



House of Commons

Tuesday 21 October 2014

PUBLIC BILL COMMITTEE

New Amendments handed in are marked thus ★

☆ *Amendments which will comply with the required notice period at their next appearance*

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL

NOTE

The Amendments have been arranged in accordance with the Order of the Committee [14 October 2014].

Debbie Abrahams
Toby Perkins
Mr Iain Wright
Ian Murray

Clause 3, page 3, line 40, leave out “may” and insert “shall”

53

Toby Perkins
Mr Iain Wright
Ian Murray
Debbie Abrahams

Clause 3, page 3, line 43, after “policies”, insert “and performance”.

Member’s explanatory statement

This amendment provides that companies can be judged on their performance in practice.

34

Toby Perkins
Mr Iain Wright
Ian Murray
Debbie Abrahams

Clause 3, page 4, line 28, at end add—

“(4A) “Performance” has such meaning as may be prescribed, and the information which may be prescribed shall in particular include information on late payment of invoices by the company, to include in a quarterly report which shall include—

35

Small Business, Enterprise and Employment Bill, *continued*

- (a) lists of all payments to suppliers which were made over 30 days after the date indicated by the suppliers agreed payment terms, without a formal query having been registered with the suppliers within a period as may be prescribed;
- (b) confirmation, for each instance listed under paragraph (a), that interest, equalling the Bank of England base rate plus 8% APR, was paid to compensate the supplier for overdue payment; and
- (c) assurance, for each instance listed under paragraph (a) where confirmation of compensation under paragraph (b) cannot be provided, of a payment plan in place to compensate suppliers on the basis set out in that paragraph.”.

Member’s explanatory statement

This amendment defines “performance” against which companies will be judged.

Debbie Abrahams

52

Clause 3, page 4, line 28, at end insert—

- “(g) about the circumstances and process for amendment of payment terms of the company.”

Member’s explanatory statement

This amendment aims to require companies to include details of the circumstances and process (including who will be involved) by which payment terms can be amended, preventing unilateral and ad hoc changes.

Debbie Abrahams

54

Clause 3, page 4, line 29, leave out “may” and insert “shall”

Toby Perkins
Mr Iain Wright
Ian Murray
Debbie Abrahams

36

Clause 3, page 4, line 31, at end add—

- “(5A) A person making a false report of payment performance commits an offence punishable under subsection (8).”.

Member’s explanatory statement

This amendment establishes that the financial reporting officer shall be liable for false reporting.

Debbie Abrahams

55

Clause 3, page 4, line 32, leave out “may” and insert “shall”

Debbie Abrahams

56

Clause 3, page 4, line 35, leave out “may” and insert “shall”

Toby Perkins
Mr Iain Wright
Ian Murray
Debbie Abrahams

37

Clause 3, page 4, line 40, at end add—

Small Business, Enterprise and Employment Bill, continued

“(8) It shall be an offence for a company, prescribed by the Secretary of State, to fail to complete a payment plan to compensate a supplier where payment to that supplier has been delayed by more than 30 days after the date indicated by that supplier’s agreed payment terms.

(9) A company committing an offence under subsection (8) shall be subject to a fine not exceeding the amount of the invoice, up to £10,000 on summary conviction.”.

Member’s explanatory statement

This amendment makes it an offence for companies not to fulfil compensation payment plans.

Matthew Hancock
Jo Swinson

Clause 4, page 5, line 3, leave out “(“credit information regulations”)”

1

Member’s explanatory statement

This amendment is a minor drafting change removing a definition which is no longer required.

Ian Murray
Mr Iain Wright
Toby Perkins

Clause 4, page 5, line 9, at end insert—

43

“(c) a duty on designated banks and designated credit reference agencies to provide information about the criteria used to calculate the credit score of a small and medium-sized business customer to such customers.”.

Member’s explanatory statement

This amendment aims to establish a duty for banks and credit reference agencies to provide information about the criteria used to calculate the credit score of an SME customer to increase transparency and guidance for small firms to understand the calculation of their credit score and to help them to take steps to improve it.

Ian Murray
Mr Iain Wright
Toby Perkins

Clause 4, page 5, line 19, at end insert—

44

“(3A) The regulations must provide that the duty in subsection (1)(c) only applies where a small or medium-sized business makes a request to a designated credit reference agency or bank.”.

Member’s explanatory statement

This amendment aims to establish a duty for banks and credit reference agencies to provide information about the criteria used to calculate the credit score of an SME customer to increase transparency and guidance for small firms to understand the calculation of their credit score and to help them to take steps to improve it.

Ian Murray
Mr Iain Wright
Toby Perkins

Clause 4, page 5, line 28, at end insert—

45

“(ba) to which the duty in subsection (1)(c) applies.”.

Member’s explanatory statement

Small Business, Enterprise and Employment Bill, continued

This amendment aims to establish a duty for banks and credit reference agencies to provide information about the criteria used to calculate the credit score of an SME customer to increase transparency and guidance for small firms to understand the calculation of their credit score and to help them to take steps to improve it.

Matthew Hancock
Jo Swinson

2

Clause 4, page 5, line 43, leave out “before a bank or credit reference agency may” and insert “for a bank or credit reference agency to”

Member’s explanatory statement

This amendment ensures that regulations made under clause 4 may provide for conditions relevant to the continued designation of a bank or credit reference agency, as well as conditions relevant to the initial designation of a bank or credit reference agency.

Matthew Hancock
Jo Swinson

3

Clause 4, page 6, line 7, leave out subsections (8) to (12)

Member’s explanatory statement

The omitted provisions are being moved to the new clause inserted by amendment NC2 as they are common to both clause 4 and the new clause inserted by amendment NC1.

Ian Murray
Mr Iain Wright
Toby Perkins

46

Clause 4, page 6, line 15, at end insert—

“(8A) For the purposes of this section, a designated bank or designated credit reference agency may only share information that has been specifically identified by the business to which the information relates.”.

Member’s explanatory statement

This amendment is to ensure the security of the data being shared by banks and credit reference agencies..

Ian Murray
Mr Iain Wright
Toby Perkins

47

Clause 4, page 6, line 33, at end insert—

“(11A) Before making regulations under subsection (1), the Secretary of State shall carry out an impact assessment which will examine—

- (a) costs incurred by the bank, credit reference agency and business; and
- (b) the impact that costs incurred will have on the final cost of borrowing for small and medium-sized enterprises.”.

Member’s explanatory statement

This amendment aims to ensure that analysis is undertaken by the Government that looks at the impact of the costs of this process and procedure on both the sharing of information (the process) and the final cost of borrowing.

Small Business, Enterprise and Employment Bill, *continued*

Matthew Hancock
Jo Swinson

4

Clause 5, page 6, line 36, leave out “Credit information regulations” and insert “Regulations under sections 4 and (*Small and medium sized businesses: information to finance platforms*)”

Member’s explanatory statement

This amendment means that the Financial Conduct Authority can regulate the activities under the new clause inserted by amendment NCI in the same way as it will be able to regulate activities under clause 4.

Ian Murray
Mr Iain Wright
Toby Perkins

42

Clause 5, page 6, line 38, at end insert—

“(1A) In making provisions under subsection (1), the Secretary of State shall include a funding mechanism enabling the Financial Conduct Authority (FCA) to monitor and enforce compliance with the regulations.”.

Member’s explanatory statement

This is a probing amendment to explore who bears the costs of the FCA process of enforcement and compliance.

Matthew Hancock
Jo Swinson

5

Clause 5, page 7, line 8, leave out “Credit information regulations” and insert “Regulations under sections 4 and (*Small and medium sized businesses: information to finance platforms*)”

Member’s explanatory statement

This amendment and amendment 6 mean that the Financial Ombudsman Service could have oversight of activities under the new clause inserted by amendment NCI in the same way as it can have oversight of the activities under clause 4.

Matthew Hancock
Jo Swinson

6

Clause 5, page 7, line 9, after “agencies” insert “or designated finance platforms”

Member’s explanatory statement

See explanatory statement to amendment 5.

Matthew Hancock
Jo Swinson

7

Clause 5, page 7, line 19, leave out “Credit information regulations” and insert “Regulations under section 4”

Member’s explanatory statement

This amendment, and amendments 10, 11 and 12 are consequential upon the drafting change made by amendment 1.

Matthew Hancock
Jo Swinson

8

Clause 5, page 7, line 21, after “allow” insert “or require”

Member’s explanatory statement

Small Business, Enterprise and Employment Bill, continued

This amendment makes it clear that the regulations can require the Bank of England to share information it receives from credit reference agencies with persons specified in the regulations (such as the Treasury).

Matthew Hancock
Jo Swinson

9

Clause 5, page 7, line 22, leave out “prescribed persons or for prescribed purposes” and insert “persons or for purposes specified or described in the regulations”

Member’s explanatory statement

This is a minor drafting amendment which clarifies that the extent of the Bank of England’s ability to share information received pursuant to regulations made under clause 4 may be specified or described in those regulations.

Matthew Hancock
Jo Swinson

10

Clause 5, page 7, line 25, leave out “Credit information regulations” and insert “Regulations under section 4”

Member’s explanatory statement

See explanatory statement to amendment 7.

Matthew Hancock
Jo Swinson

11

Clause 5, page 7, line 29, leave out “Credit information regulations” and insert “Regulations under section 4”

Member’s explanatory statement

See explanatory statement to amendment 7.

Ian Murray
Mr Iain Wright
Toby Perkins

41

Clause 5, page 7, leave out lines 39 to 41 and insert—

“(8A) Credit information regulations shall provide a small or medium-sized business with the right to complain to the Financial Ombudsman seeking a determination requiring a designated credit reference agency to rectify, block, erase or destroy data held about the complainant.

(9A) Section 226A of the Financial Services and Markets Act 2000 is amended as follows. After subsection (f) insert—

“(g) the complaint is one falling under section 5(8A) of the Small Business, Enterprise and Employment Act 2014.””.

Matthew Hancock
Jo Swinson

12

Clause 5, page 7, line 39, leave out “Credit information regulations” and insert “Regulations under section 4”

Member’s explanatory statement

See explanatory statement to amendment 7.

Small Business, Enterprise and Employment Bill, *continued*

Matthew Hancock
Jo Swinson

13

Clause 5, page 7, line 41, at end insert—

“() Regulations under section (*Small and medium sized businesses: information to finance platforms*) may impose a duty on designated finance platforms to provide statistical information to the Treasury.”

Member’s explanatory statement

This amendment enables regulations made under the new clause inserted by amendment NC1 to require platforms designated under those regulations to provide the Treasury with statistical information to do with the information shared under the regulations.

Matthew Hancock
Jo Swinson

14

Clause 5, page 7, line 42, leave out “credit information regulations that are made” and insert “regulations made under section 4 and the first regulations made under section (*Small and medium sized businesses: information to finance platforms*)”

Member’s explanatory statement

This amendment means that the first regulations made under the new clause inserted by amendment NC1 would, like the first regulations made under clause 4, be subject to the affirmative procedure.

Matthew Hancock
Jo Swinson

15

Clause 5, page 7, line 44, leave out “credit information regulations” and insert “regulations made under section 4 or (*Small and medium sized businesses: information to finance platforms*)”

Member’s explanatory statement

This amendment means that any subsequent regulations made under the new clause inserted by amendment NC1 would, like subsequent regulations made under clause 4, be subject to the negative procedure.

Matthew Hancock
Jo Swinson

16

Clause 5, page 7, line 46, leave out subsection (11)

Member’s explanatory statement

This is a minor drafting amendment which omits definitions which are no longer needed in clause 5 either because all instances of the defined term are removed by other amendments, or because the definition is included in the new clause inserted by amendment NC2.

Ian Murray
Mr Iain Wright
Toby Perkins

49

Clause 6, page 8, line 16, after “information”, insert “specifically financial information that would include entire tax records”.

Member’s explanatory statement

This amendment strengthens the safeguard in subsection (2) restricting the information that can be disclosed.

Small Business, Enterprise and Employment Bill, continued

Ian Murray
Mr Iain Wright
Toby Perkins

48

Clause 6, page 8, line 17, at end insert—

“(2A) The Secretary of State may by order specify the information that Commissioners are permitted to disclose.”.

Member’s explanatory statement

This amendment strengthens the safeguard in subsection (2) restricting the information that can be disclosed.

Ian Murray
Mr Iain Wright
Toby Perkins

51

Clause 9, page 10, line 21, at end insert—

“(3A) Prior to the commencement of section (1) of the Export and Investment Guarantees Act 1991, as amended, the Secretary of State shall—

- (a) commission an independent assessment of the functions and powers of UK Export Finance (UKEF);
- (b) make a report to Parliament of steps to be taken in response to the findings of the assessment referred to in paragraph (a);
- (c) commission an assessment to determine actions to improve the awareness of UKEF to small and medium-sized enterprises.”.

Member’s explanatory statement

This amendment aims to require the Secretary of State to assess the powers and functions of the UKEF and require the Government to reform and relaunch the organisation.

Matthew Hancock
Jo Swinson

17

Clause 11, page 11, line 30, after “delivered” insert “on or in connection with presentment or payment (including after presentment or payment or in connection with dishonour for non-payment)”

Member’s explanatory statement

This amendment clarifies that the provision disapplying requirements to exhibit, present or deliver an original physical instrument which is presented electronically has effect in respect of such requirements arising at any time, including any requirement to deliver an instrument after it is paid.

Ian Murray
Mr Iain Wright
Toby Perkins

50

Clause 11, page 12, line 8, at end insert—

“(6) Where an instrument is presented for payment under this section, the responsible bank will be required to ensure the validity of the electronic image as being from

Small Business, Enterprise and Employment Bill, continued

the person who signed the cheque and mechanisms for this will be specified in regulations under this section.”.

Member’s explanatory statement

This amendment aims to increase assurance over the validity and security of electronic cheques.

Matthew Hancock
Jo Swinson

18

Clause 11, page 13, line 30, at end insert—

“() in relation to an instrument which is not a bill of exchange or promissory note, references to the holder are to the payee or indorsee of the instrument who is in possession of it or, if it is payable to bearer, the person in possession of it.”

Member’s explanatory statement

This amendment clarifies that the term ‘holder’ in section 89D of the Bills of Exchange Act 1882 (inserted by clause 11) is used in relation to all types of instrument, and not just those types of instrument in relation to which ‘holder’ is currently defined in the 1882 Act.

Matthew Hancock
Jo Swinson

19

Clause 11, page 14, line 19, at end insert—

“() The amendments made by this section have effect in relation to presentment of instruments after it comes into force, including instruments created before that time.”

Member’s explanatory statement

This amendment clarifies that the provisions about electronic presentment of instruments have effect in relation to any presentment or purported presentment after commencement of the provisions, including presentment or purported presentment of instruments or images which were created before commencement.

Debbie Abrahams

58

Clause 11, page 14, line 19, at end insert—

“PART 4A1**PROTECTION OF RETENTION MONIES IN THE CONSTRUCTION INDUSTRY****89A1 Interpretation**

(1) In this Part—

“adjudication” and “adjudicator” have the meaning given to it in section 108 of the Housing Grants, Construction and Regeneration Act 1986 (as amended).

“bank” has the meaning given to it by section 2 of the Banking Act 2009.

“construction contract” has the meaning given to it by section 104 of the Housing Grants, Construction and regeneration Act 1996 (as amended).

“construction operations” has the meaning given to it by section 105 of the Housing Grants, Construction and regeneration Act 1996 (as amended).

“payee” refers to a party providing construction operations under a construction contract who is entitled to a payment in respect of such operations.

Small Business, Enterprise and Employment Bill, *continued*

“payer” refers to a party procuring construction operations under a construction contract upon whom is placed an obligation to ensure payment is made in respect of such operations.

“retention monies” means sums of money withheld by or on behalf of a payer from monies which would otherwise be due under a construction contract the effect of which would provide the payer with security for the current and future performance by the payee of any or all of the payee’s obligations under the construction contract.

- (2) In this Part, reference to “account” is bank account established in accordance with section 144.

89A2 Status of retention monies

- (1) Where under a construction contract the payer withholds retention monies from the payee the monies must be held in trust by the payer on behalf of the payee as beneficiary.
- (2) The payer must establish a separate and independent account at a bank for the purpose of depositing the withheld retention monies and must notify the bank that—
 - (a) the payer holds the retention monies on trust in accordance with the provisions of this Part; and
 - (b) that the payee is the beneficiary.
- (3) The status of the payer as a trustee of the retention monies does not preclude the payer having access to the retention monies in accordance with section 147.

89A3 Duties of the payer as trustee of the retention monies

- (1) The payer shall be solely responsible for any costs uncured in establishing and maintaining the account.
- (2) The payer shall issue the payee with the details of the account and at the request of the payee issue the payee with the current statement of the monies held in the account.
- (3) The payer shall deposit the retention monies in the account immediately following their withholding.
- (4) Any interest paid by the bank in respect of the retention monies held in the account shall accrue to the payee.

89A4 Failure to comply with sections 144 and 145

- (1) Where the payer fails to comply with any of the requirements in sections 144 and 145 the provisions of the construction contract permitting the payer to withhold retention monies from the payee shall be of no legal effect.
- (2) Where subsection (1) applies the payer shall refund immediately to the payee any retention monies withheld and, to the extent that the retention monies are not refunded, those retention monies shall be recoverable under the relevant construction contract as a debt exclusive of any right of set-off or counterclaim.

89A5 Release of retention monies from the account

- (1) Subject to subsection (2) the payer shall instruct the bank to release the retention monies to the payee on or before the date specified for release in the construction contract and, at the same time, issue the payee with a copy of the instructions to the bank.
- (2) Subsections (3), (4), (5) and (6) shall apply where the payer has issued a notice to the payee not later than 14 days before the date referred to in subsection (1)—

Small Business, Enterprise and Employment Bill, *continued*

- (a) stating that the payee has not complied with the contractual requirements for the release of the retention monies;
 - (b) setting out the reasons for the non-compliance; and
 - (c) stating whether the payer requires the release to the payer of all the retention monies in the account or a specified amount representing part of the monies in the account.
- (3) On receipt of the payer's notice the payee may issue a written authorisation to the payer to instruct the bank to release to the payer the whole of the retention monies or a specified amount representing part of the retention monies.
- (4) On presentation by the payer of the payee's written authorisation the bank shall release to the payer such of the retention monies as have been authorised for release by the payee under subsection (3).
- (5) In the event that the payee does not issue a written authorisation under subsection (3) or the authorisation only permits the release of part of the retention monies which is less than the specified amount in the payer's notice under subsection 2, the matter shall constitute a dispute arising under the contract which the payer may refer to adjudication in accordance with section 149 provided that—
 - (a) no later than the date specified for release in the construction contract the payer has issued the notice of referral; and
 - (b) the notice of referral has requested the adjudicator to decide to whom the retention monies shall be released either in whole or in part and, if in part, to decide the amounts that shall be released to either party.
- (6) Whichever party is entitled to the retention monies following the adjudicator's decision has authority to instruct the bank, on presentation of the decision, to release the monies in accordance with that decision.
- (7) Subsection (8) applies where the payer has failed to—
 - (a) instruct the bank in accordance with subsection (1); or
 - (b) issue the notice in accordance with subsection (2); or
 - (c) issue a notice of referral in accordance with subsection (5).
- (8) On the expiry of seven days after the date specified for release in the construction contract the payee shall have authority to instruct the bank to release the retention monies to the payee provided that the instruction to the bank states—
 - (a) which of paragraphs (a), (b) or (c) in subsection (7) applies;
 - (b) the amount of retention monies due for release;
 - (c) the date in the construction contract by which the amount should have been released; and
 - (d) that a copy of the instruction to the bank has been issued to the payer.
- (9) Where the payer has discontinued an adjudication commenced under subsection (5) for reasons other than a settlement agreed between the payer and payee, the payee shall have authority to instruct the bank to release the retention monies to the payee provided that—
 - (a) the payee has presented the bank with a statement from the adjudicator to the effect that the payer has discontinued the adjudication; and
 - (b) that a copy of the instruction to the bank has been issued to the payer.

89A6 Conflict with provisions in the construction contract

These provisions shall prevail over any inconsistent express or implied terms in any construction contract to which this Part applies but are without prejudice to the right of the payer to have recourse to the retention monies in accordance with the construction contract and section 147.

Small Business, Enterprise and Employment Bill, *continued*

89A7 Disputes

In the event of any dispute or difference arising under the provisions of this Part and subject to section 147 a payer or payee shall have the right to refer such dispute or difference to adjudication in accordance with the Housing Grants, Construction and Regeneration Act 1996 (as amended) and, where applicable, the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended).

89A8 Guidance by the Secretary of State

- (1) The Secretary of State may issue any guidance as may be considered necessary to facilitate implementation of the provisions in this Part.
- (2) The Secretary of State must publish any guidance or revised guidance issued under this section.

89A9 Service of notices

Notices must be served in accordance with the provisions of section 115 of the Housing Grants, Construction and Regeneration Act 1996 (as amended).

89A10 Periods of time

For the purposes of this Part periods of time shall be reckoned in accordance with section 116 of the Housing Grants, Construction and Regeneration Act 1996 (as amended).

89A11 Crown application

The provisions of section 117 of the Housing Grants, Construction and Regeneration Act 1996 apply to this Part (as amended)."

Member's explanatory statement

These amendments aim to require that retention monies provided for within construction industry contracts are placed in an account, separate to and independent of those of the party withholding the monies. That party is made a trustee of the monies, providing protection in the event of insolvency. The release of cash retentions is expedited. The provisions apply to public sector procuring authorities.

Matthew Hancock
Jo Swinson

20

Clause 12, page 14, line 23, at end insert—

- “(1A) Section 58 (power to require disposal of interest in payment system) is amended as provided in subsections (1B) and (1C).
- (1B) In subsection (1), for the words following “interest in” substitute “—
 - (h) the operator of a regulated payment system, or
 - (i) an infrastructure provider in relation to such a system,
 to dispose of all or part of that interest.”
- (1C) After subsection (2) insert—

Small Business, Enterprise and Employment Bill, *continued*

“(2A) The reference in subsection (2) to a restriction or distortion of competition includes, in particular, a restriction or distortion of competition—

- (a) between different operators of payment systems,
- (b) between different payment services providers, or
- (c) between different infrastructure providers.””

Member’s explanatory statement

This amendment extends the Payment Systems Regulator’s power to require disposal of an interest relating to a regulated payment system so that the Regulator may require disposal of an interest in an infrastructure provider in relation to such a system.

Ian Murray
Mr Iain Wright
Toby Perkins

74

★ Clause 15, page 16, line 17, at end insert—

“(cA) an assessment of whether and, if necessary, the extent to which, any business, having challenged a regulator, has been discriminated against thereafter as a consequence.

(cB) recommendations for mitigating steps to be taken if an assessment mentioned in paragraph (cA) concludes that discrimination has taken place.”

Matthew Hancock
Jo Swinson

21

Clause 16, page 17, line 24, leave out from beginning to “subject” and insert “Regulations under this section are”.

Member’s explanatory statement

This amendment corrects a drafting error (it is the regulations themselves that are subject to affirmative resolution procedure and not the power to make them).

Ian Murray
Mr Iain Wright
Toby Perkins

75

★ Clause 23, page 22, line 34, at end insert—

“(aA) lay a statement of each amended thing before each House of Parliament to be approved by affirmative resolution procedure before the amendment is implemented;”

Small Business, Enterprise and Employment Bill, *continued*

Ian Murray
Mr Iain Wright
Toby Perkins

76

★ Clause 29, page 25, line 26, at end insert—

“(1A) Prior to secondary legislation making or amending the regulatory provision coming into force, the review set out in sections 25 to 28 and this section shall be subject to public consultation with specific reference to the views of businesses, business organisations, civic organisations and trades unions, and any such other organisation which the Secretary of State considers to be appropriate.”

Toby Perkins
Mr Iain Wright
Ian Murray

39

Clause 30, page 26, line 7, after “business”, insert ““medium-sized business”, “large business” or “super corporate””.

Matthew Hancock
Jo Swinson

22

Clause 30, page 26, line 9, leave out subsections (2) and (3) and insert—

- “(2) In the underlying provision “small business” means an undertaking other than a micro business (see subsection (3)) which meets the following conditions (“the small business size conditions”)—
- (a) it has a headcount of staff of less than 50, and
 - (b) it has—
 - (i) a turnover, or
 - (ii) a balance sheet total,
 of an amount less than or equal to the small business threshold.

(3) In the underlying provision “micro business” means an undertaking which meets the following conditions (“the micro business size conditions”)—

 - (a) it has a headcount of staff of less than 10, and
 - (b) it has—
 - (i) a turnover, or
 - (ii) a balance sheet total,
 of an amount less than or equal to the micro business threshold.

() The Secretary of State may by regulations (referred to as “the small and micro business regulations”) make further provision about the meanings of “small business” and “micro business”.

() This section and the small and micro business regulations are to be read subject to any modifications made by the underlying provision in any particular case.”

Member’s explanatory statement

This amendment defines “small business” and “micro business” by reference to staff headcount and other conditions set out in subsections (2) and (3), replacing the previous definition referring to Commission Recommendation 2003/361/EC. It also gives the Secretary of State power to make regulations further defining these terms.

Small Business, Enterprise and Employment Bill, continued

Toby Perkins
Mr Iain Wright
Ian Murray

40

Clause 30, page 26, leave out lines 10 to 18 and insert—

- ““Micro business” means a business with 1-9 employees
- “Small business” means a business with 10-49 employees
- “Medium-sized business” means a business with 50-249 employees
- “Large business” means a business with 250-1000 employees
- “Super corporate” means a business with over 1000 employees”.

Member’s explanatory statement

This amendment proposes to create a total of five definitions in UK law based on the measure of employee head count.

Matthew Hancock
Jo Swinson

23

Clause 30, page 26, line 19, at end insert—

- ““balance sheet total”, “headcount of staff”, “micro business threshold”, “small business threshold” and “turnover” have such meanings as may be prescribed by the small and micro business regulations;”

Member’s explanatory statement

This amendment stipulates that particular terms used in amendment 22 (such as “headcount of staff” and “turnover”) are to be defined in regulations made by the Secretary of State.

Matthew Hancock
Jo Swinson

24

Clause 30, page 26, line 23, at end insert—

““undertaking” means—

- (a) a person carrying on one or more businesses;
- (b) a voluntary or community body within the meaning given by section 24;
- (c) a body which is formed or recognised under the law of a country or territory outside the United Kingdom and which is equivalent in nature to a body falling within the definition of voluntary or community body.

- () The small and micro business regulations are subject to negative resolution procedure.”

Member’s explanatory statement

This amendment defines “undertaking” as used in the definitions of “small” and “micro” business. Undertakings comprise individuals, companies, and other entities carrying on business and voluntary or community bodies (defined in clause 24) and foreign equivalents. It also applies the negative procedure to regulations under amendments 22 and 23.

Debbie Abrahams

57

Clause 33, page 28, line 40, at end insert—

- “(a1) duties to establish the past payment performance of potential parties to a contract, before contracts are entered into;

Small Business, Enterprise and Employment Bill, *continued*

- (a2) duties to ensure contracts entered into include the contractors' obligations for prompt payment of their suppliers."

Member's explanatory statement

This amendment aims to ensure that the payment performance of potential contractors are known before contracts are entered into and that contracts entered into require companies providing goods and services to public sector contracting authorities to pay their own suppliers promptly.

Ian Murray
Mr Iain Wright
Toby Perkins

77

- ★ Clause 33, page 29, line 8, at end insert—

- “(eA) duties relating to the assessment and publication of the extent to which apprenticeships and training opportunities were provided as a result of procurement of contracting authorities.
- (eB) duties to publish reports about the amount and proportions of expenditure within procurement undertaken by a contracting authority in relation to—
- (i) small and medium-sized enterprises; and
 - (ii) the area local to the contracting authority.
- (eC) duties to disclose and explain any reasons why specified business or company, or specified category of business or company, may be excluded from consideration by a contracting authority, and
- (eD) duties to publish information about the allocation, draw down, usage, sub-contracting or other third-party deployment, and results of the consumption of public resources by private entities.”

Ian Murray
Mr Iain Wright
Toby Perkins

78

- ★ Clause 33, page 29, line 16, leave out “negative” and insert “affirmative”

Richard Fuller

69

- ★ Clause 36, page 31, line 1, leave out subsection (4).

Andrew Griffiths

59

- Clause 36, page 31, line 11, leave out subsection (5)(b)(ii)

Andrew Griffiths

60

- Clause 36, page 31, line 18, leave out “their tied pub tenants” and insert “such assessments”

Small Business, Enterprise and Employment Bill, *continued*

Richard Fuller

70

- ★ Clause 36, page 31, line 20, leave out “large”
-

Andrew Griffiths
Oliver Colvile

68

- ☆ Clause 37, page 31, line 45, at end insert—
“(5A) Changes to the Pubs Code pursuant to section 37 shall be made by order. Such an order is subject to affirmative resolution procedure.”
-

Andrew Griffiths

61

- Clause 38, page 32, line 15, leave out from “(i)” to end of line 17 and insert “only apply to new agreements or at agreed break points such as rent reviews within current agreements”
-

Andrew Griffiths

62

- Clause 42, page 34, line 43, after “vexatious”, insert “or unsubstantiated”
-

Andrew Griffiths

63

- Clause 49, page 36, line 41, at end insert “or
(c) the basis and reasoning behind the decision to impose a penalty.”
-

Andrew Griffiths

64

- Clause 50, page 37, line 20, after “merit”, insert “or unsubstantiated”
-

Richard Fuller

71

- ★ Clause 60, page 41, line 6, leave out “one” and insert “500”

Small Business, Enterprise and Employment Bill, *continued*

Richard Fuller

72

★ Clause 60, page 41, line 8, leave out “large”

Richard Fuller

73

★ Clause 60, page 41, line 12, leave out “large”

Andrew Griffiths

65

Clause 61, page 41, line 36, after “means”, insert “a franchise agreement accredited by the British Franchise Association, or”

Andrew Griffiths

66

Clause 61, page 41, line 42, leave out “and includes a tenancy at will” and insert “but excluding tenancies at will and agreements of less than 12 months”

Andrew Griffiths

67

Clause 62, page 42, line 15, leave out from “tie” to end of line 16

Matthew Hancock
Jo Swinson

25

Clause 80, page 52, leave out line 13 and insert—
“(5) For the purposes of this Part, each of the following is a review period—”
Member’s explanatory statement
This amendment is consequential on amendment 26.

Matthew Hancock
Jo Swinson

26

Clause 80, page 52, leave out lines 16 to 18 and insert—
“(b) each period of 12 months beginning with the day after the end of the previous review period.
(5A) But where a company delivers a confirmation statement with a confirmation date which is earlier than the last day of the review period concerned, the next review period is the period of 12 months beginning with the day after the confirmation date.”
Member’s explanatory statement
This amendment provides for a default review period of 12 months from the end of the previous review period. This default review period will apply where no confirmation statement has been

Small Business, Enterprise and Employment Bill, continued

delivered by a company for the previous review period.

Matthew Hancock
Jo Swinson

27

Clause 81, page 59, line 10, after “(5)” insert “and (5A)”

Member’s explanatory statement

This amendment is consequential on amendment 26.

Matthew Hancock
Jo Swinson

33

Schedule 8, page 214, line 27, leave out “11C” and insert “11E”

Member’s explanatory statement

This amendment corrects a cross-reference to ensure that none of the provisions setting out the new ground for disqualifying a person for instructing an unfit director will apply to industrial and provident societies in Northern Ireland, to correspond with consequential amendments being made to that effect in Great Britain.

Matthew Hancock
Jo Swinson

28

Clause 136, page 119, line 3, leave out from “lies” to end of line 5 and insert “to an employment tribunal.”

Member’s explanatory statement

This amendment changes the venue of appeal against a penalty for the non-payment of an Employment Tribunal award or an ACAS conciliated settlement from the county court in England and Wales, or the sheriff in Scotland, to an employment tribunal.

Matthew Hancock
Jo Swinson

29

Clause 136, page 119, line 14, leave out “the county court or sheriff” and insert “an employment tribunal”

Member’s explanatory statement

This amendment is consequential on amendment 28.

Matthew Hancock
Jo Swinson

30

Clause 139, page 127, line 11, at end insert—

Small Business, Enterprise and Employment Bill, continued

“() Subsection (3) is to be disregarded for the purposes of determining any question whether a contract is a contract of employment or other worker’s contract.”

Member’s explanatory statement

This amendment means that when mutuality of obligation is considered for the purpose of determining the employment status of an individual working under a zero hours contract, the prohibition on exclusivity terms in zero hour contracts introduced by clause 139 should be ignored.

Matthew Hancock
Jo Swinson

31

Clause 148, page 132, line 21, leave out “and 5 (provision of credit information)” and insert “to (*Sections 4 to 5: interpretation*) (regulations about financial information on small and medium sized businesses)”

Member’s explanatory statement

This amendment commences the power to make regulations under the new clause inserted by amendment NC1 on Royal Assent (so it is treated in the same way as the power to make regulations under clause 4).

Matthew Hancock
Jo Swinson

32

Clause 148, page 132, line 40, leave out sub-paragraph (iii)

Member’s explanatory statement

This amendment removes the provision that would bring clause 30 into force two months after Royal Assent. Instead, it will be brought into force by commencement regulations (so that it can come into force at the same time as regulations made under amendments 22 and 23).

NEW CLAUSES

Matthew Hancock
Jo Swinson

NC1

To move the following Clause—

“Small and medium sized businesses: information to finance platforms

- (1) Where—
 - (a) a small or medium sized business has applied to a designated bank for a loan or other credit facility, and
 - (b) the application has been unsuccessful,
 the Treasury may by regulations impose a duty on the bank to provide specified information about the business to designated finance platforms.
- (2) The regulations—
 - (a) must provide that the duty only applies where the business to which the information relates agrees to its information being provided to the designated finance platforms;

Small Business, Enterprise and Employment Bill, *continued*

- (b) may require a bank—
 - (i) to seek the agreement of a business for the purposes of paragraph (a);
 - (ii) to ask the business for any of the specified information that the bank does not already have;
 - (iii) to provide the information to the finance platforms within a specified time period.
- (3) The regulations may make further provision about the duty in subsection (1), which may in particular include provision about—
 - (a) the types of loans and credit facilities that trigger the duty,
 - (b) the circumstances in which an application is to be considered unsuccessful, and
 - (c) the finance platforms to which information must be provided.
- (4) Where a finance platform has received information by virtue of subsection (1), the Treasury may by regulations—
 - (a) impose a duty on the finance platform to provide specified information to all finance providers requesting access to the information, and
 - (b) impose a duty on the finance platform to provide specified information about a particular business to a finance provider where—
 - (i) the finance provider has requested information about the business, and
 - (ii) the business has agreed to its information being provided to the finance provider.
- (5) Information specified for the purposes of subsection (4)(a) must be in such a form that no individual business, and no person associated with the business, can be identified.
- (6) The regulations may provide that the duty in subsection (4)(a) or (b) does not apply unless—
 - (a) the finance provider or business agrees to the finance platform's terms and conditions;
 - (b) the finance provider complies with specified requirements about the use and disclosure of the information.
- (7) The regulations may make further provision about the duties in subsection (4)(a) and (b), including in particular provision—
 - (a) requiring the finance platform to provide the information within a specified time period;
 - (b) setting out how a request by a finance provider must be made to a finance platform;
 - (c) setting out how a business may indicate agreement for the purposes of subsection (4)(b)(ii);
 - (d) about the time period for which information must be kept by the finance platform;
 - (e) about the removal of information from the finance platform.
- (8) The regulations may make provision—
 - (a) prohibiting finance platforms from charging fees to small and medium sized businesses, or

Small Business, Enterprise and Employment Bill, *continued*

- (b) permitting finance platforms to charge fees to small and medium sized businesses.
- (9) The regulations must make provision for the designation of banks and finance platforms by the Treasury, and the regulations may in particular provide for—
 - (a) conditions that must be met for a bank or finance platform to be designated;
 - (b) considerations that the Treasury may take into account before deciding whether to designate a bank or finance platform;
 - (c) the Treasury to consider the advice of another person before making a designation;
 - (d) the procedure for designating a bank or finance platform;
 - (e) how the list of designated banks and finance platforms must be published;
 - (f) the revocation of a designation.
- (10) In this section “specified” means specified or described in the regulations.”

Member’s explanatory statement

This new clause enables the Treasury to make regulations requiring certain banks to pass information about small and medium sized businesses which make unsuccessful applications for credit to online platforms, and requiring those platforms to share the information with finance providers. The provision of information would be subject to the agreement of the business.

Matthew Hancock
Jo Swinson

NC2

To move the following Clause—

“Sections 4 to 5: interpretation

- (1) For the purposes of sections 4 to 5, a business is a small or medium sized business if—
 - (a) it has an annual turnover of less than £25 million,
 - (b) it carries out commercial activities,
 - (c) it does not carry out regulated activities as its principal activity, and
 - (d) it is not owned or controlled by a public authority.

Regulations under those sections may make further provision for the purposes of determining which businesses they apply to (including provision about the calculation of turnover and the determination of control).
- (2) In sections 4 to 5 and this section—
 - “designated bank” means a bank that has been designated by the Treasury by virtue of section 4(7) or (*Small and medium sized businesses: information to finance platforms*)(9);
 - “designated credit reference agency” means a credit reference agency that has been designated by the Treasury by virtue of section 4(7);

Small Business, Enterprise and Employment Bill, *continued*

“designated finance platform” means a finance platform that has been designated by the Treasury by virtue of section (*Small and medium sized businesses: information to finance platforms*)(9);

“finance platform” means a person that provides a service for the exchange of information between finance providers and businesses that require finance;

“finance provider” means a body corporate that lends money or provides credit, or arranges or facilitates the provision of debt or equity finance, in the course of a business (and regulations under sections 4 and (*Small and medium sized businesses: information to finance platforms*) may make further provision for the purpose of determining which finance providers they apply to);

“public authority” has the same meaning as in the Freedom of Information Act 2000 (see section 3 of that Act);

“regulated activities” has the same meaning as in the Financial Services and Markets Act 2000 (see section 22 of that Act);

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).

- (3) The Treasury may by regulations change the figure for the time being specified in subsection (1)(a).
- (4) Before making regulations under subsection (3) the Treasury must consult such persons as they consider appropriate.
- (5) Regulations under subsection (3) are subject to negative resolution procedure.”

Member’s explanatory statement

This new clause defines terms used in clauses 4, 5, the new clause in amendment NC1 and this new clause.

Matthew Hancock
Jo Swinson

NC3

To move the following Clause—

“Small and micro business regulations: further provision

- (1) The small and micro business regulations may make provision—
 - (a) about the calculation of the headcount of staff, turnover and balance sheet total of an undertaking, including provision about the period (“assessment period”) in respect of which they are to be calculated;
 - (b) for the headcount of staff, turnover and balance sheet total, or a proportion of such, of any undertaking which satisfies such conditions as may be prescribed in relation to another undertaking (the “principal undertaking”) to be treated as part of the principal undertaking’s headcount of staff, turnover and balance sheet total.
- (2) Conditions which may be prescribed under subsection (1)(b) include, in particular, conditions relating to—

Small Business, Enterprise and Employment Bill, *continued*

- (a) the extent of ownership (whether direct or indirect) of one undertaking by one or more other undertakings;
 - (b) the degree of control exercised (whether directly or indirectly) by one or more undertakings over another.
- (3) The small and micro business regulations may make provision about—
 - (a) the assessment period or periods in respect of which an undertaking must meet the small business size conditions or the micro business size conditions in order to be a small business or (as the case may be) micro business;
 - (b) the circumstances in which an undertaking which has been established for less than a complete assessment period is to be regarded as meeting the small business size conditions or the micro business size conditions.
- (4) Provision made by virtue of subsection (3) may, in particular, provide that—
 - (a) an undertaking is a small business or a micro business if it meets the relevant size conditions in respect of each of its two most recent assessment periods;
 - (b) where there has been only one complete assessment period since an undertaking was established, the undertaking is a small business or a micro business if it meets the relevant size conditions in respect of that period;
 - (c) an undertaking which is a small business or a micro business does not cease to be such unless it fails to meet the relevant size conditions in respect of two consecutive assessment periods.
- (5) The small and micro business regulations may make provision for one undertaking (“undertaking A”) which satisfies such conditions as may be prescribed in relation to another undertaking (“undertaking B”), to be treated as being undertaking B (whether or not undertaking B is still in existence) for such purposes as may be prescribed.
- (6) Conditions which may be prescribed under subsection (5) include, in particular, conditions relating to—
 - (a) the transfer of a business from undertaking B to undertaking A;
 - (b) the carrying on by undertaking A of a business on undertaking B ceasing to carry on the activities, or most of the activities, of which the business consists in consequence of arrangements involving both undertakings;
 - (c) the existence of some other connection between undertaking A and undertaking B.
- (7) The purposes which may be prescribed under subsection (5) include, in particular—
 - (a) determining the date on which undertaking A was established (and so the number of assessment periods there have been since it was established);
 - (b) determining which periods are assessment periods in respect of undertaking A;
 - (c) calculating the headcount of staff, turnover and balance sheet total of undertaking A.

Small Business, Enterprise and Employment Bill, *continued*

- (8) The small and micro business regulations may provide that an undertaking of such description as may be prescribed is not a small business or a micro business even if it falls within the relevant definition.
- (9) In this section—
“micro business size conditions”, “small business size conditions” and “undertaking” have the same meanings as in section 30;
“prescribed” means prescribed in the small and micro business regulations.”

Member’s explanatory statement

This new clause sets out the permitted content of regulations under amendments 22 and 23 supplementing the definitions of “small” and “micro” business. This includes provision about calculating staff headcount, turnover and balance sheet totals, aggregating data of connected undertakings, assessment periods, anti-avoidance and exceptions.

Toby Perkins
Mr Iain Wright
Ian Murray

NC4

To move the following Clause—

“Government impact on small business performance: duty to report

- (1) The Secretary of State must provide for the making of an annual report to each House of Parliament setting out steps the Government has taken to support British small and medium-sized businesses over the previous 12 months.
- (2) The statement mentioned in subsection (1) must be made no more than 10 sitting days before, or after, the end of each financial year following the coming into force of this Act.”.

Member’s explanatory statement

Clause 14 gives the Secretary of State a duty to report on progress towards achieving the objective in clause 13. This new clause builds on this principle by creating a new duty on the Secretary of State to report to Parliament on what the Government has done to support British small and medium-sized businesses.

Toby Perkins
Mr Iain Wright
Ian Murray
Debbie Abrahams

NC5

To move the following Clause—

“Companies: dealing with suppliers

- (1) The Secretary of State may make regulations—
- (a) imposing a limit on the number of days after receipt of a supplier’s invoice a company can seek to challenge that invoice;
- (b) prohibiting the practice of a company seeking to change the payment terms of a supplier company unilaterally; and

Small Business, Enterprise and Employment Bill, *continued*

- (c) prohibiting a company from requiring a supplier company to make a payment in order to join that company's list of suppliers.
- (2) The regulations may make provision for a prescribed breach by a prescribed description of person of a requirement or prohibition imposed by the regulations to be an offence punishable on summary conviction—
 - (a) in England and Wales by a fine;
 - (b) in Scotland or Northern Ireland, by a fine not exceeding level 5 on the standard scale.
- (3) The regulations may specify the size of company and supplier company to which they will apply.
- (4) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (5) Regulations under this section are subject to the affirmative resolution procedure.
- (6) For the purposes of this section—
 - “company” has the meaning given by section 1(1) of the Companies Act 2006;
 - “prescribed” means prescribed by the regulations.”.

Member's explanatory statement

This new clause gives the Secretary of State new regulation-making powers to impose a limit on the number of days after the receipt of a supplier's invoice a company may challenge that invoice, to prohibit companies from seeking to change the payment terms of a supplier company unilaterally or requiring supplier companies to pay to join that company's list of suppliers.

ORDER OF THE HOUSE [16 JULY 2014]

That the following provision shall apply to the Small Business, Enterprise and Employment Bill—

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Public Bill Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 6 November 2014.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Consideration and Third Reading

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and Third Reading.

Other Proceedings

7. Any other proceedings on the Bill (including any proceedings on consideration of Lords Amendments or on any further messages from the Lords) may be programmed.

Small Business, Enterprise and Employment Bill, *continued*

ORDER OF THE COMMITTEE [14 OCTOBER 2014]

That—

- (1) the Committee shall (in addition to its first meeting at 8.55 am on Tuesday 14 October) meet—
 - (a) at 2.00 pm on Tuesday 14 October;
 - (b) at 11.30 am and 2.00 pm on Thursday 16 October;
 - (c) at 8.55 am and 2.00 pm on Tuesday 21 October;
 - (d) at 11.30 am and 2.00 pm on Thursday 23 October;
 - (e) at 8.55 am and 2.00 pm on Tuesday 28 October;
 - (f) at 11.30 am and 2.00 pm on Thursday 30 October;
 - (g) at 8.55 am and 2.00 pm on Tuesday 4 November;
 - (h) at 11.30 am and 2.00 pm on Thursday 6 November;
- (2) the Committee shall hear oral evidence in accordance with the following Table:

TABLE

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Tuesday 14 October	Until no later than 10.15 am	Confederation of British Industry; Federation of Small Businesses; British Chambers of Commerce; Institute of Directors
Tuesday 14 October	Until no later than 10.45 am	Thompsons Solicitors
Tuesday 14 October	Until no later than 11.25 am	Forum of Private Business; Institute of Credit Management
Tuesday 14 October	Until no later than 2.30 pm	The Law Society
Tuesday 14 October	Until no later than 3.15 pm	GMB; Unison; Unite
Tuesday 14 October	Until no later than 3.45 pm	Toynbee Hall; Met Police International Corruption Division
Tuesday 14 October	Until no later than 4.15 pm	Trades Union Congress; Chartered Institute of Personnel and Development
Thursday 16 October	Until no later than 12.30 pm	British Beer and Pub Association; Association of Licensed Multiple Retailers; Campaign for Real Ale; Fair Pint

Small Business, Enterprise and Employment Bill, *continued*

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Thursday 16 October	Until no later than 1.00 pm	Ofsted
Thursday 16 October	Until no later than 2.30 pm	R3: Association of Business Recovery Professionals
Thursday 16 October	Until no later than 3.15 pm	Family and Childcare Trust; National Day Nurseries Association; National Association of Head Teachers
Thursday 16 October	Until no later than 4.00 pm	Department for Business, Innovation and Skills; Her Majesty's Treasury

- (3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 35; Schedule 1; Clauses 36 to 66; Schedule 2; Clauses 67 to 70; Schedule 3; Clauses 71 to 73; Schedule 4; Clauses 74 to 82; Schedule 5; Clauses 83 to 85; Schedule 6; Clauses 86 to 99; Schedule 7; Clause 100; Schedule 8; Clauses 101 to 121; Schedule 9; Clauses 122 to 132; Schedule 10; Clauses 133 to 149; new Clauses; new Schedules; remaining proceedings on the Bill;
- (4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 6 November.

NOTICES WITHDRAWN

The following Notices were withdrawn on 17 October 2014:
Amendment 38.
