

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These Explanatory Notes relate to the Lords amendments to the Small Business, Enterprise and Employment Bill, as brought from the House of Lords on 17 March 2015. These notes have been prepared by the Department for Business, Innovation and Skills in conjunction with the HM Treasury (HMT), HM Revenue and Customs (HMRC), United Kingdom Export Finance (UKEF), the Cabinet Office (CO), the Department for Education (DfE), the Department of Health (DH), the Department for Communities and Local Government (DCLG), the Department of Energy and Climate Change (DECC), the Government Equalities Office (GEO) and the Insolvency Service (IS) in order to assist the reader of the Bill and the Lords amendments and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These Notes, like the Lords amendments themselves, refer to HL Bill 57, the Bill as first printed for the Lords.
3. These Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not and are not meant to be a comprehensive description of the effect of the Lords amendments.
4. All of the Lords amendments were tabled in the name of the Minister except for Lords Amendment 11 on export information and Lords Amendment 86 on gender pay, both of which were nevertheless supported by the Government.
5. In the following Commentary, an asterisk appears in the heading of the paragraphs dealing with those two non-Government amendments.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendments 1 to 3

6. Lords Amendments 1 to 3 would clarify the reporting requirements which may be imposed on a company under Clause 3. Lords Amendment 1 would make clear that these may include a requirement to report on the company's performance by reference to its payment practices and policies. Lords Amendments 2 and 3 would make clear that these may include a requirement to report on all financial liabilities arising out of late payment of invoices, whether paid or owed, and whether arising from interest or other penalties.

Lords Amendment 4

7. Lords Amendment 4 is a clarificatory amendment to Clause 4 which would ensure that banks do not deliberately circumvent their obligations to share credit data with designated Credit Reference Agencies (CRAs). The Government's intention is that data will be required to be shared by designated banks with designated CRAs only where an SME has agreed to terms and conditions that allow data on that product to be shared with a CRA. This is a recognised and established industry procedure. The amendment would alter the wording of this provision to ensure that regulations may require banks to include such agreement in their standard terms and conditions.

Lords Amendment 5

8. Lords Amendment 5 would ensure that the regulations under Clause 4 may require designated Credit Reference Agencies (CRAs) to provide all of the data obtained by them under the credit data measure to the Bank of England and not only data provided by designated banks. The current power allows regulations to require designated CRAs to provide the information received by designated banks to the Bank of England. The regulations will also require that, in order to access the information received by designated banks, other finance providers need to share equivalent credit data on their own customers. This amendment would allow regulations to impose an obligation on designated CRAs to share this data with the Bank of England as well.

Lords Amendments 6, 7 and 10

9. Lords Amendments 6, 7 and 10 reflect the Government's response to a recommendation in the 11th Report of the House of Lords Delegated Powers and Regulatory Reform Committee dated 12 December 2014 and would provide that all regulations under Clauses 4 to 7 would be subject to the affirmative resolution procedure.

Lords Amendments 8 and 9

10. Lords Amendments 8 and 9 would ensure that providers of "invoice discounting" and "factoring" services are covered by the definition of "finance provider", and can therefore benefit from improved access to credit data and to platforms for rejected small business finance applications.

*** Lords Amendment 11**

11. Lords Amendment 11 would amend Clause 10(6) to strengthen the level of parliamentary scrutiny of the delegated power permitting disclosure of export information by ensuring the regulations will be subject to the affirmative resolution procedure. This meets the recommendation made in the 11th Report of the House of Lords Delegated Powers and Regulatory Reform Committee dated 12 December 2014.

Lords Amendments 12 to 14 and 24

12. Lords Amendments 12 to 14 and 24 would remove the requirement for electronic presentment to be made by or to a bank. This ensures that equal opportunities for electronic presentment are provided for non-cheque paper instruments which are not drawn on a bank as are provided for cheques and other instruments which are drawn on a bank: the amendments would allow the possibility of non-bank entities submitting any paper instruments directly into the clearing system, as was possible for cheques under the Bill as introduced.

Lords Amendments 15, 16 and 18 to 23

13. Lords Amendments 15, 16 and 18 to 23 would be consequential amendments dealing with the procedure for making regulations under Lords Amendments 14 and 17 and would make minor and technical clarifications of the drafting of Clause 13.

Lords Amendment 17

14. Lords Amendment 17 would allow the Treasury to make regulations requiring a bank which pays a cheque or similar instrument to provide a copy of the instrument to the paying customer on request, and providing that this copy stands as evidence that the sum payable has been received.

Lords Amendment 25

15. Lords Amendment 25 would amend Clause 18 to provide that the regulatory functions of the Commission for Equality and Human Rights cannot be specified as functions in relation to which the duty to appoint a Small Business Appeals Champion applies (see Clause 17). The Equality and Human Rights Commission is a particular and special case where independence from Government is essential to maintain its status as a Human Rights organisation.

Lords Amendments 26 and 27

16. Lords Amendments 26 and 27 would amend Clause 19 so that it requires the guidance issued by the Secretary of State on functions of the Small Business Appeals Champions to be laid before Parliament, in addition to the original requirement in Clause 19 to publish this guidance.

Lords Amendment 28

17. Lords Amendment 28 would remove the minimum membership threshold of 21 individual members at Clause 27(5) for unincorporated bodies which do not distribute any surplus to their members. The effect of the amendment would be to include such bodies with fewer than 21 individual members in the definition of “voluntary or community bodies” which is used in the clauses relating to the business

impact target (Clauses 21 to 27), statutory reviews (Clauses 28 to 32) and definitions of small and micro businesses (Clauses 33 and 34).

Lords Amendment 29

18. Lords Amendment 29 would amend Clause 35 to change the legislative procedure for regulations made under new section 43ZA of the Landlord and Tenant Act 1954 to the affirmative procedure or the equivalent procedure in Wales. Such regulations can prescribe cases in which businesses are, or are not, to be treated as home businesses for the purposes of home business tenancies. This amendment reflects a recommendation made in the 11th Report of the House of Lords Delegated Powers and Regulatory Reform Committee dated 12 December 2014.

Lords Amendment 30

19. Lords Amendment 30 would insert a new clause after Clause 35. This would modify new section 43ZA of the Landlord and Tenant Act 1954 as it applies to tenancies held on trust. The amendment would modify the conditions which need to be satisfied in order for such a tenancy to be a home business tenancy. It would also ensure that the home business provisions are consistent with other Acts related to protected, secure and assured tenancies.

Lords Amendment 31 and 33

20. Lords Amendments 31 and 33 would be minor and technical amendments to reflect the introduction of the Public Contracts Regulations 2015, which came into force on 26 February 2015. These amendments would amend existing references in Clauses 38 and 39 to secondary legislation governing procurement, to either replace them with references to the 2015 Regulations or to add an additional reference to those Regulations.

Lords Amendment 32

21. Lords Amendment 32 would change the resolution procedure for regulations made under Clause 38 from negative to affirmative. This reflects a recommendation made in the 11th Report of the House of Lords Delegated Powers and Regulatory Reform Committee dated 12 December 2014.

Lords Amendment 34

22. Lords Amendment 34 would amend Clause 41(3) to make it clear that the Pubs Code as a whole, rather than each individual provision, must deliver the principle of fair and lawful dealing and the “no worse off” principle.

Lords Amendments 35, 36, 38 and 42

23. Lords Amendments 35, 36, 38 and 42 would make tidying up amendments to reflect the fact that the Bill no longer provides for the Pubs Code to cover two categories of pub-owning businesses. In particular, Lords Amendment 38 would remove a specific reference to “large” pub-owning businesses.

Lords Amendment 37

24. Lords Amendment 37 would clarify the “no worse off” principle (with which the Pubs Code must be consistent) to make it clear that tied pub tenants should not be

worse off than they would be if they were not subject any product or service tie.

Lords Amendment 39

25. Lords Amendment 39 would replace Clause 42 and would ensure that the market rent only (MRO) option is workable and avoids any unintended consequences, while preserving the essential principles and purposes of Clause 42 as agreed in the Commons.

26. It would provide for an MRO option to be offered to existing tied tenants of pub-owning businesses but not to prospective tenants.

27. Pub-owning businesses would be required, in circumstances to be specified in the Pubs Code, to offer their tied tenants the right to enter into a new tenancy or licence which is “MRO-compliant”, to pay no more than a “market rent” and to be free from all product or service ties, other than one for the insurance of the tied pub.

28. The circumstances in which an MRO option must be offered would include the renewal of the tenancy or licence under which the pub is occupied or of any contractual agreement in respect of the pub containing a product or service tie; a rent assessment or assessment of money paid by a tenant in lieu of rent; a significant and unexpected price increase in a tied product or service; or a “trigger” event. A “trigger” event would be further defined in the Pubs Code but must be one which is beyond the tenant’s control, not reasonably foreseeable and has a significant impact on the level of trade that could reasonably be expected at the tied pub.

29. Subsection (2) of the new clause would have the effect that a tenancy or licence is “MRO-compliant” if the rent is either one agreed between the pub-owning business and the tied tenant in accordance with the MRO procedure or, failing such agreement, a market rent, meaning the rent which it would be reasonable to pay for occupation of the particular premises based on the five assumptions set out in subsection (10)(a) and (b). The definition of “market rent” is in line with the industry guidance prepared by the Royal Institution of Chartered Surveyors (RICS).

30. Subsection (4) of the new clause would provide that for a tenancy or licence to be “MRO compliant” it must comply with the description of terms and conditions to be set out in the Pubs Code. This would mean that it must contain any required terms, must not contain any unreasonable terms or conditions and it must not be a tenancy at will.

Lords Amendment 40

31. Lords Amendment 40 would introduce a new clause outlining the procedure to be followed in connection with the offer of an MRO option. This would be detailed in the Pubs Code.

32. The new clause would provide that the Pubs Code may confer functions on the Adjudicator in relation to this procedure. In particular it would provide for the tied tenant to notify the pub-owning business when he or she considers that circumstances have arisen that entitle him or her to an MRO option; specify a negotiation period

during which the two parties would be expected to try to agree a rent for an MRO-compliant tenancy; require the appointment of an independent assessor at the end of the negotiation period to determine the market rent within a specified reasonable period if the parties fail to agree; require that appointment to be made jointly by the tied tenant and the pub-owning business or, if they cannot agree, by the Adjudicator; and may require the Adjudicator to set criteria for someone to qualify as an independent assessor for these purposes.

33. The Pubs Code would also be able to specify that the independent assessor has to determine the market rent in accordance with specified documents – for example, the Code could specify guidance produced by the Royal Institution of Chartered Surveyors.

34. The Code would also be able to provide for a tenancy, licence or other contractual agreements in force when an MRO option procedure is initiated to continue until the MRO procedure comes to an end (subsection (3)).

Lords Amendment 41

35. Lords Amendment 41 would introduce a new clause to deal with disputes relating to the MRO option. It would enable the Secretary of State by regulations to empower the Adjudicator to resolve such disputes. These regulations could give the Adjudicator authority to determine whether a proposed tenancy or licence is MRO-compliant; whether an independent assessor's determination of the market rent has been made in accordance with the Pubs Code, and whether any other required MRO procedure has been followed. They could also specify circumstances in which the Adjudicator has the authority to decide the market rent of a pub tenancy or licence.

36. The new clause would provide that the arbitration provisions in Clauses 45 to 49 would not apply to provision made in the Pubs Code under the powers conferred by the new clauses on MRO (Lords Amendments 39 and 40), although regulations may make similar provision to that found in Clauses 45 to 49.

Lords Amendments 43 and 44

37. Lords Amendments 43 and 44 would amend Clause 44 to ensure that regulations under the new clause in Lords Amendment 41 for the enforcement of the MRO provisions of the Pubs Code are treated in the same way as the other provisions for the enforcement of the Code (Clauses 45 to 48) in terms of how inconsistencies between the Pubs Code and agreements between a pub-owning business and a tied pub tenant are to be resolved.

Lords Amendment 45

38. Lords Amendment 45 would require the Adjudicator's annual report to include a summary of cases in which the Adjudicator has exercised functions in relation to the offer of an MRO option.

Lords Amendments 46 and 58

39. Lords Amendment 46 would amend Condition D of the definition of "tied pub" in Clause 65 to provide that a "stocking requirement" is not an alcohol tie

(which would mean that the presence of a stocking requirement in a tenancy would not of itself make the pub a tied pub). This is particularly relevant for when a tied pub tenant chooses the MRO option. An MRO-compliant tenancy or licence cannot include any product or service tie (other than one relating to insurance of the pub) but, as a result of this Lords Amendment, it would be clear that a pub-owning business which is a brewery could impose a stocking requirement in an MRO-compliant tenancy. A stocking requirement can apply only to beer and cider produced by the brewer, and the tenant would need to be free to purchase the brewer's beer or cider from any supplier. A stocking requirement can allow the brewer to impose restrictions on sales of competitors' beer and cider in line with prevailing competition law, so long as the brewer does not prevent the tenant from selling such products.

40. Lords Amendment 58 would make a consequential change to the definition of a product tie in Clause 69.

Lords Amendments 47 to 53

41. Lords Amendments 47 to 53 would make amendments to Clause 66, which defines a "pub-owning business" for the purposes of the Pubs measures. These amendments are consequential on the changes made to Clause 66 before the Bill transferred to the Lords which meant that the Bill no longer differentiates between "pub-owning businesses" and "large pub-owning businesses" but provides that the Pubs Code will apply only to a pub-owning business with 500 or more tied pubs.

42. Lords Amendment 47 would also provide extended protection for tied tenants of pub-owning businesses in cases where, before the end of the tenancy or licence, the tied pub is sold to a person who does not qualify as a pub-owning business (transfer of title), or where the landlord otherwise ceases to be a pub-owning business (in essence where the landlord falls below the threshold of having 500 or more tied pubs). The MRO provisions (in the new clauses in Lords Amendments 39 to 41) and the Adjudicator's investigation powers in Clauses 50 to 56 would not be extended. Other protections of the Code and the Adjudicator's arbitration powers would apply.

43. These extended protections would end when the tenancy or licence comes to an end or at the conclusion of the first rent assessment after the landlord has ceased to be a pub-owning business, whichever is the earlier. The Secretary of State would be able to make regulations by affirmative resolution specifying for these purposes when a tenancy or licence ends and when a rent assessment is deemed to have concluded.

Lords Amendment 54

44. Lords Amendment 54 would amend Clause 68 to reflect the fact that as the Pubs Code will no longer cover two categories of pub-owning businesses, specific references to large pub-owning businesses are redundant. The amendment would also amend Clause 68 to reflect the changes which would be made to Clause 66 by Lords Amendments 47 to 53.

Lords Amendment 55

45. Lords Amendment 55 would make an amendment to the list of defined terms in Clause 69 which is consequential on the new clauses on MRO (Lords Amendments

39 and 40).

Lords Amendments 56, 57, 59 and 60

46. Lords Amendments 56, 57, 59 and 60 would make minor drafting amendments to the definition of a product or service tie in Clause 69.

Lords Amendment 61

47. Lords Amendment 61 would provide that in relation to a licence to occupy, references in the Pubs Code provisions to “rent” are to be understood as references to the fee payable in respect of the licence.

Lords Amendment 62

48. Lords Amendment 62 would remove an unnecessary subsection setting out the meaning of references to complying with, or failing to comply with, the Pubs Code.

Lords Amendment 63

49. Lords Amendment 63 would remove subsection (5) of Clause 72 which relates to independent school standards. The subsection is no longer necessary due to the repeal in England of section 157(2)(b) of the Education Act 2002 by Schedule 1(16) to the Education and Skills Act 2008.

Lords Amendment 64

50. Lords Amendment 64 would change the parliamentary scrutiny for regulations made under section 156B of the Companies Act 2006, inserted by Clause 84 of the Bill, to the affirmative resolution procedure. This amendment responds to a recommendation made in the 13th Report of the House of Lords Delegated Powers and Regulatory Reform Committee dated 9 January 2015.

Lords Amendments 65 to 68, 161 and 162

51. Lords Amendments 65 to 68, 161 and 162 would ensure that the level of certain fines provided for in the Bill remains consistent with existing and similar provisions in the Companies Act 2006 and is future proofed so the amounts will rise in line with any increases to levels 1 to 4 on the standard scale.

Lords Amendment 69

52. Lords Amendment 69 would amend Clause 103 to require a draft of any order that modifies the new Schedule 1 to the Companies Directors Disqualification Act 1986 (matters determining unfitness of directors) inserted by that clause to be subject to the affirmative resolution procedure. This amendment would implement a recommendation made in the 13th Report of the House of Lords Delegated Powers and Regulatory Reform Committee dated 9 January 2015.

Lords Amendments 70 and 131

53. Lords Amendments 70 and 131 are minor and technical amendments that would clarify that a person made bankrupt by a court in Northern Ireland is also prohibited from acting as a director of a company in Great Britain.

Lords Amendments 71 to 74

54. Lords Amendments 71 to 74 relate to the numbers or proportion of creditors or contributories who must request that a physical meeting is held before such a meeting is required to make a decision in corporate insolvency proceedings.

55. The amendments would define these levels in terms of a minimum proportion or number required before the meeting must be held, and state these as 10% by value, 10% of the total number, or 10 individual creditors or contributories. Where the minimum proportion of creditors is being considered, this will be a proportion of all creditors, even if the decision in question is being made only by a certain class of creditor.

56. The amendments would put these levels on to the face of the Insolvency Act 1986 where previously they were to be prescribed in Insolvency Rules.

Lords Amendments 75 to 77

57. Lords Amendments 75 to 77 concern the proportion of creditors or contributories who must object to a decision which is being sought using the procedure of deemed consent in corporate insolvency proceedings for that decision not to be treated as having been made. This proportion is being set at 10% by value of the creditors or contributories entitled to vote in the particular decision.

58. The amendments would put this level on the face of the Insolvency Act 1986 where previously it was to be prescribed in Insolvency Rules.

Lords Amendment 78

59. Lords Amendment 78 would introduce a power for the Secretary of State to change the minimum proportions or number of creditors or contributories who can requisition a physical meeting in corporate insolvency proceedings, or object to a decision which is sought through the deemed consent procedure. Exercise of the power would require the affirmative resolution procedure.

Lords Amendments 79 to 81

60. Lords Amendments 79 to 81 relate to the numbers or proportion of creditors who must request that a physical meeting is held before such a meeting is required to make a decision in individual insolvency proceedings.

61. The amendments would define these levels in terms of a minimum proportion or number required before the meeting must be held, and state these as 10% by value, 10% of the total number, or 10 individual creditors. Where the minimum proportion of creditors is being considered, this would be a proportion of all creditors, even if the decision in question is being made only by a certain class of creditor.

62. The amendments would put these levels on to the face of the Insolvency Act 1986 where previously they were to be prescribed in Insolvency Rules.

Lords Amendments 82 and 83

63. Lords Amendments 82 and 83 concern the proportion of creditors who must

object to a decision which is being sought using the procedure of deemed consent in individual insolvency proceedings for that decision not to be treated as having been made. This proportion is being set at 10% by value of the creditors entitled to vote in the particular decision.

64. The amendments would put this level on the face of the Insolvency Act 1986 where previously it was to be prescribed in the Insolvency Rules.

Lords Amendment 84

65. Lords Amendment 84 would introduce a power for the Secretary of State to change the minimum number or proportion of creditors who can requisition a physical meeting or object to a decision which is sought through the deemed consent procedure. Exercise of the power would require the affirmative resolution procedure.

Lords Amendment 85

66. Lords Amendment 85 to Clause 139 would insert new section 415A(IB) into the Insolvency Act 1986 to clarify that the fee the Secretary of State is able to charge a recognised professional body (RPB) for the maintenance of recognition can include, but is not limited to, the costs in connection with a direction issued to the RPB under sections 391D and 391E, a reprimand to an RPB under sections 391J and 391K and revocation of an RPB's recognition, where it has requested it under section 391N.

**** Lords Amendment 86***

67. Lords Amendments 86 would insert a new clause requiring the Government to make regulations under section 78 of the Equality Act 2010 (gender pay gap information). The requirement would be for regulations to be made no later than a year after Royal Assent to the Bill and the Government must consult before laying those regulations. The new clause, section 78 itself and regulations made under it would apply to Great Britain.

68. Section 78 of the Equality Act 2010, which is not yet commenced, enables a Minister of the Crown to make regulations requiring specified employers with at least 250 employees in Great Britain to publish information about the differences in pay between their male and female employees. The regulations may specify, among other things, the form and timing of the publication, which will be no more frequently than annually. The regulations may also specify penalties for non-compliance. Regulations under section 78 are subject to the affirmative procedure.

Lords Amendment 87

69. Lords Amendment 87 would insert a new clause which would amend the Employment Rights Act 1996 to allow the Secretary of State to make regulations to prohibit prescribed NHS employers from discriminating against a job applicant on the grounds that it appears to the NHS employer that the applicant has made a protected disclosure (within the meaning given by section 43A of the Employment Rights Act 1996).

Lords Amendment 88

70. Lords Amendment 88 would change the approach to the definition of “financial award” in Part 2A of the Employment Tribunals Act 1996 (as inserted by Clause 145) so that it applies to sums of money that the employment tribunal has ordered the employer to pay to the worker in a claim between those parties, including any sum in relation to costs or preparation time. This approach also removes the need to expressly set out any other financial penalties payable to the Secretary of State that should not be considered a financial award for the purposes of that Part.

Lords Amendments 89, 92, 93, 100 and 101

71. Lords Amendments 89, 92, 93, 100 and 101 are consequential amendments resulting from the changes that would be made by Lords Amendments 88, 94 and 97 to 99 in relation to costs.

Lords Amendments 90, 91, 95 and 96

72. Lords Amendments 90, 91, 95 and 96 are minor and technical amendments which would clarify that a “relevant appeal” includes an appeal against a decision not to make a financial award, including costs.

Lords Amendment 94

73. Lords Amendment 94 would deal with timing by making it clear that a financial award is not outstanding until any relevant decisions on costs have been made.

Lords Amendment 97

74. Lords Amendment 97 would expand the instalment provisions contained in what would be new section 37D of the Employment Tribunals Act 1996 so that a financial award which consists of different sums (such as orders for compensation and costs) due on different dates will be treated as instalments in the same way as a single sum payable in instalments.

Lords Amendments 98 and 99

75. Lords Amendments 98 and 99 would expand the current regulation-making power contained in what would be new section 37O of the Employment Tribunals Act 1996 to allow for modifications to be made to the provisions permitting an enforcement officer to treat costs separately from the main award in situations where the only reason that money is not treated as unpaid is because there are still unresolved costs matters.

Lords Amendment 102

76. Lords Amendment 102 is another minor and technical amendment which would make it clear when a financial award or settlement sum is regarded as having been paid.

Lords Amendments 103 to 105

77. Lords Amendments 103 to 105 are technical amendments to make clear that regulations under Part 2A of the Employment Tribunals Act 1996 (inserted by Clause

145) are subject to affirmative (and not negative) procedure.

Lords Amendments 106, 109, 110, 115 to 118, 120 to 122 and 128

78. Lords Amendments 106, 109, 110, 115 to 118, 120 to 122 and 128 would amend Clauses 149 to 151, and insert a new clause, to provide for the power to make exit payment regulations to lie with the Scottish Ministers in relation to payments made by various Scottish bodies and with the Treasury in all other cases.

79. Lords Amendment 115 would also provide that the first and main set of public sector exit payment recovery regulations made by the Treasury and Scottish Ministers are subject to affirmative resolution procedure. Further regulations, which should be of a minor and technical nature, would remain subject to the negative resolution procedure.

Lords Amendments 107, 108, 111, 112, 113 and 114

80. Lords Amendments 107, 108, 111, 112, 113 and 114 would amend Clauses 149 and 150 to provide that the power to make regulations about exit payments enables the recovery of exit payments made to public sector workers who return to a prescribed public sector role within 1 year. They would narrow the scope of the clauses to match the policy intent, and make some necessary consequential amendments.

Lords Amendment 119

81. Lords Amendment 119 would amend Clause 149(3) to provide that exit payment regulations may provide for the Secretary of State's power to waive a repayment required under the regulations to be exercised on behalf of the Secretary of State by a prescribed person.

Lords Amendment 123 and 133

82. Lords Amendments 123 and 133 would introduce a new clause enabling the Government to meet entitlements to concessionary coal which arise in connection with employment in deep-coal-mining in the UK.

Lords Amendment 124 to 127 and 135

83. Lords Amendments 124 to 127 and 135 would make amendments to Clauses 152, 153 and 157 consequential on Lords Amendment 30.

84. The amendments would provide that consequential, transitional and commencement provision relating to the new clause inserted by Lords Amendment 30 could be made separately for England and for Wales.

Lords Amendments 129 and 130

85. Lords Amendments 129 and 130 would clarify the effect of clause 154(5) and (6), which is to provide that where regulations can be made under the Bill without being subject to any parliamentary procedure they can be included in an instrument which is subject to a higher level of scrutiny (so the negative or affirmative resolution procedure). Similarly, where regulations can be made under the Bill subject to the

negative resolution procedure, they can be included in an instrument which is subject to the affirmative resolution procedure.

Lords Amendment 132

86. Lords Amendment 132 would provide that the new clauses containing the MRO provisions inserted by Lords Amendments 39 and 40 would come into force at the end of the period of two months after Royal Assent (that is, at the same time as Clause 41 which imposes the obligation to make the Pubs Code).

Lords Amendment 134

87. Lords Amendment 134 would amend Clause 157 to specify 31 July 2016 as the commencement date for the provisions in Clause 13 enabling electronic cheque clearing, with the exception of the power to make regulations which is to come into force on Royal Assent.

Lords Amendments 136 to 138

88. Lords Amendments 136 to 138 would enable the Pubs Code Adjudicator to second staff from any person, in addition to the current provision for the Adjudicator to second staff from the public sector. The amendments would provide that a secondment to the Adjudicator would not affect a person's continuity of employment with his or her employer and a person seconded from the civil service would continue to be employed in the civil service during the secondment. They would require the Adjudicator to obtain the Secretary of State's approval for the Adjudicator's secondment policies on number of staff, payment and terms and conditions.

Lords Amendment 139

89. Lords Amendment 139 would amend paragraph 19(3) of Schedule 1 by adding functions in relation to the offer of an MRO option to those relating to the provision of parallel rent assessments, as functions under which the Pubs Code Adjudicator may require persons to provide documents and other information.

Lords Amendments 140 and 141

90. Lords Amendments 140 and 141 would provide that members of the Adjudicator's staff are disqualified from being members of the House of Commons under the House of Commons Disqualification Act 1975.

Lords Amendments 142, 144 and 145

91. Lords Amendments 142, 144 and 145 would provide that the nature of a person's control over a company may be described by reference to any or all Parts of new Schedule 1A to the Companies Act 2006 (as inserted by Schedule 3 to the Bill), as opposed to just Part 1.

Lords Amendment 143

92. Lords Amendment 143 would amend section 790K(1) of new Part 21A of the Companies Act 2006 to add to the list of information on the PSC register the fact that restrictions on using or disclosing an individual's PSC information are in place. The effect of this would be to indicate that information is being suppressed under section 790ZF.

Lords Amendment 146

93. Lords Amendment 146 would remove section 790O(4)(d) of new Part 21A of the Companies Act 2006 to avoid unnecessary inhibition of a person's ability to access and use information in a company's PSC register. Subsection (4)(d) would have required a person seeking access to a company's PSC register to tell the company whether the requested information would have been disclosed to any other person and, if so, to whom and for what purpose.

Lords Amendment 147

94. Lords Amendment 147 would insert new section 790SA to make clear that a company's duty to keep its PSC register available for public inspection is subject to its duty to protect usual residential address information and information protected under section 790ZF from public disclosure. The effect would be to avoid any conflict between the two obligations.

Lords Amendments 148, 149, 159 and 160

95. Lords Amendments 148, 149, 159 and 160 would reduce the level of the penalty where a company does not send required information to Companies House about its persons with significant control (PSC) and/or its members. These obligations only apply where a company chooses not to keep a PSC register and/or register of members and instead keeps the information only on the central register. The amendments would make these penalties consistent with those that apply where a company keeps a PSC register and/or register of members but fails to keep the register up to date.

Lords Amendment 150

96. Lords Amendment 150 would enable provisions made in regulations under section 790ZF, about the duration and revocation process for applications under that section, to be made where an application has not yet been granted. This is because restrictions on the use and disclosure of the information will apply before an application has been granted.

Lords Amendment 151

97. Lords Amendment 151 is consequential on Lords Amendment 147. It would enable regulations under section 790ZF to make provision in relation to the company's duty to make PSC information available for public inspection, where information is subject to restrictions on use and disclosure.

Lords Amendments 152 to 155

98. Lords Amendments 152 to 155 would amend paragraph 24 of Schedule 1A to the Companies Act 2006 (as inserted by Schedule 3 to the Bill) to provide that guidance on the meaning of "significant influence or control" would be subject to the draft negative resolution procedure. This implements a recommendation made in the 13th Report of the House of Lords Delegated Powers and Regulatory Reform Committee dated 9 January 2015 and increases Parliamentary scrutiny of the guidance from the original requirement to lay the guidance before Parliament.

Lords Amendments 156 and 157

99. Lords Amendments 156 and 157 would insert a power to make regulations under the affirmative resolution procedure. The power would enable the Secretary of State to prescribe the characteristics of foreign limited partners which are to be treated, for the purpose of new Part 21A, in the same manner as limited partners in limited partnerships registered under the Limited Partnership Act 1907. The amendments would ensure that investors using such foreign entities to invest in UK companies would only be entered in a company's PSC register where they exercise significant control over that company.

Lords Amendment 158

100. Lords Amendment 158 would provide that Part 2 of new Schedule 1A to the Companies Act 2006 (as inserted by Schedule 3 to the Bill) may be amended in light of changes to Part 1 of that Schedule. This would ensure that Part 2 continues to correspond to Part 1.

Lords Amendment 163

101. Lords Amendment 163 would clarify the language of the drafting in the provisions for appointment of a creditors' committee in a company voluntary arrangement.

Lords Amendment 164

102. Lords Amendment 164 would remove a reference to section 98 of the Insolvency Act 1986 (meeting of creditors), being omitted by Schedule 9 to the Bill.

Lords Amendments 165 to 167

103. Lords Amendments 165 to 167 would make changes to the amendments made by Schedule 9 to the Bill to paragraph 98 of Schedule B1 to the Insolvency Act 1986 (vacation of office of administrators). The amendments to paragraph 98 are consequential on Clause 119 (abolition of requirements to hold meetings in company insolvencies).

104. Paragraph 98 is also being amended by the Deregulation Bill (to clarify the process for release of administrators under certain circumstances). These Lords Amendments would modify the changes made to paragraph 98 by this Bill, to base them on the text of that paragraph as amended by the Deregulation Bill.

Lords Amendment 168

105. Lords Amendment 168 would remove a reference to paragraph 50(1)(b) of Schedule B1 to the Insolvency Act 1986 (creditors' meetings), being omitted by Schedule 9 to the Bill.

Lords Amendment 169

106. Lords Amendment 169 would remove references to section 102 of the Insolvency Act 1986 (creditors' meeting where winding up converted under section 96), being omitted by Schedule 9 to the Bill.

Lords Amendment 170

107. Lords Amendment 170 would amend the provisions for nomination of a liquidator in a members' voluntary liquidation which converts to a creditors' voluntary liquidation procedure. Consistent with Lords Amendment 173 the mechanism by which the appointment takes place will be set out in the Insolvency Rules.

Lords Amendment 171

108. Further to Lords Amendment 170, Lords Amendment 171 would make provision about the point at which a members' voluntary liquidation becomes a creditors' voluntary liquidation, and who is to be liquidator following the conversion. It would also provide for the insertion of an amendment contained in paragraph 14 of Schedule 17 to the Enterprise Act 2002.

Lords Amendment 172

109. Lords Amendment 172 would amend a reference in consequence of Lords Amendments 170 and 171.

Lords Amendment 173

110. Lords Amendment 173 would amend the provisions for appointment of a liquidator in creditors' voluntary liquidations. This would make it possible for the company and its creditors to make nominations on the same day, avoiding the need for a delay before the creditors' nomination. The mechanics will be in the Insolvency Rules.

Lords Amendment 174

111. Lords Amendment 174 is consequential on Lords Amendment 175.

Lords Amendment 175

112. Lords Amendment 175 would clarify the drafting of the Schedule 9 amendments to section 105 of the Insolvency Act 1986 (meetings of company and creditors at each year's end (Scotland)) by removing an unnecessary reference to the new provision on decision making in Clause 119 of the Bill.

Lords Amendment 176

113. Lords Amendment 176 would amend a reference concerning situations in creditors' voluntary liquidation proceedings where the company has not nominated a liquidator. It is consequential on Lords Amendment 173.

Lords Amendment 177

114. Lords Amendment 177 would amend the provisions relating to the powers of the liquidator in creditors' voluntary liquidation procedures. It is consequential on Lords Amendment 173.

Lords Amendment 178

115. Lords Amendment 178 would amend a reference relating to the appointment of a liquidator in creditors' voluntary liquidation consequential on Lords Amendment 173.

Lords Amendment 179

116. Lords Amendment 179 would clarify the description of the process whereby the liquidator in a members' voluntary liquidation vacates office.

Lords Amendment 180

117. Lords Amendment 180 would clarify the description of the process whereby the liquidator in a creditors' voluntary liquidation vacates office.

Lords Amendment 181

118. Lords Amendment 181 would amend a provision relating to the offence of a liquidator failing to comply with certain obligations on the conversion of a members' to a creditors' voluntary liquidation. It is consequential on Lords Amendment 170.

Lords Amendment 182

119. Lords Amendment 182 would remove a provision relating to an offence of directors failing to seek creditors' agreement to a liquidator's appointment in a creditors' voluntary liquidation. In consequence of Lords Amendment 173, the detailed provisions relating to directors' obligations to seek creditor nominations will be set out in the Insolvency Rules.

Lords Amendment 183

120. Lords Amendment 183 would make a missed consequential amendment relating to decisions in company voluntary arrangements.

Lords Amendment 184

121. Lords Amendment 184 would make a missed consequential amendment to a reference to an offence relating to statements of affairs in creditor voluntary liquidations.

Lords Amendments 185 and 186

122. Lords Amendments 185 and 186 would clarify the process under which a bankrupt's creditors may remove and replace a trustee in bankruptcy.

Lords Amendment 187

123. Lords Amendment 187 would correct a minor drafting inconsistency.

Lords Amendments 188 and 189

124. Lords Amendments 188 and 189 would amend the drafting to avoid disturbing a prospective amendment to the Insolvency Act 1986 contained in paragraph 24 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013.

Lords Amendment 190

125. Lords Amendment 190 would correct a minor drafting error.

Lords Amendments 191 and 192

126. Lords Amendment 191 and 192 would clarify the process whereby the creditors can appoint a trustee in bankruptcy where a vacancy in office has arisen.

These notes relate to the Lords Amendments to the Small Business, Enterprise and Employment Bill as brought from the House of Lords on 17 March 2015

Lords Amendment 193

127. Lords Amendment 193 is consequential on Lords Amendments 191 and 192.

FINANCIAL EFFECTS

128. Based on estimates provided by the current administrators of the UK Coal concessionary fuel scheme, support for UK Coal Production Limited, UK Coal Thoresby Limited and UK Coal Kellingley Limited by way of meeting of the concessionary fuel obligations to members of their workforce as a result of Lords Amendment 123 will have an initial cost to Government of approximately £1 million per annum with a total liability of £28 million until 2040 due to a declining per annum spread.

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

*These notes refer to the Lords Amendments to the Small Business,
Enterprise and Employment Bill as brought from the House of Lords on 17
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