exist within the local area for redundant workers, with the early assistance of standard Jobcentre Plus services.

²¹⁴ Pension Protection Fund, *Annual Report and Accounts 2007/08*, HC 1089, October 2008

²¹⁵ PPF Factsheet, '[How is compensation calculated?](#)' (August 2007); *Pensions Act 2004*, schedule 7

²¹⁶ The *Pension Protection Fund (Pension Compensation Cap) Order 2008* (SI 2008/909).

²¹⁷ By Bryn Morgan, Economic Policy and Statistics Section. For further information see *SN/EP/4891 Jobcentre Plus Rapid Response Service*, 13 November 2008

The service is run by a network of Jobcentre Plus Senior Managers in the affected country or region. This network works with the company and local partners to ensure the best possible response to the situation. Each local partnership may be different depending on the nature of the redundancy and its location.

The help provided by the RRS is tailored to the needs of the individuals, the employer, the local economy and the labour market concerned. The help offered by Jobcentre Plus through the RRS may include:

- Offering best practice consultancy to the company declaring redundancies; using our experience with companies which are down sizing and our understanding of the labour market
- Information, advice and guidance offered on all aspects of jobsearch; help with CVs, access to vacancies, further training for those who need new skills, benefit advice and information on the help available from other organisations;
- Skills and Training Analysis to help identify transferable skills and to identify any training requirements linked to the local labour market;
- Early access to a range of Jobcentre Plus programmes such as Work-based Learning for Adults, Training for Work in Scotland led by the Local Enterprise Companies and Work Based Learning for Adults in Wales led by Education and Learning Wales;
- Where appropriate, offering Re-training;
- Referrals to other programmes such as small business advice and sole trader initiatives;
- Where appropriate using Action Funding to pay for one-off support to address individual barriers to re-employment.

Once a redundancy has been declared 'significant' by the local Jobcentre Plus manager, the RRS will help all individuals who are 'under-threat' or 'under-notice' of redundancy from the employer. If they are "under-threat of redundancy", individuals can access information, advice and guidance and skills and training analysis prior to receiving their Notice of Redundancy. If they are "under-notice" as well as the above, tailored programmes will be provided to enable this group to move into new work quickly.

Individuals are eligible for the additional help provided by the RRS up to 12 weeks after they have been made redundant. The degree of help offered by the RRS is dependent on each individual and their level of transferable skills.

On 12 November 2008, in a release commenting on the latest unemployment figures, the Government announced that funding for the RRS would be doubled from £3 million to £6 million.²¹⁸

²¹⁸ "[Government offering jobseekers real help in tough times](#)", DWP Press Release, 12 November 2008

IV Financial help for people who are unemployed ²¹⁹

The main income replacement benefit for people who become unemployed is Jobseeker's Allowance (JSA).²²⁰ Help may also be available in the form of Council Tax Benefit and, for those who rent their homes, the Local Housing Allowance or Housing Benefit. Owner-occupiers may be able to get help with mortgage interest payments, but for those who qualify payments can only be made after a 'waiting period'. Redundancy can also affect tax credit awards.

Further information on benefits and related help for unemployed people is given below.

A. Jobseeker's Allowance

There are two types of Jobseeker's Allowance: **contribution-based JSA**, which is payable to employees²²¹ who have paid sufficient National Insurance contributions; and **income-based JSA**, which is means-tested (i.e. income and capital of the claimant and their partner is taken into account when calculating entitlement).

For the purposes of contribution-based JSA, the Department for Work and Pensions will look at a claimant's contribution record for the two complete tax years immediately before the benefit year in which the claim is made. 'Benefit years' run from the first Sunday in January to the end of the first Saturday in the following January.²²² Both the following contribution conditions need to be met in order for a claimant to qualify for contribution-based JSA:

- in at least one of the relevant contribution years (i.e. the two complete tax years before the benefit year in which the claim was made) the claimant must actually have paid Class 1 contributions with an earnings factor of at least 25 times the lower earnings limit for that year.
- in each of the two relevant contribution years the claimant must have paid or been credited with an earnings factor of at least 50 times the lower earnings limit for that year.²²³

An earnings factor is simply the amount of earnings on which a claimant has made Class 1 contributions. Credited contributions can count towards the second contribution requirement but not the first.

Contribution-based JSA is payable for a maximum of six months; a person who is still unemployed after six months may then claim income-based JSA. Those who do not

²¹⁹ By Steven Kennedy, Social Policy Section

²²⁰ Other benefits which may be relevant include Income Support, which may be payable to people with caring responsibilities or disabilities, Employment and Support Allowance, for people with a limited capability for work because of illness or disability, and Pension Credit, for people aged 60 or over. Further information on these benefits may be found at the [Department for Work and Pensions website](#).

²²¹ Self-employed people cannot claim contribution-based JSA

²²² Section 21(6) *Social Security Contribution and Benefits Act 1992*

²²³ Section 2 *Jobseekers Act 1995*

satisfy the contribution conditions for contribution-based JSA may claim income-based JSA from the outset.

The current weekly JSA rates for a single person are as follows (the amounts are the same for contribution-based and income-based JSA):

Under 25	£47.95
Aged 25 or over	£60.50

Contribution-based JSA does not pay an additional amount for a claimant's partner, but depending on their income and/or capital a couple where one partner gets contribution-based JSA may be entitled to a means-tested 'top-up' to bring their income up to the income-based JSA rate for couples (currently £94.95 a week, where both partners are aged 18 or over).

Additional amounts may be payable if the claimant or their partner is disabled. Support for children is now via the entirely separate Child Tax Credit.

The amount of contribution-based JSA a person receives may be affected by remaining earnings, payments at the end of a job, or by an occupational or private pension. Only the claimant's earnings (and not those of any partner or family member) are taken into account. Payment is not affected by any other income or savings the person has.

To be entitled to income-based JSA, the claimant and his/her partner must have no other income, or income below their 'applicable amount' (a set amount that depends on their circumstances). Their capital must be below £16,000. If capital is between £6,000.01 and £16,000, a 'tariff income' of £1 for every £250 or part of £250 that they have in capital is deducted from benefit.

a. Job seeking requirements

To be entitled to Jobseeker's Allowance, a person must, among other things:²²⁴

- be available for work for at least 40 hours a week. Certain groups of people including carers and those with a physical or mental condition are able to restrict their availability to less than 40 hours depending upon their personal circumstances, so long as they retain reasonable prospects of employment;
- be actively seeking work. The claimant must be able to demonstrate this by undertaking a certain number of 'steps' each week, such as preparing a CV, applying for jobs, or registering with an employment agency.
- enter into a Jobseeker's Agreement with Jobcentre Plus. The Agreement sets out the claimant's agreed availability, including any restrictions on their availability

²²⁴ For the JSA rules which now apply to lone parents with a youngest child aged 12 or over, see the *Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008*; see also the [Report by the Social Security Advisory Committee under Section 174\(1\) of the Social Security Administration Act 1992 and the statement by the Secretary of State for Work and Pensions in accordance with Section 174\(2\) of that Act](#), Cm 7480, October 2008

for work; the steps the claimant intends to take to look for work; and the range of help to be provided by Jobcentre Plus to help the claimant find work.

- not be in 'remunerative work'. This is work done for payment, or in expectation of payment, for 16 hours or more a week.

Payment of benefit can be suspended ('sanctioned') for a period of time in various situations, including where the claimant:

- Left their job voluntarily without good cause;
- Lost their job through misconduct;
- Was dismissed or discharged from the Armed Forces;
- Refused, failed to apply for or accept a job, without good cause;
- Neglected to avail themselves of an employment opportunity;
- Refused to carry out a 'jobseeker's direction';
- Refused, failed to apply for or failed to attend a compulsory training scheme or employment programme, without good cause; or
- Lost their place on a compulsory training scheme or employment programme because of misconduct.

The length of the suspension depends upon the situation, but in some situations it can be for up to 26 weeks.

b. Claiming JSA

People wishing to claim Jobseeker's Allowance should call Jobcentre Plus on 0800 055 6688 or textphone 0800 023 4888 (8am - 6pm Monday to Friday), or enquire at their local Jobcentre Plus office. JSA may also be claimed [online](#).

Further contact details for Jobcentre Plus services can be found at its [website](#).

When a claim is made for JSA the claimant is required to attend a 'new jobseeker interview'. This has two parts:

- The first part focuses on the benefit claim itself.
- The second part consists of a meeting with a personal adviser who will advise the claimant about work and training issues. This involves a discussion of the claimant's personal circumstances.

The Jobseeker's Agreement is drawn up at the interview.

Claimants are normally required to 'sign on' at a Jobcentre every fortnight, but they can be asked to sign on more frequently. A claimant may be required to sign on weekly for six weeks after they have been claiming JSA for 13 weeks; more intensive job search assistance is given during this period.

In 'signing on' the claimant is making a declaration that they still meet the conditions for entitlement for JSA. At the same time, an employment officer interviews the claimant to check on their job search activities, to discuss any difficulties they are experiencing and what help and support might be provided, to check whether there have been any

relevant changes in circumstances, and to refer the claimant to job, training or employment scheme vacancies.

After 13 weeks, the claimant undertakes a more in-depth interview where the Jobseeker's Agreement may be reviewed and updated if necessary. Further in-depth interviews are likely to take place at 6 month intervals. Following an in-depth interview, a claimant may be issued with a 'jobseeker's direction'. This is a written notice giving the claimant specific instructions on looking for work, attending training, or improving their behaviour or appearance to help their employment prospects.

B. Tax credits

People in receipt of Working Tax Credit (WTC) who become unemployed – including those getting help with childcare costs – should inform the Tax Credits Helpline within one month. Entitlement to WTC may also be affected if the person's working hours fall below 16 hours, or 30 hours a week. Payment of WTC can however continue for a four week 'run-on' period when entitlement ends.

Families who experience a drop in income due to redundancy may however be able to get an increase in Child Tax Credit. Again, they would need to report the change to the Tax Credit Office. Information on how changes in circumstances affect tax credit awards, and on how to report them, is available at the [HM Revenue and Customs website](#).

The Low Incomes Tax Reform Group has also compiled a factsheet, [Feeling the pinch?](#) which gives information and advice.

C. Council Tax Benefit

Council Tax Benefit provides means-tested assistance for people who are liable to pay Council Tax. People getting income-based JSA receive 100 per cent help with their Council Tax bill, subject to any deductions for non-dependants. Those not in receipt of income-based JSA are subject to a means test. People who are liable for the Council Tax but who have capital in excess of £16,000 are not entitled to Council Tax Benefit.

Help is also available to people who are liable for the tax and who have a second adult in their households who would normally be expected to contribute to the Council Tax bill but cannot afford to do so. These are called Second Adult Rebates and they are assessed on the basis of the financial circumstances of the second adult, not of those of the liable taxpayer. Rebates of up to 25 per cent may be awarded.

Both Council Tax Benefit and the Second Adult Rebate are administered by local authorities. Further information and claim forms can be found at the [Directgov website](#).

D. Housing Benefit and the Local Housing Allowance

Housing Benefit provides means-tested help for people who are liable to pay rent in respect of the dwelling they occupy as their home. The amount of benefit depends on eligible rent, income, the number of people in the household and their needs, deductions

in respect of any non-dependants, deductions where food, fuel and water are included. As with Council Tax Benefit, people on income-based JSA automatically receive full housing Benefit. Those with capital in excess of £16,000 are not entitled to Housing Benefit.

The Local Housing Allowance (LHA) has applied to people who enter into tenancy agreements in the deregulated private sector after 7 April 2008, and those who have a break in their claim or move to a new home. LHA is a new way of calculating Housing Benefit and is based on the area the person lives, the number of occupiers in the property and household size. LHA rates are calculated for individual areas, known as Broad Market Rental Areas, each month. The amount payable is based on the 'middle of the range' rental figure for the area which the property is in, taking into account of the size of the household and the number of bedrooms required.

Both LHA and Housing Benefit are administered by local authorities. Further information can be found at the [Directgov website](#).

E. Help with mortgage interest payments

Help with mortgage costs is available to claimants of certain benefits who are not in work. Assistance is available for people receiving Income Support (IS), income-based Jobseeker's Allowance (JSA), Pension Credit, and income-related Employment and Support Allowance (ESA). The schemes are collectively known as Income Support Mortgage Interest (ISMI) or, more recently, Support for Mortgage Interest (SMI). Payments are made towards mortgage interest payments and are generally made direct to lenders.

For most new JSA claimants, assistance is currently subject to a number of restrictions:

- Interest is only payable on loans up to a £100,000 capital limit;
- New claimants must usually wait 39 weeks before they can get help; and
- The amount of interest covered is not based on the actual interest rate paid but is instead calculated using a 'tracker' rate set at 1.58 per cent above the Bank of England Base rate.

On 2 September the Government announced however that, as a temporary measure, from April 2009 the 'waiting period' would be reduced to 13 weeks for working age SMI claimants.²²⁵ As a further temporary measure, the loan cap for new working age claims would be increased to £175,000. At the same time however, a time limit on SMI of two years would be introduced for new JSA claimants only.²²⁶

On 6 November the Government announced in a written answer that the SMI changes would be brought forward to January 2009.²²⁷ The *Pre-Budget Report* on 24 November announced a further increase in the capital limit for SMI for working age claims to

²²⁵ Pension Credit claimants can however get help straight away

²²⁶ DWP website, [Support for Mortgage Interest \(SMI\)](#), 2 September 2008

²²⁷ HC Deb 6 November 2008 c703w

£200,000 from January 2009. It also announced that the Government would 'maintain the level of support at the current interest rate for the next six months for existing claimants so that net support to such claimants is increased'.²²⁸ The current 'Standard Interest Rate' for SMI is 6.08 per cent, due to fall to 4.58 per cent on 14 December 2008 following the recent 1.5 per cent reduction in the Bank of England base rate.²²⁹

²²⁸ [Cm 7484 para 5.56](#)

²²⁹ DWP website, [Standard Interest Rate](#), accessed 25 November 2008