EXPLANATORY MEMORANDUM TO

THE WORK AND FAMILIES (INCREASE OF MAXIMUM AMOUNT) ORDER 2009

2009 No. 1903

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 From 1 October 2009, this Order increases the maximum weekly limit from £350 to £380. This limit is used to calculate certain awards made by employment tribunals (including awards for redundancy or unfair dismissal), and other amounts payable by the Secretary of State under employment legislation, where an employer is insolvent. It also suspends the annual uprating of these limits due to take place in February 2010.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order applies to the sums specified in Section 186(1) (a) and (b) and 227(1) of the Employment Rights Act 1996.

3.2 The powers contained in section 14 of the Work and Families Act 2006 "the 2006 Act" may be used on one occasion only.

4. Legislative Context

4.1 This Order increases the sums specified under section 186(1)(a) and (b) and section 227(1) of the Employment Rights Act 1996. The amount payable by way of redundancy payment and the basic award for unfair dismissal are calculated with reference to the employee's weekly pay. For the purposes of the calculation a week's pay is, by virtue of section 227 of the 1996 Act, subject to a statutory maximum which is currently £350. The same statutory maximum applies in relation to certain other compensation payments (which are listed in section 227(1), or refer to section 227(1) of the 1996 Act). A weekly limit also applies to the calculation of certain payments which are payable on the insolvency of an employer (including arrears of pay and holiday pay) (see section 186(1)(a) and (b) of the 1996 Act).

4.2 Section 34 of the Employment Relations Act 1999 provides a mandatory mechanism for altering these statutory maximums to track changes in the retail prices index (RPI). If the RPI for September of a year is higher (or lower) than the index for the previous September, the Secretary of State is required to change the limits, by Order, by the amounts of the increase (or decrease). The relevant payments and awards were uprated pursuant to this legislation for the first time in February 2000, and have been uprated each year since.

4.3 This Order, made pursuant to powers contained in section 14 of the 2006 Act, suspends the annual revision of the limits specified, which would ordinarily take effect on 1 February 2010 and replaces it with an earlier one-off increase. This suspension is for the 2010 revision only.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister of State for Employment Relations and Postal Affairs has made the following statement regarding Human Rights:

In my view the provisions of the draft Work and Families (Increase of Maximum Amount) Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Between its introduction in 1965 and the late 1990's, the value of the weekly limit used to calculate statutory redundancy payments fell substantially in real terms. In 1999, the Government introduced an annual uprating formula, which provides for the weekly limit to be uprated each February in line with RPI, rounded up to the nearest £10. This means that in practice, increases in the limit have tracked average earnings since 1999. However, the Government has been considering the case for a one-off increase, to partly restore the value in real terms and to help people made redundant in the current recession, including cases where employers have become insolvent.

7.2 The Government also believes it would be helpful to suspend the annual revision of these limits in February 2010, to prevent the possibility of the limits falling in the event of deflation and providing greater stability for employers.

- ***Consolidation***

7.2 This Order does not consolidate any other Instrument.

8. Consultation outcome

8.1 No formal consultation exercise was undertaken for this Order, although informal discussions have previously taken place with the CBI, EEF and TUC.

9. Guidance

9.1 Any reference to the statutory limit in guidance will be updated. This includes electronic and other media, such as the Businesslink.gov.uk redundancy calculator.

10. Impact

10.1 The impact on business, public sector, charities or voluntary bodies can be more readily ascertained from the accompanying Impact Assessment.

10.2 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 We believe that small firms should not be treated differently to larger firms and that the increase in the limit is not onerous. We consider that all employees should be given the same level of protection in the current economic climate, regardless of the size of business they work for.

11.3 The basis for our decision in not consulting small firms is outlined in paragraph 8.1.

12. Monitoring & review

12.1 BIS produces an annual monitoring and evaluation report for all employment policies and will be reviewing this policy change in over a year after implementation (summer 2011).

13. Contact

Mark Norton at the Department for Business, Innovation and Skills, Tel: 0207 215 6300 or e-mail: mark.norton@bis.gsi.gov.uk can answer any queries regarding the instrument.

BERR | Department for Business Enterprise & Regulatory Reform

The Work And Families (Increase Of Maximum Amount) Order 2009

Final Impact Assessment

JUNE 2009

Summary: Intervention & Options		
Department /Agency: **BERR**	**Title:** **Final Impact Assessment - The Work And Families (Increase Of Maximum Amount) Order 2009**	
Stage: Final	**Version:** Final	**Date:** 03/06/2009
Related Publications: http://www.hm-treasury.gov.uk/bud_bud09_repindex		

Available to view or download at:

http://www.

Contact for enquiries: Stephen Taylor/Asad Ghani **Telephone:** 020 7215

What is the problem under consideration? Why is government intervention necessary?

Government introduced the statutory redundancy scheme in 1965 to provide a safety net for those who find themselves being made redundant. If left to private markets 'unemployment insurance' type schemes are likely to be underprovided as they result in perverse incentives. Since 1999, the weekly limit used to calculate statutory redundancy pay and other compensation payments has been uprated annually in line with the RPI, rounded up to the nearest £10. On the grounds of fairness, the Government has decided to introduce a one-off increase in statutory redundancy pay and compensation payments, to help those being made redundant without placing undue burdens on employers and the Exchequer.

What are the policy objectives and the intended effects?

The Government wishes to ensure rapid help for those made redundant during these difficult economic times without placing undue burdens onto employers and the Exchequer. A one-off uprating in the weekly statutory redundancy limit will enhance the support given to those made redundant.

What policy options have been considered? Please justify any preferred option.

We have considered a range of possible levels of increasing the weekly limit, taking into account both the concerns of business and the unions. This impact assessment compares raising the weekly limit to £380 against a 'do nothing' baseline (weekly limit of £350) and an option of increasing the limit to average weekly earnings (£450), as suggested by the Lindsay Hoyle private members bill (which seeks to cover redundancy payments only). The preferred option is to raise the statutory weekly limit by £30 to £380 as this strikes the right balance between helping those made redundant without placing undue burden on employers. The Government announced this in the 2009 budget. The Government also proposes suspending the annual uprating exercise in February 2010, so the weekly limit will remain unchanged until February 2011.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? BERR produces an annual monitoring and evaluation report for all employment policies and will be reviewing this policy change in over a year after implementation (summer 2011).

Ministerial Sign-off For SELECT STAGE Impact Assessments:

> ***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

MP, Pat McFadden, Minister of state for Employment Relations and Postal Affairs

……………………………………………………………………………Date: 4 June 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Increasing the statutory redundancy weekly limit to £380 and associated compensation payments. And also suspending the 2010 annual uprating exercise.

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups'. Cost to business from increasing the weekly limit: £51-77 million. Cost to the Exchequer from an increase in weekly limit: £15-29 million. Cost to business from suspending 2010 uprating: £19-27 million. Cost to the Exchequer from suspending 2010 uprating: £5-10 million. Cost to Business/Exchequer from wider associated compensation payments £14.6-14.9 million. £2.3 million familiarisation cost to business.
One-off (Transition)	**Yrs**	
£ 2.3M	1	
Average Annual Cost (excluding one-off)		
£115.6- 144.9m	10	**Total Cost** (PV) **£997 - 1,249m**

Other **key non-monetised costs** by 'main affected groups'

None. Although note the upper and lower ranges above are taken from two key scenarios on number of redundancies and hence do not sum up to the total range. More details in the impact assessment.

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' Increase in redundancy pay for employees £74-96 million. Increase in redundancy pay from suspending 2010 uprating £27-34 million.Increase in wider compensation payments associated with the statutory redundancy pay limit £14.6-14.9 million.
One-off	**Yrs**	
£ 0	1	
Average Annual Benefit		
£ 115.6- 144.9m	10	**Total Benefit** (PV) **£995-1,247m**

Other **key non-monetised benefits** by 'main affected groups' Improved safety net for all employees with more than two years of service.

Key Assumptions/Sensitivities/Risks That total eligible redundancies for statutory redundancy pay will range between 443,000 and 576,000. Note that we expect around half will benefit from this policy change. The cost estimates presented here are likely to be overestimates as some employers already pay above the weekly limit.

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£ -2.3m**	**NET BENEFIT** (NPV Best estimate) **£ -2.3m**

What is the geographic coverage of the policy/option?	GB
On what date will the policy be implemented?	October 2009
Which organisation(s) will enforce the policy?	HMRC / BERR
What is the total annual cost of enforcement for these	£ negligible
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A

What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off) Not quantifiable (N/Q)	Micro N/	Small N/Q	Medium	Large N/Q
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)

(Increase - Decrease)

Increase	£	Decreas	£ negligible	**Net**	**£** negligible

Key: Annual costs and benefits: Constant Prices | (Net) Present Value

Evidence Base (for summary

A. Strategic overview

Government introduced statutory redundancy pay in 1965 as a response to an investigation from the Dunnett Committee. The intention at the time was in the words of the Dunnett Committee "to encourage greater efficiency in industry and contribute to economic growth". This was a measure designed to encourage workers to move from one industry or part of the economy to another. Employees with redundancy protection were reluctant to move to other sectors without that protection.

The redundancy scheme provides a better safety net for employees if made redundant. If left to private markets only, 'unemployment insurance' type schemes are subject to problems of moral hazard – which will result in under provision as employees' may have perverse incentives.

The Government took an enabling power[1] to make a one-off increase to the statutory redundancy pay (SRP) limit and to suspend the annual uprating exercise in the Work and Families Act 2006, these powers can only be applied once. In the 2009 Budget, Government announced that it would be increasing the level of statutory redundancy payments by £30 from £350 to £380.

The Government feels that during these difficult economic times it is fair to introduce a one-off increase in statutory redundancy pay and compensation payments to help those being made redundant, without placing undue burdens on employers and the Exchequer.

B. The issue

Under the statutory redundancy scheme, employees with two or more years' service are entitled to a redundancy payment from their employer, based on their age, length of service (up to a 20-year cap) and earnings capped to the weekly limit. Statutory redundancy pay is calculated in the following way:

> Number of years service (max 20 years) x multipliers x week's pay
> (actual pay is used if the employee earns below the limit; otherwise the weekly limit is used)

The multipliers used in the payment calculation are:

- 1.5 weeks' pay for each full year of service, where age during the year was not below age of 41;
- 1.0 week's pay for each full year of service, where age during the year was not below age of 22;
- 0.5 week's pay for each full year of service, not falling in the categories above.

The statutory redundancy limit is in essence a statutory minimum, which a firm must pay in redundancy if their employees are earning above the limit and equal to their actual pay if they

[1] An enabling power in this context, refers to S14 of the Work and Families Act 2006 which gave the Secretary of State the power to make a one-off increase to the limit via secondary legislation.

are earning below the limit. Firms have the option to go beyond the minimum and anecdotal evidence from informal consultation suggests that perhaps around half of firms do.

Box 1: Illustrative examples of how statutory redundancy pay is calculated

Example 1

Heather is an employee with 5 full years' length of service with the same employer and started work at 17 years old. Heather is currently aged 22 and has a weekly wage of £305. Heather is entitled to redundancy payments as she has more than 2 years' length of service with the same employer. Heather is entitled to 0.5 weeks pay for each year of full service, when her age was less than 22 (0.5 x 5 = 2.5). Heather's total redundancy payments will be paid at her weekly wage of £305 (as this is below the currently weekly limit of £350). Hence total redundancy payments = 2.5 x £305 = £762.5.

Example 2

David is an employee with 20 years' service and started work with his current employer at 22 years old. He is currently aged 42 and has a weekly wage of £421. David is entitled to redundancy payments as he has more than 2 years' length of service with the same employer. He is entitled to 1.0 week's pay for each year of full service, when his age during the year was 22 or above but less than 41 (1.0 x 19 = 19), plus 1.5 week's pay for each full year of service, where his age during the year was 41 or above (1.5 x 1 = 1.5). Adding these multiples together - sums to 20.5. His total redundancy payments will be paid at the weekly limit of £350 (as David earns above the weekly limit). Hence total redundancy payments = 20.5 x £350 = £7,175.

Example 3

Jenna is aged 24 and only has one full year's length of service with her current employer and is not entitled to any statutory redundancy payments.

Note that the highest level of statutory redundancy payments is £10,500 (= £350 x 20 x 1.5). Firms can however exceed the statutory minimum. These examples were calculated using BERR's ready reckoner (http://www.berr.gov.uk/cgi-bin/er_feb07_reconner.pl)

In 1999, the Government introduced an annual uprating formula, which provides for the weekly limit to be uprated each February in line with the retail price index (RPI), rounded up to the nearest £10. Employees earning below the weekly limit receive a redundancy payment calculated using their actual wage, while those earning above the limit have their pay capped to the limit. The current weekly limit is £350.

Under the Employment Rights Act 1996, the figure for the weekly redundancy limit is also used for a wide range of other compensation payments:

- non-compliance with flexible working procedures;
- the basic and additional awards for unfair dismissal;
- compensation where an individual has been unjustifiably disciplined by a trade union;
- compensation where an employer has failed to consult with a collective bargaining unit;

- compensation in relation to a right not to be excluded or expelled from a union;
- compensation for failure by an employer to allow an employee to be accompanied to a disciplinary or grievance hearing;
- compensation for failure by an employer to give a statement of employment particulars;
- failure of employer to comply with duty to notify employee of date on which he intends employee to retire or of right to make request not to retire on the intended date); and
- various payments due in the event of insolvency (redundancy pay, arrears of pay, pay in lieu of notice, holiday pay, unpaid compensation for unfair dismissal).

The compensation payments listed above mainly fall on employers except when a firm becomes insolvent and the Exchequer pays redundancy pay, arrears of pay, pay in lieu of notice, holiday pay, unpaid compensation for unfair dismissal from the NIF.

Consultation:

Within Government

These proposals have been developed in consultation with the following Government Departments: Insolvency Service and HM Treasury.

Public Consultation

No formal consultation exercise was undertaken for these proposals, although informal discussions have previously taken place with the CBI, EEF and TUC.

C. Objectives

The Government feels that during these difficult economic times it is fair to introduce a one-off increase in statutory redundancy pay and compensation payments to help those being made redundant by providing a better safety net without placing undue burdens on employers and the Exchequer.

If left to private markets ‘unemployment insurance’ type schemes are subject to problems of moral hazard. This occurs when an employee for instance is insulated from risk (i.e. unemployment) and as result of this may behave differently from the way they would behaved if it were fully exposed to the risk (in this case they may be less likely to enter employment). And as a result private markets will not provide an optimal amount of unemployment insurance leading to insufficient coverage.

D. Options identification

Option 1: do nothing and let the RPI indexing formula determine the weekly limit in February 2010.

Option 2: raise the level of statutory redundancy payments and other compensation payments from £350 to £380 and suspend the annual uprating exercise in February 2010.

Option 3: raise the level of statutory redundancy payments and other compensation payments from £350 to £450.

Lindsay Hoyle MP has proposed linking the weekly limit to average earnings (currently £450) in his private members bill which has passed second reading at the time of drafting this impact assessment. His bill covers only redundancy payments. However, this impact assessment for option 3 assesses all the costs related to a £450 SRP limit including compensation payments, as with option 2.

The cost and benefits of option 2 and 3 have been measured against option 1, the 'do nothing' baseline.

The Government's preferred option is option 2, as option 3 is deemed too expensive for business and option 2 strikes the right balance between helping individuals who are made redundant without placing undue burdens on business.

E. Analysis of options

Option 2 and 3: Business sectors affected

This proposed policy amendment will affect all sectors of the Great Britain economy, however some sectors will be hit harder than other sectors. This depends on the economic climate going forward and the structural difference between and within sectors. For example, low paying sectors such as distribution, hotels and restaurants are likely to have fewer individuals who earn above £350 per week and are made redundant. Therefore they would be less affected by this policy change compared to a higher paying sector such as banking and finance. Table 1 shows the distribution of redundancies by sectors in 2008. Over this period, manufacturing, construction and banking, finance and insurance were all hit hard by the global slowdown in economic growth. We have then assumed that the distribution of redundancies would be the same in the future as in 2008 for two scenarios:

1) Assume around 443,000 redundancies eligible for SRP. This figure is based on scaling down Labour Force Survey (LFS) figures for redundancies in 2008 (around 654,000 redundancies) to remove employees made redundant with less than two years' service.

2) Assume around 576,000 redundancies eligible for SRP. This is based on assuming a total of 850,000[2] redundancies and scaling this figure down to strip out those with less than two years' service. We do not know the exact length of service of those made redundant but assume that the distribution is the same as all employees in the labour market.

2 For sensitivity analysis 576,000 redundancies has been chosen as an illustrative upper estimate and is approximately 30% higher than the number of redundancies in 2008. This is essentially based on historical redundancy data. This is based on assuming a total of 850,000 redundancies and scaling this figure down to strip out those with less than two years' service. We do not know the exact length of service of those made redundant but assume that the distribution is the same as all employees. Since 1996 redundancies peaked at 741,000 in 2002. An 850,000 upper range was chosen to factor in a value that was higher than the highest historical value since 1996 as redundancies were higher than 741,000 in the early 1990's (we don't have official ONS statistics but the Employment Gazette suggests higher redundancy levels than 741,000 in the early 1990's).

1. Distribution of redundancies by sector

	Percentage share of total redundancies	Total redundancies assuming around 443,000 eligible for SRP	Total redundancies assuming around 576,000 eligible for SRP
Agriculture and fishing	1.3%	5,903	7,675
Energy and water	1.3%	5,864	7,624
Manufacture	22.8%	100,998	131,320
Construction	17.4%	77,139	100,298
Distribution, hotels and restaurants	16.4%	72,834	94,701
Transport and communication	8.7%	38,644	50,246
Banking, finance and insurance etc	19.6%	86,984	113,098
Public admin, education and health	7.9%	34,834	45,292
Other services	4.5%	19,800	25,745

NB: Figures have been rounded and totals may not sum to individual parts

BERR estimates based on Labour Force Survey, 2008

Costs

Option 2: raise the level of statutory redundancy pay limit and other compensation payments from £350 to £380 and suspend the annual uprating exercise in February 2010.

Direct cost to business and the Exchequer from raising the statutory redundancy pay limit from £350 to £380

The primary duty to pay any redundancy entitlement falls onto employers. However where an employer has become insolvent, the National Insurance Fund (NIF)[3] pays redundancy and other compensation payments. Tables 2 and 3 show a summary of the total costs and breakdown of costs between business and the Exchequer under two different scenarios. Tables 2 and 3 assume around 443,000 and 576,000 redundancies eligible for SRP respectively. Note that the costings presented in this impact assessment assume that firms meet the statutory minimum only. In reality some firms go beyond the statutory minimum and hence our costings are likely to be an overestimate.

The share of the total cost incurred by the Exchequer is derived from the amount of redundancy payments the Insolvency Service has to pay out from the NIF. Annex B table B1 shows that NIF payments have ranged between £191m and £293m between 2001 and 2006. Given the fluctuation in NIF payments we assume that between 20-30 percent of the total cost of redundancies will be paid out from the NIF. This percentage range is used as an approximation of the share of total redundancy costs that the Exchequer may be liable for.

Annex B contains further details on how the cost estimates were derived.

[3] Under the Social Security Administration Act 1992 benefits due under the National Insurance Scheme, including statutory redundancy pay, are payable out of the National Insurance Fund. The funds are mainly provided from National Insurance contributions payable by employed earners, employers and others.

2. Summary of annual costs - scenario one 443,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350 baseline)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
£350	£1,317m	-	£263m	£395m	£1,053m	£922m	-	-	-	-
£380	£1,391m	£74m	£278m	£417m	£1,112m	£973m	£15m	£22m	£59m	£51m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 654,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings,2008. Totals may not sum to individual parts due to rounding.

3. Summary of annual costs - scenario two 576,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350 baseline)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
£350	£1,711m	-	£342m	£513m	£1,369m	£1,198m	-	-	-	-
£380	£1,807m	£96m	£361m	£542m	£1,446m	£1,265m	£19m	£29m	£77m	£67m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 850,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings,2008. Totals may not sum to individual parts due to rounding.

The direct marginal cost of uprating the SRP from £350 to £380 will be in the range **£74m - £96m**. The direct marginal cost to the Exchequer will be between and **£15m and £29m**. The direct marginal cost to business will be between **£51m and £77m**. Note: The upper and lower ranges above are taken from two key scenarios on a number of redundancies and hence the total do not sum up to the total range. These costs will represent transfers from employers to employees or the Exchequer to employees hence the net effect (with the exception of implementation costs) will be zero.

Direct cost to business and the Exchequer from suspending annual uprating exercise in February 2010

As mentioned in section B, the weekly SRP limit is uprated each February in line with RPI and rounded to the nearest £10. Using actual data to date and Treasury's independent forecasts, we estimate that RPI in September 2009 will be negative by around 4 percent[4]. Using the standard uprating methodology, this could result in the SRP limit reducing from £350 to £340 (£350 x 0.96= £336, rounded to nearest £10 gives £340).

4 BERR estimate using actual RPI data up to March 2009 (which was the latest data available) and April HM Treasury independent forecasts. BERR estimate that RPI will be around 4% (negative) in September 2009 which would imply a £10 fall in the weekly limit.

Box 2: Forecast of RPI in September 2009

The annual uprating exercise of the statutory redundancy weekly limit is based on the value of the RPI in September. The annual growth in the RPI (year ending September) is then used in the uprating formula.

To determine how the weekly limit will change in February 2010 in the absence of any policy change we need to estimate the value of the RPI in September 2009. At the time of drafting this impact assessment the RPI value for **September 2008 was 218.4**. We had actual RPI data up to March 2009 (211.3).

In order to estimate the value of the RPI in September 2009 we applied the HM Treasury independent forecast rate for 2009 RPI (-1.6%) at a monthly compounded rate to the March 2009 value to extrapolate a forecasted value for RPI in **September 2009 at 209.6**. This is a fall of around **4%** compared to the value of the RPI a year ago.

Section 14 of the Work and Families Act 2006 gives the Government a one off power to suspend the annual uprating. We assume in the absence of any intervention a 'down rating' of the SRP limit will take place. Therefore we propose a suspension in the February 2010 uprating exercise to avoid a fall in the SRP limit. This will leave the SRP limit unchanged from our one-off up-rating until February 2011.

4. Summary of annual costs - suspending the SRP uprating - scenario one 443,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
£350	£1,317m	-	£263m	£395m	£1,054m	£922m	-	-	-	-
£340	£1,290m	£27m	£258m	£387m	£1,032m	£903m	£5m	£8m	£22m	£19m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 654,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings,2008. Totals may not sum to individual parts due to rounding.

5. Summary of annual costs - suspending the SRP uprating -scenario two 576,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
£350	£1,711m	-	£342m	£513m	£1,369m	£1,198m	-	-	-	-
£340	£1,677m	£34m	£335m	£503m	£1,342m	£1,174m	£7m	£10m	£27m	£24m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 850,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings,2008. Totals may not sum to individual parts due to rounding.

The methodology used for estimating the cost of suspending the annual uprating in 2010 will be the same as estimating the cost of uprating the current SRP. For full details please refer to annex B.

The direct marginal cost of suspending the annual uprating will be in the range **£27m - £34m** The direct marginal cost to the Exchequer will be between and **£5m and £10m**. The direct marginal cost to business will be between **£19m and £27m**[5]. These costs will represent transfers from employers to employees or the Exchequer to employees hence the net effect (with the exception of implementation costs) will be zero.

5 The upper and lower ranges above are taken from two key scenarios on a number of redundancies and hence the total do not sum up to the total range.

Indirect cost associated with raising SRP

Under the Employment Rights Act 1996, the figure for the weekly SRP limit is also used for a wide range of other compensation payments (Table 6)[6]. This section of the impact assessment will attempt to estimate the expected indirect costs from increasing the SRP limit from £350 to £380. These indirect costs will result in a transfer of payments from businesses to employees, and hence the net benefit (cost minus benefits) present value of this policy change will be zero.

Table 6: Compensation payments affected by the weekly limit to redundancy
non-compliance with flexible working procedures;
the basic and additional awards for unfair dismissal;
compensation where an individual has been unjustifiably disciplined by a trade union;
compensation where an employer has failed to consult with a collective bargaining unit;
compensation in relation to a right not to be excluded or expelled from a union;
compensation for failure by an employer to allow an employee to be accompanied to a disciplinary or grievance hearing;
compensation for failure by an employer to give a statement of employment particulars;
failure of employer to comply with duty to notify employee of date on which he intends employee to retire or of right to make request not to retire on the intended date); and
various payments due in the event of insolvency (redundancy pay, arrears of pay, pay in lieu of notice, holiday pay, unpaid compensation for unfair dismissal).

Cost of compensation payments (excluding insolvency payments)

The proposed amendment in this IA, increasing the SRP limit from £350 to £380 will result in increase costs for compensation payments. BERR (Department for Business, Enterprise and Regulatory Reform) estimated that the extra cost will be between **£1.9m and £2.2m**. For a detailed breakdown of these costs estimates, refer to annex C.

Cost of insolvency payments

When an employer becomes insolvent, the Insolvency Service through the NIF pays arrears of pay, pay in lieu of notice, redundancy pay, unpaid compensation for unfair dismissal and other payments.

In 2008/09, the Insolvency Service paid out a total of £428 million to employees' working for insolvent employers. Once we remove redundancy pay this figure reduces to £186 million. Accounting for the increase in the number of compensation claims made to the Insolvency Service due to the economic climate in the next financial year, BERR estimates as a result of the uprating the SRP limit, the additional cost of insolvency payments will be around **£12.7m** per year[7].

Option 3: raise the level of statutory redundancy payments and other compensation payments from £350 to £450

Direct cost to business and the Exchequer from raising the statutory redundancy payments from £350 to £450.

Lindsay Hoyle MP has proposed linking the weekly limit to average earnings (currently £450) in his private members bill which has passed second reading at the time of drafting this impact assessment. His bill covers only redundancy payments. However, this impact assessment for option 3 assesses all the costs related to a £450 SRP limit including compensation payments, as with option 2.

6 In table 6 'Redundancy Pay' has been estimated in the direct cost section of this Impact Assessment.
7 Please refer to annex c for the full methodology.

The methodology used to calculate the impact of raising the weekly limit to £380 has also been used on option 3. A summary of the costs are below.

7. Summary of annual costs - scenario one 443,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350 baseline)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
£350	£1,317m	-	£263m	£395m	£1,054m	£922m	-	-	-	-
£450	£1,538m	£221m	£308m	£461m	£1,231m	£1,077m	£44m	£66m	£177m	£155m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 654,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund. Totals may not sum to individual parts due to rounding.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings,2008

8. Summary of annual costs - scenario two 576,000 eligible redundancies

Weekly limit	Total cost	Marginal cost (compared to £350 baseline)	Exchequer cost		Business cost		Marginal cost to the Exchequer		Marginal cost to Business	
			NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%	NIF = 20%	NIF = 30%
£350	£1,711m	-	£342m	£513m	£1,369m	£1,198m	-	-	-	-
£450	£1,999m	£288m	£400m	£600m	£1,599m	£1,399m	£58m	£86m	£230m	£202m

NB: Figures have been rounded and totals may not sum to individual parts

Note: Assumed 850,000 total redundancies. NIF = National Insurance Fund. This table assumes a range of 20-30% of the total costs fall onto the Exchequer via the National Insurance fund. Totals may not sum to individual parts due to rounding.

BERR estimates based on Labour Force Survey, 2008 and the Annual Survey of Hours and Earnings,2008

The direct marginal cost of uprating the SRP from £350 to £450 will be in the range **£221m - £288m**. The direct marginal cost to the Exchequer will be between and **£44m and £86m**. The direct marginal cost to business will be between **£155m and £230m**[8].

Indirect cost associated with raising SRP

We have applied the same methodology and assumptions used to calculate the indirect cost of associated compensation payments that was used for option 2 to option 3. More detail on the methodology can be found in annex C and D. The only change in methodology is the percentage rise in the SRP weekly limit. In option 2 the weekly limit is increased from £350 to £380 - a 8.6 percent rise. However, in option 3 the weekly limit increases from £350 to £450 - a 28.6 percent rise. Our methodology uses a simplifying assumption that all individuals made redundant earning more than £350 benefit by £30 in option 2 and by £100 in option 3. This will lead to an overestimation as for example an individual earning £400, which is between the current weekly limit (£350) and the new proposed rate (£450 in option 3) will only benefit by £50 (as you receive your weekly pay if you earn less than the limit.) The marginal indirect cost for option 3 is **£48.7m - £49.7m.**

8 The upper and lower ranges above are taken from two key scenarios on a number of redundancies and hence the total do not sum up to the total range.

Costs to the Government

The cost to Government for this exercise will not be different to that of the annual uprating exercise. These include updating websites, including the 'SRP calculator[9]' and the replacing of information leaflets. As this cost is in effect being brought forward from February 2010 to October 2009, we consider these costs to be negligible.

Implementation costs

Costs associated with this one-off uprating for business are assumed to be small. They will involve firms becoming aware of the rate increase this October 2009 and that the February 2010 uprating will be suspended. We estimate for illustrative purposes that the cost for businesses to become aware of the change in the law will cost around **£2.3million** and this will be a one-off cost[10]. We assume that firms will be familiarising themselves with the law again in February 2010 to ensure correct compliance, hence the implementation costs for the October announcements are treated as additional.

Benefits

The direct cost related to the increase in the weekly limit and indirect cost of compensation awards linked to the level of statutory redundancy pay represent transfers from either employers to employees or transfers from the Exchequer to employees. Employees will essentially benefit from these payments and the net effect (costs minus benefits) will be zero (with the exception of implementation costs). Redundancy pay creates a safety net for employees, and this one-off uprating will improve this safety net for workers earning over £350.

F. Risks

This impact assessment is based on the best evidence base available and a set of assumptions. We have produced costings on an assumption that all firms pay the statutory minimum requirement for redundancy payments. Anecdotal evidence from stakeholders suggests that perhaps half of firms pay above the statutory minimum. In the absence of precise data our assumption will lead to an overestimation of the costs and benefits. In addition to this assumption there are three other key assumptions that have a significant influence on the cost benefit analysis. These are discussed further in turn. First, we assume that redundancies will mirror the general earnings distribution (i.e. weekly wage is not a deciding factor when making redundancies). This may not turn out to be the case if firms layoff cheaper workers to avoid being affected by this policy change. This would lead to an overestimation of costs and benefits. Second, we assume 20-30 percent of redundancy payments fall on to the Exchequer. If during this economic downturn more firms become insolvent compared to our assumption this would exert greater pressure on the Exchequer and our Exchequer costs would be an underestimate. Finally, we assume a range of 443,000 to 576,000 eligible redundancies will potentially be affected by a rise in SRP limit and associated compensation payments. The lower range is based on redundancy levels in 2008 and the upper range is based on historical redundancy data from the early 1990's. If the economy improves greatly over the next decade we may be overestimating the total number of redundancies eligible for SRP leading to an overestimation of costs and benefits.

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9 www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page33157.html

10 For illustrative purposes we assume that the equivalent of 5 minutes of management time (£21.50 an hour, including 21 percent non wage labour costs) will be spent by every enterprise in the GB that has employees (around 1.3 million) in order to become familiar with the change in the law. This equates to around £2.3 million.

There may be some anticipation effects for firms from this policy announcement and some firms may decide to bring forward planned redundancies, so that payments can be made at the current lower rates. However, the risk of employers bringing forward redundancies is low. Table 9 below shows that in 2007 and 2008 the weekly limit rose by £20 whereas in all other years since 1999 (the year in which the weekly limit became indexed to RPI) the weekly limit increased by £10. And in 2007 and 2008 the number of redundancies in the quarter before the uprating takes effect (quarter 3) shows no statistically significant increase in number of redundancies compared to years in which the limit increased by a smaller amount (£10). We note that the time period examined in table 9 is mostly during economic growth and hence some caution should be taken when drawing conclusions from the data in table 9.

9. Historic weekly limit rates since 1999 and Q3 level of redundancies

Year	Weekly limit	Marginal increase in weekly limit	Q3 level of redundancies 000's
1999	220	-	173
2000	230	10	161
2001	240	10	196
2002	250	10	176
2003	260	10	158
2004	270	10	133
2005	280	10	160
2006	290	10	137
2007	310	20	129
2008	330	20	156

Source: BERR and ONS

For individual firms, an increase in the SRP limit may result in reduced firm flexibility (a potential reduction in the scope to make operational decisions). Also a rise in the SRP limit may increase labour costs for some firms which may lead to reduced profitability.

G. Enforcement

If an employee believes he has been paid an incorrect redundancy payment, or no redundancy payment where one is due, he can take his former-employer to an employment tribunal.

If an employer fails to pay an employment tribunal award, the employee can apply to the County Court. We expect no change in the number of employment tribunal cases as a result of the increase in the weekly limit.

H. Summary table of costs and benefits

A summary of the costs and benefits of option 2 and 3 are presented below.

10. Summary of costs and benefits for option 2 and 3

	Group affected	One-off or ongoing?	Option 2 Amount (per annum)	Option 3 Amount (per annum)
Costs				
Implementation costs	Business	One-off	£2.3 million	£2.3 million
Implementation costs	Government	One-off	No additional cost over and above annual uprating	No additional cost over and above annual uprating
Cost of raising SRP limit to £380	Business	On-going	£51-77 million in increased statutory redundancy payments	£155-230 million in increased statutory redundancy payments
Cost of raising SRP limit to £380	Exchequer	On-going	£15-29 million in increased statutory redundancy payments	£44-86 million in increased statutory redundancy payments
Cost of suspending the annual uprating exercise in February 2010	Business	On-going	£19-27 million in increased statutory redundancy payments	N/A
Cost of suspending the annual uprating exercise in February 2011	Exchequer	On-going	£5-10 million in increased statutory redundancy payments	N/A
Associated compensation payments	Business	On-going	£1.9-2.2 million in increased compensation payments	£6.3-7.3 million in increased compensation payments
Associated compensation payments	Exchequer	On-going	£12.7 million in increase compensation payments	£42.3 million in increase compensation payments
Total costs (excluding implementation costs)			£115.6-144.9 million	£269.7-337.7.9 million
Benefits				
Benefit of raising SRP limit to £380	Employees	On-going	£74-96 million in increased statutory redundancy payments	£221-288 million in increased statutory redundancy payments
Benefit of suspending the annual uprating exercise in February 2011	Employees	On-going	£27-34 million in increased statutory redundancy payments	N/A
Associated compensation payments	Employees	On-going	£14.6-14.9 million in associated compensation payments	£48.7-49.7 million in associated compensation payments
Total benefits	Employees	On-going	£115.6-144.9 million	£269.7-337.7.9 million
Net benefit			£-2.3 million	£-2.3 million

Source: BERR estimates. Raising the SRP limit and associated compensation payments from £350 to 380 is a transfer from employers and the Exchequer to employees. The implementation costs for business is not a transfer. The upper and lower ranges presented in this table (for raising the SRP limit) are taken from two key scenarios on redundancy levels and hence the disaggregated costs (for employers and the Exchequer) do not sum to the total cost. However the total costs (excluding implementation costs) do sum to the total benefits. Individual parts may not sum to total because of rounding.

The net benefit (benefit minus cost) of options 2 and 3 are identical because of transfers between employers, Exchequer and employees. However, option 3 is deemed too expensive for business and option 2 strikes the right balance between helping individuals who are made redundant without placing undue burdens on business.

Implementation

The new statutory redundancy pay weekly limit of £380 will come into force from 1 October 2009 and the annual uprating due to take effect from 1 February 2010 will be suspended.

In line with Departmental good practice, we will be ensuring that businesses start being made aware of the changes 12 weeks in advance of 1 October. This will involve updating websites, including the 'SRP calculator[11] and the replacing of information leaflets. We consider the costs associated with this to be negligible.

I. Monitoring and evaluation

11 http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-guidance/page33157.html

On an annual basis BERR Employment Relations team produces a monitoring and evaluation report of all employment relations policy changes. We plan to evaluate this policy change in summer 2011. We will be able to monitor the volume of redundancies, level of firm insolvencies and payments made by the Exchequer.

Specific Impact Tests: Checklist

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Annex A: Specific impact tests

Small Firms Impact Test

The proposed amendment to the regulations would apply to firms of all sizes. However, its impact will be the greatest amongst firms who make redundancies with employees earning over £350 and paying the statutory minimum in redundancy pay. We do not have robust evidence in this area, but anecdotal evidence would suggest that firms of all sizes would not be equally affected.

Table A1 presents the distribution of employees who have been made redundant and compares this to the distribution of all employees by firm size across the economy. The indication is that small and medium sized workplaces would be disproportionately affected by this proposed policy amendment as they are more likely to make employees redundant and more likely to pay SRP, however if we did exempt small and medium firms it would defeat the objective of this policy change.

A.1. Distribution of employment and redundancies by firm size (number of employees)

	Redundant	All in employment
1-10	26.2%	20.5%
11-19	8.6%	8.6%
20-24	6.7%	4.6%
don't know but under 25	3.3%	1.9%
25-49	14.2%	13.6%
50-249	21.3%	22.7%
250-499	5.1%	7.3%
don't know but between 50 and 499	3.7%	3.1%
500 or more	10.9%	17.7%

NB: Figures have been rounded and totals may not sum to individual parts

Source: Labour Force Survey, 2008

Competition Assessment

The initial analysis of the competition filter test reveals that a detailed competition assessment is not considered necessary. The proposed legislation will apply to all firms and the Government feels that is fair to introduce this one-off uprating to the SRP limit, to partly restore its value in real terms and help those made redundant during this current recession. Table A2 below gives the result of the competition filter test.

A.2. Results of the competition filter test – In any affected market, would the proposal:

Directly limit the number or range of suppliers?	No
Indirectly limit the number or range of suppliers?	No
Limit the ability of suppliers to compete?	No
Reduce suppliers' incentives to compete vigorously?	No

Equality Assessment

In line with better regulation best practice and the 2002 Equalities duty, we have considered the impact of changing the law and conclude that there will not be a disproportional impact by gender, race and disability.

Who will be affected?

The Labour Force Survey (LFS) indicates that around 35 percent (Table A3) of employees that stand to benefit for the proposed policy amendment will be women. This is almost identical to the distribution of women that will be affected by redundancies. This suggest that women will not be disproportionately affected.

A.3. Distribution of redundancies by sex

	All in employment	Redundant	Earning over £350*
Male	53.8%	64.6%	65.2%
Female	46.2%	35.4%	34.8%

NB: Figures have been rounded and totals may not sum to individual parts
*Distribution of all employees whose gross weekly earnings are £350
Source: Labour Force Survey, 2008 and ASHE,2008

The distribution on ethnicity is very similar on redundancies and those affected by this proposed policy amendment, hence we do not think that any group classified by ethnicity will be disproportionately affected from the proposed policy amendment.

A.4. Distribution of redundancies by ethnicity

	All in employment	Redundant	Earning over £350*
White	92.2%	91.0%	92.0%
Mixed	0.4%	0.7%	0.7%
Asian or Asian British	4.3%	4.3%	3.5%
Black or Black British	1.2%	2.1%	2.1%
Chinese	0.6%	0.5%	0.5%
Other ethnic group	1.3%	1.4%	1.2%

NB: Figures have been rounded and totals may not sum to individual parts
*Distribution of all employees whose gross weekly earnings are £350
Source: Labour Force Survey, 2008 and ASHE 2008

Evidence from the Labour Force Survey does not suggest that employers employing individuals with disabilities will be unduly affected by the proposed adjustment in this impact assessment.

A.5. Distribution of redundancies by disabilities

	All in employment	Redundant	Earning over £350*
DDA disabled and work-limiting disabled#	5.2%	5.1%	3.6%
DDA disabled#	5.1%	5.3%	5.1%
Work-limiting disabled only	3.6%	2.6%	2.5%
Not disabled	86.0%	87.0%	88.8%

NB: Figures have been rounded and totals may not sum to individual parts
#DDA - Disability Discrimination Act
*Distribution of all employees whose gross weekly earnings are £350
Source: Labour Force Survey, 2008 and ASHE 2008

Removal of barriers which hinder equality

The proposed changes reflect a broad policy and are designed to have a positive impact on all employees regardless of their gender, race or disability. Therefore, the proposed changes are unlikely to create any barriers to equality in terms of gender, race and disability.

Annex B - Technical note to cost estimates for raising the weekly limit to £380

Formula for calculating statutory redundancy payments

To qualify for payment an employee must have completed two years continuous service.

- 1.5 weeks' pay for each full year of service, where age during the year was not below age of 41;
- 1.0 week's pay for each full year of service, where age during the year was not below age of 22;
- 0.5 week's pay for each full year of service, not falling in the categories above;

There is a 20-year cap on the number of service years for which an employee is entitled to payment.

The amount of payment received depends upon the employee's weekly earnings and is subject to a cap set at the statutory weekly limit e.g. currently £350. An employee earning below the weekly limit will receive payments calculated using their current weekly earnings, and an employee earning above the weekly limit will receive the weekly limit.

Methodology used to estimate costs

Step 1: Estimate the number of week's payment an employee is entitled to according to their age and length of service, using the formula set out above.

Step 2: Estimate the number of employees eligible to receive payments. Estimates are taken from LFS data on the number of people made redundant with over two years' service. The LFS data does not tell us how many years service a person who has been made redundant in the last year had completed with their employer. We therefore had to make the assumption that employees who are made redundant have the same distribution with regards to age and length of service as other employees in the workforce i.e. length of service with an employer is not a deciding factor when making people redundant. The number of employees eligible is disaggregated according to their age and the number of service years with their employer in order to work out how many weeks payment they are entitled to.

Step 3: Calculate the total number of weeks for which redundancy payments are required according to segments by age and length of service. This is found using the information in steps 1 and 2.

Step 4: Examine average earnings by age. To calculate the cost of redundancies, we need to estimate the wage rate at which the number of week's payments due will be paid. This will vary according to each individual's salary. In order to cost this we use the average earnings from ASHE 2008 data taking the proportion earning below the set weekly limit and multiplying by the average earnings of these earners and the proportion earning above the weekly limit multiplied by the weekly limit. From this we get an estimate of the weekly wage rate at which the required number of week's statutory redundancy payments is paid.

Step 5: Final cost of redundancies by age under different weekly rates. This uses the information in steps 3 and 4. Step 3 establishes the total number of week's redundancy payment required for each age segment. Multiplying step 3 by the average weekly wage rate of the employees in the corresponding age segment from step 4 gives the cost of redundancies for each age segment. Summing across all age segments then gives the total cost under the different weekly limits.

Note that we assume throughout that all employers pay out under the SRP. We have limited data in this area and believe that many (perhaps half) may actually pay more than the statutory limit.

Historic National Insurance Fund redundancy payments and receipts

Table B.1. shows redundancy payments made out of the NIF by the Exchequer for redundancy payments when a firm becomes insolvent.

Table B.1. NIF Redundancy Payments and Receipts

Financial Year	Payments	Receipts
2000-01	191,210	22,826
2001-02	230,365	21,097
2002-03	252,923	24,123
2003-04	237,893	26,991
2004-05	219,495	31,772
2005-06	293,174	37,553

(NB: data in current prices)

Source: National Insurance Fund annual accounts

In this impact assessment we assume 20-30 percent of the total cost of redundancy payments falls to the Exchequer. We do not have actual cost data on total redundancy payments. For this impact assessment we have taken the historical NIF payments and divided through by our cost estimates for the current weekly limit of £350 – and this proportion averages to around 20 percent over 2000 to 2006. This will be underestimating the proportion falling on the NIF as historical NIF payments are based on current prices and the redundancy rates were lower in previous years. To factor this in we incorporate sensitivity by assuming 20-30 percent of redundancy payments will fall on to the Exchequer. This range takes into account our underestimation and allows for some buffer if a greater proportion of firms become insolvent in the future.

Annex C: Methodology used to estimate compensation payments associated with raising the SRP limit (excluding insolvency payments):

1) Estimate the number of accepted claims to the Tribunals Service, which will be affected by the uprating of the statutory redundancy limit[12]. For a lower bound estimate, BERR has taken the number of accepted claims[13] to the Tribunals Service in the financial year 2008/9. For an upper bound estimate, we have added 20 percent to the number of accepted claims to the Tribunals Service in the financial year 2008/9. The 20 percent increase reflects economic uncertainty and previous increases in accepted claims since 2005. BERR has estimated that the Tribunals Service will accept between 55,000 and 66,000 claims in 2008/09.

2) BERR has assumed 8.7 percent of accepted claims will be successful at Tribunal. This number has been estimated based on the average success rate at Tribunal for Unfair Dismissal (UD)[14] claims in the last three financial years (2005/6, 2006/07, and 2007/08). The estimated numbers of successful claims at Tribunal in 2009/10 are between 4,793 and 5,752.

3) BERR has estimated that the average payout for successful claims will be £8,237. This figure is an average payout for successful UD claims over the last three financial years (2005/6, 2006/07, and 2007/08).

4) We then multiply the number of successful claims at Tribunal by the average payout at Tribunal (i.e. 4,793*£8,237 and 5,752*£8,237). This gives the total cost for successful claims at Tribunal for the financial year 2009/10 (no uprating) is expected to be in the range £39.5 million and £47.4million.

5) If we inflate the expected total cost for successful claims (no uprating) at Tribunal by the new proposed SRP limit (£380) and divide by the existing SRP limit (£350) we get the expected total cost for successful claims including the uprating (i.e. {380-350}/350 =8.6 percent). However, we then need to adjust for workers earning over £350, as not all employees will benefit from this uprating. BERR estimate that the total cost for successful claims to between £41.3 million and £49.6 million. The marginal cost of increasing the SRP limit for compensation payments will be between £1.9 million and £2.2 million.

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12 The following compensation payments will be affected by uprating the statutory redundancy pay limit: non-compliance with flexible working procedures, the basic and additional awards for unfair dismissal, compensation where an individual has been unjustifiably disciplined by a trade union, compensation where an employer has failed to consult with a collective bargaining unit, compensation in relation to a right not to be excluded or expelled from a union, compensation for failure by employer to allow an employee to be accompanied to a disciplinary or grievance hearing, compensation for failure to give by employer to give statement of employment particulars, failure of employer to comply with duty to notify employee of date on which he intends employee to retire or of right to make request not to retire on the intended date.

13 Accepted claims to the Tribunals Service throughout this document will refer to accepted claims which will be affected by the uprating of the statutory redundancy limit.

14 The majority of accepted claims will be UD claims, therefore UD data has been used as a proxy for determining if the claims will be successful and what the average level of payout will be.

Annex D: Methodology used to estimate the marginal insolvency payments from raising the SRP limit

When a firm becomes insolvent the Exchequer pays out any arrears of pay, pay in lieu of notice, redundancy pay, unpaid compensation for unfair dismissal that is due to employees.

In 2008/09, the Insolvency Service paid out nearly £428 million in cash payments to employees from insolvent employers. These payments included arrears of pay, pay in lieu of notice, redundancy pay, unpaid compensation for unfair dismissal and other payments. We have removed the cost of redundancy payments from our calculations to avoid double counting (with annex B). The cash payments over this period were based on 165,000 claims.

In 2009/10, BERR and Insolvency Service estimate that there will be approximately 200,000 cases. This is an increase of 21 percent ({200,000-165,000}/165,000) and is mainly driven by the economic cycle. Having factored in the expected increase in the number of claims, we have next estimated what we expect the total payments (including and excluding redundancy payments) will be in 2009/10 (lines eight and nine of table D1).

The proposed policy amendment – increasing the SRP limit from £350 to £380 represents an increase of 8.6 percent ({380 – 350}/350). In addition, this amendment will only affect those earning over £350, as those earning below the SRP limit will receive their actual pay. From ASHE 2008, BERR has estimated that 55 percent of employees earn more than £350 and account for 66 percent of the total cash payment made by the Insolvency Service. Putting this information together BERR has estimated that the total cash payment (excluding SRP) made by the Insolvency Service in 2009/10 (line 16 of table 1) will be £238 million. Therefore, the marginal cost of increasing the weekly limit on insolvency payments excluding SRP will be **£12.7 million per annum**.

	D.1. Payments due in event of insolvency	
1	Total cash payments 2008-09	£427,622,263
2	Total cash payments 2008-09 excluding SRP	£185,651,421
3	Total claims in 2008/09	165,000
4	Expected total claims in 2009/10	200,000
5	% rise in total claims	21%
6	No uprating, affect of increase claims	
7	Expected total payments in 2009/10 (£)	£518,330,016
8	Expected total payments (excluding SRP) in 2009/10 (£)	£225,032,025
9	Effect of increase in weekly limit	
10	Old limit	350
11	New limit	380
12	% rise in weekly limit	8.6%
13	55% of workers that earn more than £350	
14	Weight of total costs from those earning more than £350	66%
15	Expected total payments in 2009/10 (£)	£547,652,685
16	Expected total payments (excluding SRP) in 2009/10 (£)	£237,762,409
17	Marginal cost of increasing weekly limit (£)	
18	Expected marginal payments in 2009/10 (£)	£29,322,669
19	Expected marginal payments (excluding SRP) in 2009/10 (£)	£12,730,383

Relationship between columns: 5=(4-3/3)*100; 7=1*5; 8=2*5; 12=(11-10/10)*100; 15=7*12; 16=8*12; 18=15-7; 19=16-8

1,2 and 3 data comes from the Insolvency Service

10, 11 current policy and proposed amendment

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