

# ENTERPRISE BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Enterprise Bill [HL] as brought from the House of Lords on 16 December 2015 (Bill 112).

- These Explanatory Notes have been produced by the Department for Business, Innovation and Skills in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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## Overview of the Bill

- 1 The Bill deals with a range of Government commitments which are intended to support the growth of enterprise in the United Kingdom. The Bill:
  - a. establishes a Small Business Commissioner, to enable small businesses to resolve disputes with larger businesses and avoid future issues;
  - b. expands the deregulation target to include regulators;
  - c. requires regulators subject to the duty to have regard to the Regulators' Code and/or the Growth Duty to report on the effect these duties have had on the way they exercise their functions to which these duties apply;
  - d. extends the Primary Authority scheme to make it easier for more businesses to join;
  - e. protects the term apprenticeship in law, with a view to ensuring that apprentices have access to high quality training;
  - f. gives powers to set targets for apprentice numbers in the public sector;
  - g. requires insurers to pay insurance claims within a reasonable time;
  - h. reforms the business rates appeals system;
  - i. simplifies and updates the Industrial Development Act 1982;
  - j. repeals some of the legislation relating to the Green Investment Bank in order to allow it to be classified as private sector;
  - k. includes provisions concerning the pubs code.
- 2 The Bill gives the Treasury and Scottish Ministers powers to make regulations to restrict public sector exit payments. The Bill also gives the Treasury or the Secretary of State a power to provide financial assistance or make other payments to UK Government Investments Limited.
- 3 The Bill contains provisions on a range of policies which span the responsibilities of the Department for Business, Innovation and Skills, HM Treasury, Department for Culture, Media and Sport and the Department for Communities and Local Government.

## Policy background

### Part 1: The Small Business Commissioner

- 4 On 26 July 2015, the Government published 'Establishing a Small Business Commissioner', a consultation which closed on 21 August 2015. The paper proposed the creation of a Small Business Commissioner to assist small businesses in payment disputes with larger businesses – a problem that is estimated to adversely impact small businesses to the tune of £26.8bn per year. The Commissioner's role is intended to enable small businesses to resolve disputes and avoid future issues by encouraging a culture change in how businesses deal with each other, promoting fair treatment for all.
- 5 The Small Business Commissioner will achieve this by providing:
  - a. General advice and information, for example, related to dispute resolution and contract principles, including options for resolving disputes;
  - b. Signposting to appropriate services, such as relevant sector ombudsmen or regulators,

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existing independent advice services, or, for business-to-business disputes, to an approved alternative dispute resolution provider;

- c. An in-house complaints handling function, in respect of payment issues between a small business supplier and a larger business.
- 6 The Small Business Commissioner will not provide advice on legal issues relating to a specific case, nor information or advice on matters specific to dealing with a public body.
- 7 The legal position in relation to the matters and disputes which the Small Business Commissioner seeks to cover is determined by contract law and, where relevant, legislation such as the [Late Payment of Commercial Debts \(Interest\) Act 1998](#) (LPCDA). The Bill does not alter the substantive legal regime. The LPCDA entitles a supplier to statutory interest and (limited) compensation, where a business fails to pay the supplier within certain periods. If there is no agreed payment date, statutory interest starts to run after a 30-day period. If there is an agreed payment date, interest starts to run after a 60-day period for a contract between two businesses, or (if longer) after the agreed period if this is not grossly unfair.
- 8 The Small Business Commissioner is intended to complement the existing court and alternative dispute resolution landscape. The Bill does not alter existing court rules or formal mechanisms for dispute resolution. It establishes a statutory office holder whose role is to encourage and facilitate dispute resolution.

## Part 2: Regulators

### Business Impact Target

- 9 Sections 21-27 of the [Small Business, Enterprise and Employment Act 2015](#) (SBEE Act) require the Government of the day to publish a Business Impact Target (BIT) for the duration of the Parliamentary term, regarding the economic impact of new legislation on business, including voluntary and community bodies.
- 10 The Government is required to measure and report on the economic impact of all provisions that are included within the Secretary of State's determination of "qualifying regulatory provisions" and come into force or cease to have effect over the course of the Parliament. Section 22 of the SBEE Act specifically describes which provisions can qualify for inclusion within the target. It currently covers legislation and regulatory activity undertaken by UK Ministers, including some non-statutory regulators who exercise regulatory functions for or on behalf of UK Ministers. To increase transparency, the intention is to extend the scope of the target to include the regulatory activity of all statutory regulators, as their activities have an impact on businesses. The list of regulators subject to this measure will be specified in secondary legislation.
- 11 Statutory regulators will be required to assess the economic impact to business of any changes to their regulatory policies and practices that come into force or cease to have effect during the course of the Parliament. They will have to publish verified assessments which will be incorporated into the Government's annual reports outlining its performance against the Business Impact Target.

### Reporting requirements

- 12 Section 22 of the [Legislative and Regulatory Reform Act 2006](#) (LRRRA) places duties on a person whose regulatory functions are specified by order under section 24(2) of the LRRRA (i.e. a regulator), to have regard to any code of practice issued under section 22 in the exercise of certain functions. The current code of practice, issued in April 2014, is called the Regulators' Code.

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- 13 Section 108(1) of the [Deregulation Act 2015](#) places a duty on a person exercising regulatory functions to be specified by order under section 109(1) (i.e. a regulator) to have regard, in the exercise of those functions, to the desirability of promoting economic growth (the growth duty).
- 14 Together, these two measures are intended to support a positive shift in the way regulation is delivered by regulators.
- 15 There is currently no express legal requirement for regulators to report on how they have performed their duties under the Regulators' Code or the growth duty ("the Duties"). Consequently, not all regulators publish such information, which makes it very difficult to measure the effect the Duties have had and assess whether or not they benefit business.
- 16 These provisions amend the LRRRA and the Deregulation Act 2015 by requiring a regulator to report on the effect that their performance of the Duties has had on the way it has exercised those functions to which the Duties apply. It also requires regulators (other than the Commission for Equality and Human Rights in respect of the Regulators' Code) to provide information about that effect to a Minister when requested to do so from time to time. The aim is to ensure regulators are more transparent about the action they have taken in respect of the Duties.

### Application of regulators' principles and code

- 17 These provisions repeal subsection (5) of section 24 of [Legislative and Regulatory Reform Act 2006](#) (LRRRA). Section 24(5) prevents the regulatory functions of Ofgem, Ofcom, the ORR and Ofwat from being subject to the duty to have regard to the better regulation principles in section 21 LRRRA and the code (currently the Regulators' Code) under section 22 LRRRA. This repeal will not of itself subject these regulators to this duty (this can only be done following consultation and via secondary legislation) but it removes a legislative barrier to doing so.

### Secondary Legislation: Duty to Review

- 18 The [Small Business Enterprise and Employment Act 2015](#) (SBEE Act) requires that secondary legislation which impacts on business must include a statutory review clause, undertaking to carry out a review of the legislation and report on it within 5 years of the legislation coming into force. This provision amends section 30 in the SBEE Act. The aim is to ensure that Departments adopt a proportionate approach when deciding how many other EU member states' implementation to consider when reviewing EU or internationally derived legislation.

## Part 3: Extension of the Primary Authority Scheme

- 19 Part 2 of the [Regulatory Enforcement and Sanctions Act 2008](#) (c.13) (RESA) established the Primary Authority scheme. Under this scheme a local authority may be nominated, by the Secretary of State, to act as a primary authority for a person carrying out a regulated activity across multiple local authority areas. A local authority may also be nominated to act as a primary authority for a group of persons who carry out the same regulated activity, in a similar way, across multiple local authority areas, e.g. trade associations. The primary authority provides advice and guidance on regulatory compliance to that person, as well as advice and guidance to local authorities with the same regulatory functions as to how they should exercise those functions in relation to the person. The primary authority may stop another local authority from taking enforcement action against that person where it would be inconsistent with the advice and guidance the primary authority has given.
- 20 The measures in this Bill extend the application of the Primary Authority scheme and enable the Secretary of State to make legislation that will bring regulators other than local authorities within the scope of the scheme.

## Part 4: Apprenticeships

- 21 The Government aims to deliver 3 million apprenticeship starts in England within this Parliament; an increase on the 2.3 million achieved in the previous Parliament.
- 22 The Government wants to ensure that the public sector is a model employer with respect to apprenticeships; leading by example and offering a significant number of apprenticeships to develop a skilled workforce for the future. These provisions therefore aim to increase the number of apprenticeships in the public sector.
- 23 The latest [research](#), published June 2015, demonstrates the high level of return to investment delivered by the apprenticeship programme, indicating that adult apprenticeships at level 2 and level 3 deliver £26 and £28 of economic benefits respectively for each pound of Government investment.
- 24 The Government also wishes to protect the term ‘apprenticeship’ from misuse. Low-quality courses that do not meet the requirements of statutory apprenticeships should not be described as apprenticeships, or else it would damage the reputation of apprenticeships and have a negative impact on the growth of statutory apprenticeship schemes. Clause 21 is intended to protect the reputation of training providers, employers who offer statutory apprenticeships and apprentices who join those apprenticeships, by helping to ensure that statutory apprenticeships are not confused with lower quality training. It also secures a “level playing field” and fairness in the market to the benefit of training providers, employers and individuals. Preventing improper use of the apprenticeships name is intended to give employers more confidence that they are investing in high quality schemes.
- 25 A parallel can be drawn between this measure and the unrecognised degrees legislation in section 214 of the [Education Reform Act 1988](#). The unrecognised degree legislation was designed to prevent persons from offering a degree when they were not entitled to do this. The Government wants similar protection for apprenticeships.

## Part 5: Late Payment of Insurance Claims

- 26 The Law Commission and the Scottish Law Commission are undertaking a major review of insurance contract law. Their July 2014 Report, [Insurance Contract Law: Business Disclosure; Warranties; Insurers’ Remedies for Fraudulent Claims; and Late Payment](#) (Law Com No 353 / Scot Law Com No 238), made recommendations for reform of the law in relation to late payment of insurance claims.
- 27 Under the current law in England and Wales, there is no obligation to pay valid insurance claims within a reasonable time. This is the result of a legal fiction which holds that the insurer’s primary obligation under a contract of indemnity insurance is not to pay money to the policyholder if an insured event occurs but is in fact to prevent the insured event from occurring in the first place.
- 28 In Scotland, however, the court has accepted that there is an implied term that the insurer should assess a claim reasonably quickly and with diligence.
- 29 Both Law Commissions recognised that the position in England and Wales was unexpected and difficult to justify on a policy or legal basis. They recommended that insurers in the UK should be under a legal obligation to pay sums due within a reasonable time, and that a policyholder should have a remedy where an insurer failed to do so.
- 30 The measure in this Bill implements the key recommendations made by the Law Commissions on this issue.

## Part 6: Non-Domestic Rating

- 31 Non-Domestic Rates are commonly known as Business Rates. The Valuation Office Agency (VOA), which is part of HM Revenue and Customs (HMRC), is responsible for compiling and maintaining non-domestic rating lists. These lists contain details of properties which are liable for non-domestic rates together with their rateable values. The rateable value is, broadly speaking, the annual rental value of the property. Local authorities and (for certain properties) the Secretary of State for Communities and Local Government are responsible for calculating and collecting rates bills using the information on those rating lists.
- 32 In the course of exercising their functions, the VOA also collects information from businesses such as the identity of the non-domestic ratepayer and plans of the property. However, this information is not published on the rating list.
- 33 Section 18 of the [Commissioners for Revenue and Customs Act 2005](#) (CRCA) provides that HMRC officials, including VOA officials, are only able to disclose information in limited circumstances such as in relation to their functions. Section 19 of CRCA also sets out criminal sanctions for the wrongful disclosure of information that relates to an individual whose identity is specified in the disclosure or can be deduced from it. As a result, officers of the VOA are prevented from sharing the information they collect about properties and ratepayers with local government. This means that businesses have to provide the same information twice to the VOA and local government. It can also mean that the properties have to be inspected by both the VOA and the local authority.
- 34 In April 2014, the Government published a discussion paper on the review of [Administration of Business Rates in England](#) which included consideration of how to improve the sharing of non-domestic rates information in government. Following discussions with local government and ratepayers, the Government published their [Interim Findings](#) on the review in December 2014 and acknowledged that the current constraint on the VOA sharing information with local government was a barrier to the efficient administration of the rating system. The Government committed to seek legislation to allow greater sharing of information on non-domestic properties.
- 35 In cases where a ratepayer is not content with the assessment shown in the non-domestic rating list, they may challenge their rateable value by making a proposal to the VOA for an alteration to the rating list under section 55 of the [Local Government Finance Act 1988](#). If there is a disagreement between the ratepayer and the VOA as to the proposed alteration, the ratepayer can appeal to the Valuation Tribunal for England (VTE).
- 36 In the Autumn Statement 2013, the Government announced it would open up a discussion with businesses and local authorities about long-term administrative reform to non-domestic rates in England after 2017. This was followed, in the Autumn Statement 2014, by publication of the Interim Findings of the Business Rates Administration review. This set out proposals for improvements, including a reformed non-domestic rates appeals system.
- 37 The Interim Findings identified that too many rating appeals are made with little supporting evidence and that they take too long to resolve. It suggested that a revised appeals system should be built around clearly structured stages which will provide transparency and clear expectations on all sides about timescales, requirements and action. The purpose of this is earlier and more effective engagement between the parties. The aim is to make the system more efficient, and to help to ensure that appeals are resolved at the earliest possible stage. Respondents to the Interim Findings paper broadly agreed with the proposed system.

## Part 7: Other Enterprise-Related Provisions

### Industrial Development

- 38 The [Industrial Development Act 1982](#) enables financial support to be provided by the government to industry in the United Kingdom. It includes:
- a. Section 8 (Selective Financial Assistance: general powers) – this enables the Secretary of State to provide financial assistance in any part or area of the UK, subject to certain conditions. Subsection (8)-(9) caps the amount that can be paid in respect of any one project at £10 million. Financial assistance over this limit to any one project requires a resolution of the House of Commons. Section 8 applies to the whole of the UK;
  - b. Section 13 (Improvement of basic services) – this allows a Minister in charge of any Government Department to make grants or loans towards the cost of improving basic services in development areas or intermediate areas (now commonly known as Assisted Areas), with the intention of developing industry in that area. Basic services cover the provision of facilities such as power, water or transport, and the section applies to Great Britain.
- 39 The business environment has since changed and the then Government consulted on 20 July 2011 on proposals for increasing the project cap in section 8 and giving Ministers the power to provide financial assistance in relation to the provision of telecommunications and broadband. The consultation on revision of the Industrial Development Act 1982 closed on 2 November 2011, having received 31 responses. The Government [response \(Revision of the Industrial Development Act 1982\)](#) to the consultation was published on 28 June 2012, noting that there was strong support for these two proposals from those who commented, and committing to bring forward legislation as and when Parliamentary time allowed. The measures in the Enterprise Bill updating the Industrial Development Act 1982 build on the response to the consultation.

### UK Government Investments

- 40 The Chancellor of the Exchequer and the Prime Minister announced a machinery of Government change to create UK Government Investments Limited (UKGI) in May 2015. UKGI will bring together, into a single corporate structure, the two bodies that currently manage most of the taxpayer stakes in businesses – the Shareholder Executive (ShEx) and UK Financial Investments Limited (UKFI).
- 41 UKGI will be a government company (GovCo) - a company formed under the Companies Act 2006 with HM Treasury as its sole shareholder. UKFI already operates as a GovCo which enables it to successfully execute disposals, establishing and maintaining independence and commercial expertise.
- 42 ShEx operations will transfer out of the Department for Business, Innovation and Skills to UKGI and ShEx will rebrand as UKGI. It will continue to offer impartial advice directly to the Secretary of State and Permanent Secretary of the Department that owns the relevant company, asset or project. From 1st April 2016, UKFI will become a subsidiary company of UKGI continuing to operate as it currently does until, in time, it fully merges with UKGI.
- 43 UKGI will be funded centrally from HM Treasury (on behalf of Departments). This clause in the Bill provides a specific power to allow HM Treasury and Departments to fund and make payments to UKGI. This is in line with the 1932 Concordat between the Treasury and the House of Commons Public Accounts Committee, now reflected in HM Treasury's manual ["Managing Public Money"](#), which requires there to be specific statutory authority for significant items of ongoing Government expenditure.

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## UK Green Investment Bank

- 44 The UK Green Investment Bank plc (GIB) is a public company established by the Secretary of State under the [Companies Act 2006](#) to facilitate and develop investment in the green economy. GIB is currently funded by 100% equity from the Government and is entirely Government owned.
- 45 The [Enterprise and Regulatory Reform Act 2013](#) (ERRA 2013) contains provisions to ensure that GIB engages only in activities which contribute to “green purposes”. ERRA 2013 also requires the Secretary of State to provide an undertaking to the GIB in order to facilitate its operational independence, permits the Secretary of State to provide funding to GIB, and imposes certain enhanced reporting and accounting obligations on GIB.
- 46 These sections repeal some of the legislation on GIB contained in the ERRA 2013, in preparation of the Government’s disposal of part or all its interest in the GIB. In particular, the repeal removes elements of Government control over the corporate policy of GIB contained within the ERRA 2013. The intention behind the repeal is to facilitate the GIB’s re-classification to the private sector following a sale.
- 47 The Government has published additional information on the policy background for GIB, its plans to bring in private capital, and the need to re-classify GIB to the private sector, in its policy statement [“Future of UK Green Investment Bank plc”](#).

## Pubs Code

- 48 Part 4 of the [Small Business, Enterprise and Employment Act](#) 2015 (SBEE Act) requires the Secretary of State to introduce a statutory Pubs Code. The Code will govern the relationship between large pub-owning businesses (those that own 500 or more tied pubs) and their tied tenants. The SBEE Act also provides for a new independent Adjudicator to enforce the Code. The Code and Adjudicator measures will be introduced through secondary legislation. The draft Code is currently the subject of consultation ([Part 1](#) and [Part 2](#)). The consultation will run until January 2016 following which the regulations will be finalised and laid before Parliament.
- 49 One aspect of the Code required by section 43 of the SBEE Act is that tied tenants must, in specified circumstances, be entitled to occupy their pub on a Market Rent Only (MRO) basis, i.e. the option to go free of tie. The draft Code sets out the details of when the MRO option is available to tied tenants and how the MRO procedure will work.
- 50 The Code should deliver two principles: that the tied tenant should be no worse off than a free-of-tie tenant, and that there is fair and lawful dealing as between pub-owning businesses and their tied tenants.
- 51 Section 46 of the SBEE Act also requires the Secretary of State regularly to review the Pubs Code, to consider how well it is delivering the two principles and to propose any changes as may be necessary. Sections 62 and 67 of the SBEE Act provide that the Adjudicator must provide annual reports to the Secretary of State, who can also ask for the Adjudicator to provide specific information.

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

- 52 The Government announced on 23 May 2015 that it intended to [end six figure exit payments for public sector workers](#).
- 53 In this context, an exit payment is a payment made to an employee or office holder as a result of them leaving that employment or office. Exit payments can be any financial or non-financial

transfer to an employee from the employer which does not represent remuneration for normal ongoing activities that are part of their employment. This includes, for example:

- Payments related to voluntary and compulsory redundancies;
- Payments related to other voluntary exits with compensation packages;
- The cost to the employer of offering early access to reduced pensions in place of, or in combination with, other exit payments;
- Special severance payments and ex gratia payments related to exit from employment;
- The monetary value of any extra leave, allowances or other benefits granted as part of the exit process which are not payments in relation to employment;
- Payments or compensation in lieu of notice and payments relating to the cashing up of outstanding entitlements.

54 There are a wide range of exit payment arrangements in the public sector. These include formal redundancy schemes (for example, the Civil Service Compensation Scheme) and schemes operated at local level by employers. Further, some employees may have individual contractual relationships that provide for additional exit payments. The regulations made under this Part of the Bill will cap relevant payments under these arrangements to the amount specified in the Bill or in later regulations.

## Legal background

55 The relevant legal background is explained in the policy background section of these Notes.

## Territorial extent and application

56 The following provisions in the Bill apply to England only:

- Apprenticeships (Part 4, clause 20 to 21);
- Non-domestic rating (clause 26).

57 The following provisions apply to England and Wales only:

- Late payment of insurance claims (clause 24);
- Non-domestic rating (clause 25).
- Pubs Code (clauses 33 and 34);

58 There may be minor or consequential effects outside of England resulting from clause 21. It is conceivable that a prosecution could be commenced in England in relation to a course or training undertaken partly in England and partly in Wales.

59 There are minor and consequential effects outside England and Wales in relation to the Pubs Code, to the extent that tied pubs in England and Wales will be in scope of the statutory code, notwithstanding that the business which owns those pubs (that meets the definition of a “pub owning business” in scope of the legislation) might be located or registered in Scotland or

Northern Ireland. The Code places obligations on all pub owning businesses with 500 or more tied pubs.

- 60 There are no minor or consequential effects outside England in relation to clause 26, and no minor or consequential effects outside England and Wales in relation to clause 24 or clause 25.
- 61 All other provisions in the Bill apply beyond England and Wales.
- 62 See the table in Annex A for a summary of the position regarding territorial extent and application. The table also summarises the position regarding legislative consent motions and matters relevant to standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Part 1: The Small Business Commissioner

### Clause 1: Small Business Commissioner

- 63 This clause establishes the statutory office of the Small Business Commissioner and sets out its principal functions. The clause also gives effect to Schedule 1, which contains more detail on how the office is established and structured.

### Schedule 1: The Small Business Commissioner

#### *Paragraph 1 – Status*

- 64 This provision establishes the Commissioner as a corporation sole. As a corporation sole, the Commissioner has separate legal personality which will ensure, for example, that the Commissioner is able to enter contracts, in his or her capacity as an office holder rather than any individual capacity.

#### *Paragraph 2 – Appointment of commissioner*

- 65 This provision is self-explanatory.

#### *Paragraphs 3 & 4 – Deputy Commissioners*

- 66 The Secretary of State may appoint one or more Deputy Commissioner(s), if necessary, to work alongside and share the workload of the Commissioner. If any Deputy Commissioner(s) is appointed, the Commissioner will determine what the Deputy Commissioner(s) will do, as the Commissioner can delegate any functions to the Deputy Commissioner(s). The Commissioner could choose to delegate functions in relation to particular complaints, or could delegate certain functions only - for example, the function of considering complaints but not of publishing reports or providing general advice and information.

#### *Paragraph 5 – Term in office and how it may end*

- 67 The Commissioner and any Deputy Commissioner(s) may be appointed for up to four years and may then be re-appointed for one or two further terms of up to three years each. A person may not serve more than a total of one initial term and two further terms overall whether any of these terms is as Commissioner or Deputy Commissioner.
- 68 The Commissioner, and any Deputy Commissioners, may resign by giving written notice to the Secretary of State; or the Secretary of State may dismiss the Commissioner (and any Deputy Commissioner(s)) for being unable, unwilling, or unfit to perform their official functions.

#### *Paragraph 6 – Remuneration decisions*

- 69 The Commissioner and any Deputy Commissioner(s) may receive remuneration, allowances, and/or sums by way of or in respect of pensions, at the discretion of the Secretary of State.

#### *Paragraph 7 – Commissioner and Deputy Commissioners not civil servants*

- 70 This provision is self-explanatory.

#### *Paragraph 8 – Acting Commissioner arrangements*

- 71 The Secretary of State may nominate a person to act as Commissioner during a vacancy in the office of Commissioner or when the Commissioner is absent, subject to suspension or unable to act for any reason, including due to a conflict of interest.
- 72 The nominated person will be a Deputy Commissioner or if there is no Deputy Commissioner

a member of staff can be appointed to the role.

#### *Paragraph 9 - Conflicts of interest*

73 The Commissioner must make procedural arrangements for dealing with conflicts of interest for the Commissioner, any Deputy Commissioner and any member of staff working for the Commissioner. The Commissioner must consult the Secretary of State before making or revising these arrangements, and must publish a summary of those arrangements.

#### *Paragraph 10 – Validity of acts*

74 If there has been an error in the way the Commissioner, Deputy Commissioner or an acting Commissioner (under paragraph 7) has been appointed, for example a procedural requirement in the terms of appointment is not met, this does not impair the validity of what they do in their appointed roles.

#### *Paragraph 11 to 13 – Staff*

75 The Commissioner may appoint staff directly and make arrangements for staff to be seconded to serve as members of the Commissioner’s staff. Before doing so, the Commissioner must obtain the Secretary of State’s approval of his policies as regards the number of appointed or seconded staff, any payments to be made to or in respect of staff and the terms and conditions on which staff are to be appointed or seconded. Staff appointed by the Commissioner will not be civil servants.

#### *Paragraph 14 – Financial and other assistance from the Secretary of State*

76 This paragraph enables the Secretary of State to provide payments and provide other financial assistance to the Commissioner so that the office will be publicly funded.

#### *Paragraph 15 – Application of seal and proof of documents*

77 This paragraph sets the formalities for the application of the Commissioner’s seal to a document and the correct treatment of such a document: it is to be received in evidence and treated as duly executed unless this is shown to not be the case. The seal itself has to be certified as authentic by the Commissioner’s signature or the signature of someone authorised by the Commissioner.

#### *Paragraph 16 – Incidental powers*

78 This paragraph allows the Commissioner to do anything that will help his/her work.

#### *Paragraph 17*

79 This paragraph protects the Commissioner, any Deputy Commissioner or a member of staff nominated as an acting-Commissioner, and any other staff from claims for damages by third parties, except where they have acted in bad faith or in breach of human rights. This covers things done in exercise of their functions, or where they believed they were exercising their functions. In the absence of this protection it might, for example, be possible for a business to claim against the Commissioner in the tort of negligence in relation to a decision on a complaint. The Government intends that the Commissioner should not be required to spend time, at public cost, in dealing with such claims. The Commissioner will however be subject to the normal public law duties and constraints of a public authority.

#### *Paragraphs 18 to 21*

80 Paragraph 18 inserts reference to the Small Business Commissioner into Schedule 2 to the [Parliamentary Commissioner Act 1967](#) (departments etc. subject to investigation), so that the Small Business Commissioner may be subject to investigation by the Parliamentary Ombudsman.

*These Explanatory Notes relate to the Enterprise Bill [HL] as brought from the House of Lords on 16 December 2015 (Bill 112)*

- 81 Paragraphs 19 and 20 insert references into the relevant schedules to the [House of Commons Disqualification Act 1975](#) and the [Northern Ireland Assembly Disqualification Act 1975](#), so that neither the Commissioner nor any Deputy Commissioner may be a member of Parliament or of the Northern Ireland Assembly. This is in order to avoid a conflict of interest.
- 82 Paragraph 21 adds the Small Business Commissioner to the list of public authorities covered by the [Freedom of Information Act 2000](#).

### Clause 2: Small businesses in relation to which the Commissioner has functions

- 83 This clause provides the definition of small businesses. In all cases, a small business must have a staff headcount of fewer than 50 people. Financial thresholds may also be applied, under secondary legislation. Further details of how 'small business' is defined and the relevant thresholds are calculated may be provided in secondary legislation. Regulations made under this clause, related to the definition of small business, must be approved by both Houses of Parliament. The intention is that the thresholds to be a small business under this Part will be broadly consistent with those under sections 33-34 of the [Small Business, Enterprise and Employment Act 2015](#).

### Clause 3: General advice and information

- 84 This clause provides the Commissioner with the power to publish, or provide small businesses with, impartial general advice and information which the Commissioner believes may be useful to small businesses in connection with their supply relationships with larger businesses. In considering what may be useful the Commissioner must consider how helpful the advice and information would be in encouraging the small business to resolve and/or avoid disputes. General advice and information may cover contract law principles, legal rights about supplying or buying goods and services, and means of resolving disputes (subsection (3)).
- 85 The Commissioner may publish or provide information to 'signpost' small businesses to providers of dispute resolution services, for example directories of authorised mediators who may be able to assist the small business to resolve a dispute with a larger business. The Commissioner may also 'signpost' small businesses to regulators or ombudsmen, for example to assist the small business with a concern with a regulated larger business such as a financial services firm (subsection (4)).
- 86 In relation to small businesses' dealings with public authorities, the Commissioner's function is to signpost them to regulators, ombudsmen, adjudicators and other public bodies, that may help the small business resolve a dispute with a public authority and/or give them other types of help (subsection (5)). The Commissioner may also provide small businesses with general advice and information related to their statutory rights to refer for adjudication a dispute with a public authority.
- 87 The Commissioner may publish and/or provide general advice and information directly to small businesses or make arrangements with others who will do so (subsection (7)). For example the Commissioner may arrange that he/she must approve the content of information to be published by Government or a business representative body.
- 88 The clause also makes provision for the Commissioner to make recommendations to the Secretary of State about the publication or provision of advice and information to small businesses (subsection (8)). This enables any general advice or information for small businesses which is published or provided by the Government, to reflect the Commissioner's views about what will be useful to small businesses.
- 89 The general advice and information which may be published or provided under this clause, may be useful in relation to small businesses' past, current or potential supply agreements with

a larger business or public authority, under which small businesses receive or provide goods or services.

#### Clause 4: The SBC complaints scheme

- 90 This clause requires the Commissioner to establish a complaints scheme under which the Commissioner enquires into, considers, and determines complaints, and sets out the types of complaints which will be considered (subsections (1) and (3)). The Commissioner must establish and run the scheme in accordance with regulations to be made under clause 7 (subsection (2)).
- 91 The Commissioner will consider complaints from a small business supplier, about payment issues with a larger business with which the small business has a previous, current or potential supply relationship. The Commissioner will consider complaints about payment in a broad sense: a complaint need not relate to the act of paying (or failing to pay), but any acts or omissions in respect of payment. Examples could be requesting a new fee, seeking to alter the price or fees agreed, or requesting payment of a fee which is provided for by the contract but has not previously been relied on.
- 92 If a larger business seeks to prevent a small business supplier from complaining to the Small Business Commissioner, the small business may raise a complaint about this (subsection (4)(b)).
- 93 Subsection (5) sets out exclusions from the scheme. The Commissioner will not consider complaints about: how appropriate a price is for goods or services; matters which are going through legal or adjudication proceedings; matters which are within the remit of an ombudsman, regulator or adjudicator providing statutory adjudication, or another public body which considers or decides complaints.
- 94 The Commissioner will also not consider a complaint if it relates to an act or omission that occurred before the start date of the complaints scheme, or if the act or omission is allowed by a pre-existing contractual term and that term has not been varied after the start date for the scheme (subsection (5)(e)). For example, the Commissioner could not consider a complaint about a small business being asked to make a payment, which is payable under a pre-existing contract term. However, the Commissioner may consider a complaint about an act or omission which breaches or would amend a pre-existing contract term. For example, if a larger business proposes an amendment to a pre-existing contract, such as a new or increased fee, the Commissioner could consider a complaint about that proposed amendment. Or if a pre-existing contract required the larger business to pay invoices within 30 days and, after the scheme start date, they failed to do so, then the Commissioner could consider a complaint about that breach. The exemption in subsection (5)(e) applies by reference to a start date to be appointed by the Secretary of State, so that the exemption will reflect the date that the complaints handling scheme starts. A different start date may be specified for different areas or purposes (subsections (7) and (8)), so that the exemption would still fit with the relevant start date for the complaints handling scheme, if the Government were to commence the complaints handling scheme in phases.
- 95 Under subsection (5)(f), the Secretary of State may make regulations to exclude other matters from the scope of 'relevant complaints'. Regulations to exclude any other matters from scope of the complaints handling scheme must be approved by both Houses of Parliament.

#### Clause 5: Enquiry into, consideration and determination of complaints

- 96 This clause sets the key parameters for the Commissioner's enquiry into, consideration and determination of complaints. The Commissioner will seek representations from the respondent before reaching a view, and can ask, but not require, either party to provide information.

- 97 The Commissioner determines complaints under the scheme in accordance with what the Commissioner considers to be fair and reasonable in all the circumstances of the case. The scheme regulations to be made under clause 7 will specify matters which the Commissioner is to take into account in deciding what is fair and reasonable in a case, and these matters include the legal position.
- 98 When the Commissioner determines a complaint, the determination may result in recommendations or it may not. The determination may be that it is not possible to reach a view. Once a complaint is determined the Commissioner must prepare a written statement which sets out the reasons for the determination, any recommendations and in the absence of recommendations the reasons why no recommendations have been given. The statement must be given to the complainant and respondent.
- 99 Determinations made under the SBC complaints scheme are not legally binding. The parties are therefore not under a legal obligation to follow any recommendations of the Commissioner, but the intention is that the Commissioner's determination and any recommendations will enable the parties to resolve the issue.

### Clause 6: Reports on complaints

- 100 This clause provides that the Commissioner may publish a report of the enquiry into, consideration and determination of a complaint made under the complaints scheme. The report may be anonymous or may name the respondent. The Commissioner will consider whether it is appropriate to publish a report and, if so, to name the respondent. The scheme regulations to be made under clause 7 will specify matters which the Commissioner is to take into account in deciding whether to name the respondent (clause 7(7)). The Commissioner has an obligation to allow both complainant and respondent reasonable opportunity to make representations about the proposal to publish a report and must allow the respondent to make representations about a proposal to name them in the report. The complainant will not be named in a report without their consent.

### Clause 7: Scheme regulations

- 101 This clause requires the Secretary of State to make “scheme regulations” to address how complaints should be made by small businesses, and details of how the Commissioner will consider and determine and may report on them.
- 102 The regulations are to set out a time limit after which complaints cannot be considered and will establish that a complaint cannot be considered by the Commissioner if it has not been communicated to the respondent business. The regulations are to provide that the time limit can be extended in certain circumstances. Subsection (3)(c) and (d) set out other factors that the regulations may stipulate to permit the Commissioner to dismiss a complaint.
- 103 The scheme regulations must include factors for the Commissioner to take into consideration in deciding whether something complained of is fair and reasonable, and factors to be taken into consideration in deciding whether to name the respondent in a report under clause 6. These factors are non-exhaustive.
- 104 The scheme regulations may not specify that certain practices are fair or unfair, because the Commissioner is to consider fairness and reasonableness on a case by case basis, taking account of the particular circumstances of each complaint.
- 105 The Secretary of State must consult appropriate persons before making scheme regulations and the regulations must be approved by both Houses of Parliament.

## Clause 8: Confidentiality

106 This clause prohibits the Commissioner from disclosing information which is likely to reveal that the complainant has raised a complaint, unless the disclosure is covered by certain exceptions. This does not stop the Commissioner from carrying out his/her functions; for example, the Commissioner is not prevented from publishing a report under clause 6 or informing the respondent of the complaint, although in some cases it may be appropriate not to reveal the complainant's identity in doing so. But this clause would stop the Commissioner from speaking publicly about the complaint before the report stage, if the complainant could be identified from this.

107 The prohibition in clause 8 does not apply if (1) the complainant consents to disclosure, (2) the disclosure is made by the Commissioner to the respondent in relation to the complaint or in a report on a complaint published under clause 6, (3) disclosure is required to comply with an EU obligation (as defined in Schedule 1 to the European Communities Act 1972; any such obligation could not be overridden by the Bill), (4) disclosure is required by court or tribunal rules, or a court or tribunal order, for the purpose of legal proceedings, or (5) the information is already in the public domain. However, clause 8 is intended to prevent the disclosure of information to which the clause applies being required by a request under the Freedom of Information Act 2000 (see section 44 of that Act).

## Clause 9: Annual report

108 This clause provides that the Commissioner must publish an annual report after the end of each reporting period and send it to the Secretary of State (subsections (1) and (2)). The first reporting period will begin when clause 1 comes into force and end on 31 March. Subsequent reporting periods are each twelve-month period after that.

109 Each annual report should therefore contain information which is useful to the Secretary of State in reviewing the Commissioner under Clause 10, as well as to users of the Small Business Commissioner generally. Subsection (3) requires that the Secretary of State lay a copy of the report before Parliament.

## Clause 10: Review of Commissioner's performance

110 The Secretary of State is required to review the Commissioner's performance two years from the 31 March that follows commencement of part 1 and every three years thereafter (subsections (1), (3) and (4)). Following a review, the Secretary of State must publish a report of the findings and lay a copy before Parliament (subsection (6)).

111 The Secretary of State may direct the Commissioner to provide information for the review (subsection (2)) and must in particular assess how effective the Commissioner has been in carrying out his or her functions (subsection (5)).

## Clause 11: Power to abolish the Commissioner

112 The Secretary of State may abolish the statutory office of Small Business Commissioner through secondary legislation following a review under clause 10, if the Secretary of State is satisfied either that it is no longer necessary to have a Small Business Commissioner or that the role has not been sufficiently effective (subsection 1).

113 In determining whether or not the role has been sufficiently effective the Secretary of State must consider how the Commissioner has carried out the functions of the role as well as whether the role has improved both payment practices and the awareness of small businesses of alternative dispute resolution.

114 In the event that the office is abolished, the Secretary of State can amend or repeal Part 1 of the Bill and other legislation, such as the cross-references inserted into other legislation by

Schedule 1 of the Bill. The Secretary of State can make other provisions in the secondary legislation required to effect the abolition, for example, to allow the Commissioner to exercise only certain functions pending abolition. Prior to making regulations, the Secretary of State must consult the Commissioner (unless the office is vacant), persons affected by the regulations and other persons the Secretary of State deems appropriate. If the Secretary of State decides to change the proposed regulations he or she must carry out a further consultation on the changes.

### Clause 12: Regulations under section 11: procedure

115 This clause contains the procedural requirements for use of the power for the Secretary of State to abolish the office of the Commissioner. If the Secretary of State considers it appropriate to make regulations under section 11, the Secretary of State must lay draft regulations and an explanatory document before Parliament (subsection (2)). Under subsection (4), this may not be done before 12 weeks after the start of the consultation under section 11(5). The explanatory document must explain why the Secretary of State considers abolition of the office is appropriate by reference to section 11(1) and summarise consultation responses.

116 Subsections (6) to (14) provide for either House of Parliament to require an “enhanced affirmative” procedure for use of the power. This “enhanced affirmative” procedure increases the scrutiny period by a further 20 days (making 60 days in total). The Secretary of State must have regard to certain representations, resolutions and recommendations made within this period. After the 60th day the regulations can be debated and made if approved, or the Secretary of State may choose to amend the draft and lay revised regulations.

### Clause 13: Definitions used in Part 1

117 This clause contains the definitions of terms used in the preceding clauses and in Schedule 1.

118 Part 1 (other than paragraphs 1 and 15 of Schedule 1, which are the provision establishing the Commissioner as a corporation sole and the document execution provisions) extends to England and Wales, Scotland and Northern Ireland.

## Part 2: Regulators

### Clause 14 and Schedule 2: Business Impact Target

119 This clause and accompanying Schedule enable the Government to bring certain provisions made by statutory regulators into scope of the Government’s Business Impact Target.

120 The Business Impact Target (BIT) in Sections 21-27 of the [Small Business, Enterprise and Employment Act 2015](#) (SBEE Act) requires the Secretary of State to:

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

- 121 The BIT applies to statutory provisions. These include public Acts made in the UK Parliament, subordinate legislation made by UK Ministers, and other similar provisions that have effect by virtue of the exercise of a function conferred on a Minister of the Crown by an Act – such as statutory guidance, policy and procedures relating to the securing of enforcement and compliance with regulations. The scope of the BIT is currently limited to the activity of UK Ministers. This includes some non-statutory regulators who exercise regulatory functions for or on behalf of UK Ministers.
- 122 Subsections (1) - (3) extend the scope of the BIT by amending the definition of “statutory provision” to cover provisions made by statutory regulators which exercise their own statutory powers. The Secretary of State will specify the “relevant” statutory regulators by regulations which are subject to the affirmative resolution procedure.
- 123 Subsections (5) and (6) deal with implementation. They clarify that when the SBEE Act is amended, the amendments as to what is within scope of the BIT will apply for the whole of the relevant period i.e. the period between the last general election and the next one, including the part of that period that has already elapsed. The first set of regulations made specifying statutory regulators will have the effect that those regulators will be within the scope of the BIT for the whole of the relevant period.
- 124 Subsection (7) sets out transitional arrangements for regulator reporting in respect of any past reporting period, which will apply on the making of the first set of regulations that will bring statutory regulators in scope of the target. Subsection (8) allows for subsequent regulations listing statutory regulators to contain similar provisions as to the period for which those regulators will be within the BIT and how they will report in respect of any past reporting period.
- 125 Schedule 2 sets out the amendments which arise as a consequence of bringing the activities of statutory regulators within the scope of the BIT provided in subsections (1) to (3) and makes some related amendments to the SBEE Act.
- 126 Paragraph 2 of Schedule 2 amends the existing BIT reporting duties of the Secretary of State under the SBEE Act. Specifically, it amends the required content of the annual reports in relation to regulatory provisions, which are measures which are not in scope of the target. They allow for the report to contain a summary (rather than a list) of regulatory provisions which are not primary or secondary legislation. This provision is intended to streamline the reporting requirements in light of the extension of the target.
- 127 Paragraph 3 of Schedule 2 clarifies a further aspect of the reporting duty in section 23 of the SBEE Act. Specifically that, in assessing aggregate economic impact in annual reports, the contribution of provisions that came into force in previous reporting periods is to be assessed by reference to the assessments of the impact of those provisions that were made in the reporting period in which they came into force.
- 128 Paragraph 4 of Schedule 2 introduces a new reporting duty for the regulators specified in regulations by the Secretary of State. The duty requires such regulators to publish certain information to enable the Secretary of State to fulfil his BIT reporting obligations under section 23 of the SBEE Act. It also ensures that regulators assess economic impact consistently, and in line with the methodology that is published by the Government of the day. Each regulator must publish the following information no later than two weeks after the end of each annual reporting period:
- A list of all qualifying regulatory provisions for which the regulator is responsible which have come into force or ceased to be in force in that reporting period;

- An assessment of the economic impact of these provisions on business activities, assessed in accordance with the published BIT methodology and verified by the Independent Verification Body; and
- A summary of all out-of-scope regulatory provisions for which the regulator is responsible which have come into force or ceased to be in force in the reporting period which do not qualify for the target.

129 Regulators must have regard to guidance issued by the Secretary of State regarding the publication of this information.

130 Paragraph 5 of Schedule 2 amends section 26 of the SBEE Act which addresses provisions required as a consequence of the Secretary of State making changes to the BIT or the scope or methodology. They align the variation procedure for regulators with those that already apply to the actions of UK Ministers under the SBEE Act. In particular, if the methodology or the scope of the target is varied within a Parliamentary term, regulators will be required to revise any lists, assessments or summaries that have already been published to bring them into line with the revised scope or methodology. If regulatory measures previously outside of scope of the BIT are brought within scope, the regulator will be required to make a backdated assessment of the economic impact of those measures. All revised or back-dated assessments must be verified by the Independent Verification Body and published to enable the Secretary of State to produce amended reports as required under the SBEE Act.

131 The Secretary of State may issue guidance in relation to this process of updating lists and assessments, which regulators must have regard to.

132 This measure will apply to statutory regulators but not in relation to any regulatory provision which is within the legislative competence of the Scottish Parliament, Northern Ireland Assembly or the National Assembly for Wales (see section 22(7) of the 2015 Act). The result is that, where regulators operate under a mix of reserved and devolved powers, only the regulatory activities undertaken pursuant to reserved powers would be considered in scope.

### Clauses 15 and 16: Reporting requirements

133 Clause 15 inserts section 23A into the [Legislative and Regulatory Reform Act 2006](#) (LRRRA) and will apply to any “relevant regulator” (i.e. a person, other than a local authority, with regulatory functions to which section 22 of LRRRA applies). Section 22 of the LRRRA permits a Minister to issue a code of practice (the current code of practice under section 22 is the Regulators’ Code) to which persons with regulatory functions to which section 22 LRRRA applies must have regard. Clause 16 inserts section 110A into the Deregulation Act 2015 and will apply to any “regulator” with regulatory functions that are brought in scope of the duty to have regard to the desirability of promoting economic growth (i.e. the growth duty) in section 108(1) of that Act.

134 Subsections (1) and (2) of both new sections introduce a requirement on regulators who are subject to a duty to have regard to the Regulators’ Code and/or the growth duty (“the Duties”) to publish an annual performance report. The report must set out the effect that a regulator’s performance of the Duties has had on the way it has exercised its functions to which the Duties apply. There are a number of ways in which the Duties might affect the way a regulator exercises its functions. The Duties may change the way a regulator acts in exercising some of its functions, or a regulator may take the Regulators’ Code or desirability of promoting economic growth into account and decide it is outweighed by other factors and may not change what it does, even though it has affected the exercise of this function. The Government intends that guidance will set out how these scenarios should be covered in a performance report.

- 135 Subsection (4) of new section 23A and subsection (3) of new section 110A require the performance report to also include a regulator's assessment of the views of business about this effect, the impact the effect has had on business, and a forward look covering any future effects a regulator expects to result from the Duties.
- 136 Subsections (5) and (6) in new section 23A and subsections (4) and (5) in new section 110A provide a Minister of the Crown with the power to issue guidance on the preparation and publication of performance reports. Regulators must follow this guidance unless there is a good reason not to do so. Both sections make provision for the timing of annual performance reports, the aim of which is to enable a regulator to include their report in their existing annual report, should they wish to.
- 137 Subsection (10) in section 23A and subsection (9) in section 110A require a regulator to provide certain information to a Minister, which the Minister may from time to time request. The Commission for Equality and Human Rights is exempt from the requirement in new section 23A(10). This requirement is largely limited to the type of information required in subsections (2) and (3) but also covers information relating to instances in which it appears to a Minister that a regulator has not followed the guidance issued under subsection (5) of section 23A and subsection (4) of section 110A.
- 138 The Regulators' Code does not cover operational matters. Whilst the Growth Duty does cover operational matters, section 110A(10) makes it clear that the duty to report on performance in respect of the Growth Duty does not require a regulator to report on the exercise of functions in relation to a particular person and, as a result, regulators will not be required to report on individual operational matters.
- 139 Subsection (11) in both sections clarifies that the reporting duty does not apply if there is other legislation that would prevent the regulator from disclosing such information (unless that legislation contains provision for such disclosure where another Act, such as this, requires that information is provided). This is to prevent a situation where the regulator is both under a duty to include information in a performance report, but is prevented from doing so by other legislation.
- 140 The regulatory functions which are the subject of the reporting requirements introduced by the new section 23A and 110A are subject to the devolution constraints in section 24(3) of LRRRA and section 109(3) of the Deregulation Act 2015 respectively. The clauses extend to the United Kingdom. Clause 38(5) provides that the new section 23A LRRRA and section 110A of the Deregulation Act 2015 come into force on such day as the Secretary of State may by regulations appoint.

### Clause 17: Application of regulators' principles and code

- 141 This clause will repeal section 24(5) of the LRRRA. Section 24(5) currently prevents the regulatory functions of Ofgem, Ofcom, the ORR and Ofwat from being subject to the duty to have regard to the five regulatory principles set out in section 21 of the LRRRA and the Regulators' Code.
- 142 The clause will not of itself subject these regulators to the duty to have regard to the five regulatory principles or the Regulators' Code. This can only be done via secondary legislation following consultation (i.e. in accordance with section 24 of the LRRRA).
- 143 The clause extends to the United Kingdom and, as a result of clause 38(2), will come into force two months after the day on which this Bill becomes an Act.

### Clause 18: Secondary legislation: duty to review

- 144 The [Small Business Enterprise and Employment Act 2015](#) requires that secondary legislation

which impacts on business must include a statutory review clause, undertaking to carry out a review of the legislation and report on it within 5 years of the legislation coming into force. The clause amends a measure in the Small Business, Enterprise and Employment Act 2015 that sets out what the review needs to look at. In relation to EU derived legislation, the Small Business, Enterprise and Employment Act states that the review must have regard to how the other EU member states have implemented the obligation. The amended clause clarifies that the requirement is to review implementation in other EU member states “as far as is reasonable”, rather than reviewing the implementation in all the other EU member states.

## Part 3: Extension of the Primary Authority Scheme

145 This Part substitutes Part 2 of the [Regulatory Enforcement and Sanctions Act 2008](#) (RESA) and extends to England, Wales, Scotland and Northern Ireland. In relation to Scotland, Part 2 of RESA will continue to apply only to reserved matters. In relation to Northern Ireland, it will continue to apply only to matters that are not transferred.

### Clause 19 and Schedule 3: Extending the primary authority scheme under RESA 2008

146 Part 2 of RESA (Co-ordination of regulatory enforcement) established the Primary Authority scheme. It enables the Secretary of State to nominate a local authority to be the primary authority for the exercise of a relevant (regulatory) function in relation to a regulated person. The primary authority provides advice and guidance to the regulated person, as well as advice and guidance to other local authorities who share the same regulatory function as to how those authorities should exercise that function in relation to that person, including how those authorities should conduct inspections. Where a local authority other than the primary authority (“the enforcing authority”) proposes to take enforcement action against the person, the enforcing authority must notify the primary authority before it takes the enforcement action. Where the enforcement action would be inconsistent with the advice and guidance that the primary authority has given, the primary authority may direct the enforcing authority not to take the enforcement action.

147 The new Part 2 of RESA (Regulatory enforcement) will extend the application of the Primary Authority scheme. It will enable the Secretary of State to prescribe in secondary legislation qualifying regulators other than local authorities that may be a primary authority, regulators that may provide support to primary authorities, and regulators that will be required to act consistently with primary authority advice. It provides that persons who carry on an activity in the area of only one qualifying regulator and those who do not yet carry on an activity are also in the scope of the Primary Authority scheme. It enables members of regulated groups to access the Primary Authority scheme via a co-ordinator and establishes the powers and duties of persons who act as a co-ordinator.

148 The references to “new section X” are to the section numbers in clause 19 and the reference to new Schedule 4A is to the Schedule introduced by the sections in clause 19. The references to “section Y” and to Schedule 4 are to the sections and the Schedule in Part 2 of RESA as it now applies. While much of the scheme remains the same, the Part is being replaced, rather than simply amended, for ease of comprehension.

### *New section 22A: “Regulated person” and “regulated group”*

149 This section defines “regulated person” and “regulated group” for the purposes of Part 2. Under section 23A, the Secretary of State may nominate a primary authority in relation to a regulated person or a regulated group.

150 At present, section 22 of RESA (Scope of Part 2) means that the Secretary of State may only nominate a primary authority where a person carries out a regulated activity in the area of two or more local authorities with the same regulatory function, or where a person shares an

approach to regulatory compliance with another person who carries out an activity in another local authority area.

151 Subsection (1) of new section 22A provides that a ‘regulated person’ is a person who carries on, or proposes to carry on, an activity where a qualifying regulator has a ‘relevant function’. This means that a person regulated by only one qualifying regulator will be able to benefit from the Primary Authority scheme. It also means that a person who has not yet started to carry out an activity will be able to obtain advice and guidance through the Primary Authority scheme.

152 Section 22A also defines “regulated group”. A group of persons is a regulated group where a member of the group carries on, or proposes to carry on an activity that is regulated by a qualifying regulator.

### *New section 22B: Qualifying regulators*

153 This section defines “qualifying regulator” for the purposes of Part 2. A qualifying regulator is one that the Secretary of State may nominate to act as a primary authority under section 23A.

154 Subsection (1)(a) provides that a local authority may be a qualifying regulator and subsections (2) and (3) define “local authority”. The local authorities that may be qualifying regulators are the same as those who may be primary authorities under the current provisions of RESA, as subsections (2) and (3) re-enact section 23 of that Act (“Local authority”).

155 Subsections (1)(b) and (4) enable the Secretary of State to specify by regulations a regulator other than a local authority that may be a “qualifying regulator” for the purposes of Part 2.

### *New section 22C: Relevant functions*

156 This section defines “relevant function” for the purposes of Part 2. A relevant function is one that may be included in the primary authority’s partnership functions under section 23A.

157 In relation to local authorities in England and Wales, the relevant functions to which Part 2 will apply are the same as those that are within the scope of the existing scheme, as new subsection (1)(a) re-enacts section 24(1)(a) of RESA. ‘Relevant function’ in the context of these authorities has the same meaning as in Part 1 of the Act and is defined in section 4 and Schedule 3.

158 In relation to local authorities in Scotland and Northern Ireland, a “relevant function” is a regulatory function exercised by a local authority and specified in regulations made by the Secretary of State. Subsection (2) of new section 22C provides that the regulations may only specify functions that are relevant functions in relation to local authorities in England and Wales or equivalent to such a function. This re-enacts the existing provisions in section 24(2) of RESA. Subsections (4) and (5) prevent the Secretary of State specifying a regulatory function in Scotland that is not reserved and a regulatory function in Northern Ireland that is transferred. This re-enacts the existing provisions in section 24(3) and (4).

159 In relation to ‘specified regulators’, new section 22C(1)(d) provides that a relevant function is a regulatory function exercised by that regulator and specified in regulations made by the Secretary of State. The regulations may only specify functions that are relevant functions in relation to local authorities in England and Wales or equivalent to such a function.

### *New section 23A: Primary authorities for regulated persons and regulated groups*

160 Subsection (1) provides that the Secretary of State may nominate a qualifying regulator to be a primary authority in relation to a regulated person or a regulated group. Subsection (2) provides that the “partnership functions” are the relevant functions specified in the nomination. Subsections (3), (4) and (5) provide that each partnership function must be a relevant function of the primary authority, or a relevant function that is held by another qualifying regulator and equivalent to a relevant function of the primary authority.

161 Subsection (6) provides that the Secretary of State may from time to time revise the specification of functions if the primary authority and the regulated person or the co-ordinator of the regulated group have agreed in writing to the revision.

#### *New section 23B: Nomination of primary authorities*

162 Subsection (1) sets out the requirements that must be met in order for the Secretary of State to nominate a qualifying regulator to be a primary authority in relation to a regulated person (a "direct primary authority") and subsection (2) provides the conditions that must be met in relation to nominating a primary authority for a regulated group (a "co-ordinated primary authority").

163 Subsection (3) enables the Secretary of State to revoke a nomination.

164 Subsection (4) requires the Secretary of State to maintain the register of nominations and make it available for inspection free of charge. New section 23C(6) also requires that the register contains the names of any co-ordinator nominated under that section.

#### *New section 23C: "Co-ordinator" of a regulated group*

165 Subsection (1) provides for a person to be nominated by the Secretary of State as the "co-ordinator" of a regulated group. The co-ordinator has various functions in respect of regulated groups, and having a co-ordinator is a condition for nominating a qualifying regulator to be the primary authority in respect of a regulated group.

166 Subsection (2) provides that a person cannot be nominated as the co-ordinator without the person's consent.

167 Provision is made in subsections (3) and (4) for the revocation of a nomination of a co-ordinator and for nomination of another person when a co-ordinator is unable to act.

#### *New section 23D: Membership of a regulated group*

168 Subsection (2) requires a co-ordinator of a regulated group to maintain a list of the members of the regulated group, which is the definitive list of who is a member of a regulated group at any point in time (subsection (6)).

169 Subsection (3) sets out what information must be included in the membership list.

170 Subsections (4) and (5) provide that the co-ordinator must make the membership list available to the Secretary of State, the primary authority and (where this is relevant to the exercise of their functions) qualifying regulators. The co-ordinator must do so as soon as is reasonably practicable, and not later than the end of the third working day after the day on which the request was received.

#### *New section 23E: Application of sections 24A to 28B*

171 Subsection (1) of new section 23E provides that the core provisions of the new Part 2 of RESA, on advice and guidance, enforcement action and inspection plans, apply separately in relation to each nomination of a qualifying authority as a primary authority (with references in those provisions to "the" primary authority, "the" partnership functions and so on being read accordingly). Subsection (3) provides for that nomination-by-nomination application of the core provisions to be subject to sections 29A to 29D. Those four sections deal with cases where more than one qualifying regulator has been nominated as primary authority in relation to the same person.

#### *New section 24A: Primary authority advice and guidance*

172 This section gives primary authorities the function of giving advice and guidance to a

regulated person, to the co-ordinator of a regulated group and to other qualifying regulators (as the case may be).

173 Subsection (4) provides that a co-ordinator must pass any advice or guidance given to it by the co-ordinated primary authority on to regulated group members who the co-ordinator considers might find it relevant.

174 Subsection (5) provides that the Secretary of State's consent is required before advice and guidance may be given by a primary authority to other qualifying regulators.

#### *New section 25A: "Enforcement action"*

175 New section 25A(1) defines 'enforcement action' for the purposes of Part 2. Subsection (2) provides that the Secretary of State may, with the consent of the Welsh Ministers, make an order that defines action that is, and is not, enforcement action for the purposes of Part 2.

#### *New section 25B: Enforcement action by the primary authority*

176 This section makes provision for the process to be followed where enforcement action is proposed by the primary authority against a regulated person or (where the primary authority is aware that the person is a member of a regulated group) against a member of a regulated group.

177 Subsection (2) requires the primary authority to notify the regulated person, or member of the regulated group, of the enforcement action it proposes to take and prevents the primary authority from taking the proposed enforcement action before the end of the period allowed for the regulated person or the member to refer the matter to the Secretary of State under paragraph 1(1) of Schedule 4A.

178 Subsection (3) provides that Parts 1 and 3 of new Schedule 4A to RESA apply. Part 1 of Schedule 4A provides that the person or member may, with the consent of the Secretary of State, refer the proposed enforcement action to the Secretary of State for a determination. Where the Secretary of State determines that the enforcement action is inconsistent with advice or guidance given by the primary authority and that the advice was correct and properly given, the Secretary of State must direct the primary authority not to take the enforcement action.

179 Under Part 3 of Schedule 4A, the referral must be made as soon as reasonably practicable, or within the relevant period, defined in paragraph 5(2). The Secretary of State has 28 days in which to make the determination (paragraph 5(6)).

#### *New section 25C: Enforcement action other than by primary authority*

180 This section sets out the process to be followed where enforcement action is proposed by a qualifying regulator other than a primary authority (the "enforcing authority") against a regulated person or a member of a regulated group.

181 Subsection (2) requires an enforcing authority to notify the primary authority of proposed enforcement action before it takes the action and prevents the enforcing authority from taking the proposed enforcement action until the end of the relevant period, which is defined in paragraph subsection (9).

182 Subsection (3) provides that, where the primary authority has been notified of the enforcement action by the regulated person, the member or the coordinator of the regulated group and has not been notified by the qualifying regulator under subsection (2), the primary authority must notify the enforcing authority that it is prohibited from taking the enforcement action during the relevant period.

183 Subsection (4) enables a primary authority, within the relevant period, to direct the enforcing authority not to take the enforcement action if it decides such action would be inconsistent with advice or guidance the primary authority has previously given. If no direction is issued and the enforcing authority continues to propose to take the enforcement action, it must notify the regulated person or the member of its intention to do so under subsection (6).

184 Subsection (7) provides for Parts 2 and 3 of new Schedule 4A to RESA, which contains provisions that allow an enforcing authority, a primary authority or a regulated person or members of a regulated group to refer questions regarding enforcement action to the Secretary of State.

#### *New sections 25D: Enforcement action: exceptions*

185 This section provides that the Secretary of State must make regulations, with the consent of the Welsh Ministers, which prescribe the circumstances in which the procedures in new sections 25B and 25C do not apply.

#### *New section 26A: Inspection plans*

186 Section 26A provides that a primary authority may make an inspection plan that applies to a regulated person or a regulated group; new section 26B makes provision for the effect of an inspection plan on the functions of the primary authority and other relevant qualifying regulators; and new section 26C provides for the revision and revocation of an inspection plan made under section 26A.

187 Subsection (2) of new section 26A provides that an “inspection plan” is a plan containing recommendations as to how a relevant qualifying regulator (an “inspecting regulator”) should exercise its inspection functions (as defined in subsection (1)) in relation to the regulated person or member of the regulated group.

188 Before drawing up an inspection plan, the primary authority must consult the regulated person or the co-ordinator of the regulated group to whom the plan applies. When drawing up the plan, the primary authority is required to take into account recommendations published by any person (other than an inspecting regulator) pursuant to a regulatory function (subsection (5)). For an inspection plan to have effect, the Secretary of State must consent to it (subsection (7)).

189 Where the Secretary of State consents to an inspection plan, subsection (8) requires the primary authority to bring the plan to the notice of the regulated person or the co-ordinator of a regulated group and inspecting regulators.

190 Subsection (9) requires the co-ordinator to bring the plan to the notice of the members of the regulated group to whom it may be relevant, and to keep a list of those members, which it must provide to the primary authority. It must also provide the list to inspecting regulators (subsection (10)).

#### *New section 26B: Effect of inspection plans*

191 Subsection (1) requires the primary authority to comply with its inspection plan in relation to the regulated person or a member of a regulated group.

192 Under subsection (2), if the plan has been brought to the attention of an inspecting regulator, that regulator must also comply with the plan, unless the primary authority has approved an alternative inspection proposal by the inspecting authority or (in the case of a regulated group) the inspecting authority doesn't know that the person being inspected belongs to the regulated group.

### *New section 26C: Revocation and revision of inspection plans*

193 This section enables the primary authority, with the consent to the Secretary of State, to revoke an inspection plan made by it. The primary authority must bring the revocation to the attention of the regulated person or the co-ordinator of the regulated group and to the attention of inspecting regulators, under subsection (2). Under subsection (3), where the revocation is brought to the attention of a co-ordinator, the co-ordinator must bring the revocation to the attention of relevant members of the regulated group.

194 Subsection (4) enables the primary authority to revise an inspection plan. Under subsection (5), new sections 26B and 26C apply where a primary authority wishes to revise such a plan.

### *New section 27A: Power to charge*

195 New section 27A enables the primary authority to charge the regulated person or the co-ordinator for the work it has done. The primary authority is only entitled to recover such costs as it has reasonably incurred in the exercise of its functions. Under new section 30A, the Secretary of State may issue guidance about the charging of fees.

### *New section 28A: Support of primary authority by other regulators*

196 This section provides for certain "supporting regulators" with "designated functions" to do anything that they consider appropriate to support a primary authority in the preparation of advice and guidance under section 24A or an inspection plan under section 26A (subsection (2)).

197 Under subsection (1) a "supporting regulator" is defined as a person who has regulatory functions and who is specified in regulations made by the Secretary of State. The consent of the Welsh Ministers is required to specify a "supporting regulator" whose functions relate only to Welsh Ministerial matters (subsection (9)).

198 The Secretary of State specifies in regulations the "designated functions" exercised by the supporting regulator. A designated function must be a regulatory function exercised by that regulator (subsection (10)). When exercising a designated function, a supporting regulator who has provided support under new section 28A must act consistently with any advice, guidance or plan that is subsequently given by the primary authority under section 24A or 26A and to which the supporting regulator has consented (subsection (3)).

199 The designated functions may not include regulatory functions exercisable in Scotland, unless those functions are reserved matters and may not include regulatory functions in Northern Ireland that are transferred matters. The consent of the Welsh Ministers is required to include a regulatory function that is a Welsh Ministerial matter (subsection (11)).

200 Where the regulated person or co-ordinator has agreed to the support being given to the primary authority by the supporting regulator, subsection (6) gives the regulator the power to charge the regulated person or co-ordinator of the regulated group fees for the work it has done on a costs recovery basis.

### *New section 28B: Other regulators required to act consistently with primary authority advice etc*

201 This section provides that "complementary regulators" must act consistently with primary authority advice and guidance in the exercise of their "designated functions" in relation to a regulated person or a member of a regulated group, in so far as it was aware that the person is a member of a regulated group and as far as is possible to do so in accordance with its other functions (subsections (2) to (4)). Subsection (5) defines primary authority advice and guidance as advice and guidance issued by a primary authority under section 24A and inspection plans

made by the primary authority under section 26A.

202 Under subsection (1) a "complementary regulator" is defined as a person who has regulatory functions and who is specified in regulations made by the Secretary of State. The consent of the Welsh Ministers is required where the "complementary regulator" exercises functions that relate only to Welsh Ministerial matters (subsection (8)).

203 Under subsections (1)(a) and (9), the Secretary of State must specify in regulations the "designated functions" exercised by the complementary regulator. A designated function must be a "partnership function" (as defined in section 23A(2)) or equivalent to such a function but must not be a "relevant function" (defined in section 22C) of the complementary regulator. This means that, in relation to the designated function, the complementary regulator could not be a "qualifying regulator" eligible for nomination as a primary authority under section 23A. The designated function must be exercisable by the complementary regulator in relation to the regulated person or member of the regulated group.

204 The regulations may not include regulatory functions exercisable in Scotland, unless those functions are reserved matters and may not include regulatory functions in Northern Ireland that are transferred matters. The consent of the Welsh Ministers is required to include a regulatory function that is a Welsh Ministerial matter (subsection (10)(c)).

#### *New section 29A: Primary authority enforcement action inconsistent with another authority's advice etc*

205 This section applies where a 'direct' or 'co-ordinated' primary authority notifies under new section 25B(2)(a) a regulated person or member of a regulated group that it proposes to take enforcement action. If, within the relevant period, the regulated person or member notifies the primary authority that it considers the proposed enforcement action to be inconsistent with advice or guidance previously given by another primary authority, then the provisions of section 25C apply as if the primary authority proposing to take the enforcement action were an enforcing authority.

#### *New section 29B: Concurrent duties to notify primary authorities of enforcement action*

206 This section provides for the situation where there is more than one primary authority nominated in respect of a regulated person or member of a regulated group, and an enforcing authority intends to take enforcement action against the regulated person or member.

207 Where an enforcing authority proposes to take enforcement action it must notify the regulated person or member of a regulated group under section 25C(2)(a). This new section 29B provides for two exceptions to this obligation.

208 The first exception, under subsection (3), is where an enforcing authority is required to notify under section 25C(2)(a) a direct primary authority. The second exception, under subsection (4), is where there is no direct primary authority, but the enforcing authority notifies at least one other co-ordinated primary authority under section 25C(2)(a).

#### *New section 29C: Enforcement action notified to a primary authority inconsistent with another primary authority's advice etc*

209 This section applies where a primary authority has decided not to direct an enforcing authority not to take proposed enforcement action. Where this is the case, subsection (2) requires the primary authority to take reasonable steps to ascertain whether another primary authority for the regulation of the function in relation to the regulated person or member has previously given advice or guidance, and whether the regulated person or member considers the proposed enforcement action to be inconsistent with that advice or guidance.

- 210 If the primary authority does ascertain that the such advice or guidance has previously been given and that the regulated person or member considers the enforcement action to be inconsistent with it from another primary authority and considers the enforcement action inconsistent with such advice or guidance, then it must refer the proposed enforcement action to the primary authority which issued that advice and notify the enforcing authority and the regulated person or member that it has done so (subsection (3)).
- 211 'Subsection (4) provides that where a reference is made under subsection (3) the procedure to be followed is that set out under sections 25C, but as if the notification had been given under section 25C(2)(a). Section 25C will no longer apply to the referring primary authority (PA1) as the primary authority. In practice, this means that the relevant period (during which time the enforcing authority cannot take enforcement action) will restart, and the primary authority to which the reference is made will have to consider the proposed enforcement action and decide whether to direct the enforcing authority not to continue the action. The provisions in new section 25B that allow an enforcing authority or a regulated person or member of a regulated group to refer the decision to the Secretary of State will also apply.

#### *New section 29D: Overlapping inspection plans*

- 212 This section makes provision for cases where there is more than one relevant inspection plan in respect of the same inspection function in relation to the same person. The effect of the section is that an inspection plan made by a direct primary authority must be followed even where there is also an inspection plan made by a co-ordinated primary authority.
- 213 Where a direct primary authority has made an inspection plan to which the Secretary of State has consented, new section 26B(2), which would require the primary authority as an inspecting regulator to exercise the inspection function in accordance with another plan if it was notified of the other plan, does not apply (subsection (3)).
- 214 Subsections (4) and (5) make provision for the situation where a co-ordinated primary authority is an inspecting authority and a direct primary authority has also made an inspection plan in respect of the same inspection function for the same person. These subsections provide that new section 26B(1), which would require the co-ordinated primary authority as an inspecting regulator to exercise the inspection function in accordance with its own plan (if one is made), does not apply, and new section 26B(2), which would require the co-ordinated primary authority to follow an inspection plan made by an inspecting authority applies only to the inspection plan made by the direct primary authority.
- 215 Where a co-ordinated primary authority has made an inspection plan, new section 26B(2), which would require the primary authority as an inspecting regulator to exercise the inspection function in accordance with another plan if it was notified of another plan, does not apply (subsection (6)) unless such other plan was made by a direct primary authority.
- 216 In all other cases where there is more than one inspection plan in respect of an inspection function for the same person, the reference in new section 26B(2) to the plan must be read as a reference to the plan made by a direct primary authority or, where there is no such plan, as a reference to any one of the plans brought to the attention of the inspecting regulator (subsection (7)).

#### *New section 30A: Guidance from the Secretary of State*

- 217 This section provides that the Secretary of State may give guidance to qualifying regulators, supporting regulators, complementary regulators and co-ordinators about the operation of Part 2. Any such guidance must be published (subsection (8)).
- 218 Subsection (5) requires the Secretary of State to consult such persons as are considered

appropriate before issuing the guidance. Under subsection (6), the Welsh Ministers must be consulted where guidance to supporting regulators makes provision about which functions are relevant to the exercise of a partnership function under section 28A. The Welsh Ministers must also be consulted where guidance is issued to qualifying regulators and supporting regulators about the charging of fees by the primary authority.

219 Qualifying regulators, supporting regulators, complementary regulators and co-ordinators must have regard to any guidance issued by the Secretary of State, by virtue of subsection (4).

#### *New section 30B: Periods of time under Part 2*

220 This section enables the Secretary of State to make regulations that amend any provision of the Part that specified a time period. Any such regulations are subject to the affirmative resolution procedure (new section 30C(2)).

#### *New section 30C: Regulations under Part 2*

221 This section stipulates that regulations made under Part 2 must be made by statutory instrument (subsection (1)). A statutory instrument containing regulations made under new sections 22B, 28B(1)(a) or 30B must be made via affirmative resolution (subsection (2)). All other regulations may be made by negative resolution (subsection (3)).

#### *New section 30D: Interpretation of Part 2*

222 This section aids interpretation of the new Part 2. It contains definitions of key terms (subsection (1)) and definitions of 'working day' (subsection (2)) and 'relevant place' (subsection (3)).

### **Schedule 3: Primary Authority Scheme: New Schedule 4A to RESA 2008**

223 This schedule sets out the procedure for references to the Secretary of State. It replaces schedule 4 to the Regulatory Enforcement and Sanctions Act 2008.

224 Part 1 is concerned with enforcement action by the primary authority. It enables a regulated person, or a member of a regulated group, to make a referral to the Secretary of State where the primary authority has notified it of proposed enforcement action. This part is new. Its purpose is to ensure that the regulated person, or member of a regulated group, has the opportunity to apply for a reference where enforcement action is proposed by the primary authority, rather than by a different regulator.

225 Part 2 sets out the procedure for references to the Secretary of State where enforcement action has been notified to the primary authority by an enforcing authority and the primary authority has directed against it. Reference may be made by the enforcing authority (paragraph 2) or the regulated person/member of the regulated group (paragraph 3).

226 Part 2 also enables a primary authority to refer proposed enforcement action by an enforcing authority to the Secretary of State instead of making a determination on the action itself (paragraph 4).

227 Consent of the Secretary of State to the reference is necessary in each situation. The Secretary of State is then able to:

- direct against the action, if satisfied that the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority, and that it was correct and properly given; or
- consent to the action.

228 If the Secretary of State directs against the action, the Secretary of State may direct the

enforcing authority to take some other enforcement action.

229 Part 3 sets out general provisions in relation to referrals. Paragraph 5 sets out timings for the making of referrals and for the Secretary of State to determine referrals. Paragraph 6 provides that the Secretary of State must consult with any relevant regulator where appropriate, and may consult with other persons. Paragraph 7 enables the Secretary of State to require information to be provided by any of the primary authority, the enforcing authority or the regulated person/member of the regulated group. Paragraph 8 makes provision as to costs where the regulated person/member of regulated group applies for make a reference. Paragraph 9 allows the Secretary of State to make further provision as to procedures to be followed.

## Part 4: Apprenticeships

### Clause 20: Public sector apprenticeship targets

230 This clause will insert new sections A9 (public sector apprenticeship targets) and A10 (further provision about apprenticeship targets) into Chapter A1 of Part 1 of the [Apprenticeships, Skills, Children and Learning Act 2009](#) (the 2009 Act). That Chapter concerns English apprenticeships.

231 New section A9 will provide the Secretary of State with a power to set targets for public bodies in relation to the number of apprentices who work for them and new section A10 will make further provision. The apprentices must be employed under approved English apprenticeship agreements (see section A1 of the 2009 Act) or any apprenticeship agreements based on frameworks which are not yet phased out under provision made under section 115(9) of the [Deregulation Act 2015](#).

232 The public bodies within scope of this clause will be set out in regulations. These will cover public authorities or bodies with functions of a public nature that receive some form of funding from public money. The intention is to ensure that the Secretary of State is able to set targets for any public sector body, including central Government departments, non-departmental public bodies and other bodies which exercise public functions. The Secretary of State has discretion to decide not to include certain bodies or categories of bodies in the regulations.

233 The Secretary of State has the freedom and flexibility on how to apply a target; the Secretary of State may set different targets for different bodies, groups of bodies or parts of bodies. Alternatively, the Secretary of State may wish to set one target for all of the bodies. When choosing to set a target, the Secretary of State may set different targets in different periods. The Secretary of State may take into account the particular circumstances of a body and not apply any, or a particular, target to it.

234 There is a duty on all public bodies for which targets are set to have regard to the applicable apprenticeship targets and any applicable guidance the Secretary of State may issue.

235 In order to determine which public bodies should be in scope of this measure, or to carry out other functions under the new section, the Secretary of State needs to be able to access information about the workforce of public bodies. This clause provides a power for the Secretary of State to require anybody in the public sector to provide information to the Secretary of State that is needed for that reason. This may be information in relation to their numbers of employees, or workforce planning.

236 To ensure public bodies are having due regard to the target and in order to increase transparency there will be a duty for public bodies to publish information on progress towards meeting the apprenticeships targets annually. Public bodies will also be required to send this

information to the Secretary of State. There is also provision for the Secretary of State to make regulations under which bodies would be required to send separate, additional information regarding the target. This may be information on why they were unable to meet the target, or their future plans to try and meet the target.

237 This provision forms part of the law of England and Wales but applies to England only. Where public bodies operate across the UK, the target will be set as a certain proportion of their England-based workforce.

## Clause 21: Only statutory apprenticeships to be described as apprenticeships

238 This clause inserts a new section A11 into the 2009 Act. It creates an offence for a person to provide or offer a course or training as an apprenticeship in England if it is not a statutory apprenticeship. Similarly, the offence includes describing a person who undertakes such a course or training as an apprentice. The offence only applies to a person acting in the course of business.

239 The definition of statutory apprenticeship in the section is intended to include all English apprenticeships provided for under the 2009 Act (including apprenticeships in relation to frameworks saved under provision made under section 115(9) of the Deregulation Act 2015) and section 2 of the [Employment and Training Act 1973](#). It also includes statutory apprenticeship arrangements within Scotland, Wales and Northern Ireland in case any part of those apprenticeships are provided or offered in England.

240 Employers cannot commit the offence in relation to their employees. That includes employees who have a contract of apprenticeship which is not a statutory apprenticeship. The definition of a contract of employment in section 230(2) of the [Employment Rights Act 1996](#) expressly includes contracts of apprenticeship.

241 The offence may be committed by a body corporate. An officer of a body corporate also commits the offence if the action of the body corporate is done with their consent or connivance or is as a result of their neglect. In this context, an officer also includes a governor of an educational institution.

242 This offence will be enforced primarily by the Local Weights and Measures Authorities using similar powers to those they have in relation to unrecognised degrees under Schedule 5 to the [Consumer Rights Act 2015](#). It will enable them, the Secretary of State, or others with the consent of the Director of Public Prosecutions to take action if courses or training are offered which are not of sufficient quality as required of statutory apprenticeships. The offence is only triable in the Magistrates' Court and the maximum penalty is a fine.

243 This provision forms part of the law of England and Wales but applies to England only.

## Part 5: Late Payment of Insurance Claims

### Clause 22: Insurance contracts: implied term about payment of claims

244 Clause 22(1) inserts a new section 13A into the [Insurance Act 2015](#) which will imply a term requiring the insurer to pay sums due within a reasonable time into all contracts of insurance made under the law of any part of the United Kingdom.

245 Breach of the new contractual term in insurance contracts will give rise to the usual remedies for breach of contract, including damages for loss.

246 Sections 13A(2) and (3) make further provision about the meaning of a "reasonable time". Under section 13A(2), this will always include time to investigate and assess the claim. Section 13A(3) makes clear that what is reasonable depends on all the circumstances and contains a

non-exhaustive list of factors which might be relevant in considering whether the insurer has acted within a reasonable time.

- 247 The type of insurance involved may be relevant because, for example, claims under business interruption policies usually take longer to value than claims for property damage. In terms of size and complexity, larger more complicated claims will usually take longer to assess than straightforward claims. A claim may be complicated by its location, for example: if an insured peril occurs abroad, it is possible that investigation will be more difficult.
- 248 The reference to relevant statutory or regulatory rules or guidance might include, for example, rule 8 of the Financial Conduct Authority's Insurance: Conduct of Business sourcebook (ICOBS) on claims handling, and paragraph 27 of Schedule 1 to the [Consumer Protection from Unfair Trading Regulations 2008](#) (SI 2008/1277) relating to commercial practices which are in all circumstances considered unfair.
- 249 Factors beyond the insurer's control might delay payment. For example, investigations may be held up because the policyholder or a third party fails to provide relevant information in a timely manner. An insurer's decision may also be dependent on the actions of another insurer. This may arise as a result of the interaction between business interruption and property insurance, or in the subscription market where a follower may be dependent on the lead insurer.
- 250 Section 13A(4) gives the insurer a defence to a claim for breach of the implied term where it had reasonable grounds for disputing the validity or quantum of a claim. Whether the insurer had reasonable grounds is intended to be judged objectively.
- 251 Section 13A(4)(b) provides that the insurer's conduct in handling the claim may be a relevant factor in deciding whether the term was breached and, if so, when. An insurer who has a reasonable basis for disputing a claim or at least conducting further investigations may nevertheless be found to be in breach of the implied term if, for example, it conducts its investigation unreasonably slowly, or is slow to change its position when further information confirming the validity of the claim comes to light.
- 252 Section 13A(5) preserves the distinction between claims for breach of the implied term and (a) the substantive insurance claim and (b) claims for interest on the insurance claim, whether contractual, statutory or otherwise. Breach of the implied term must be argued and proven separately.
- 253 These provisions have UK wide extent, as do the other provisions of the Insurance Act 2015. They deal solely with reserved or non-devolved matters.

### Clause 23: Contracting out of the implied term about payment of claims

- 254 This clause amends Part 5 of the [Insurance Act 2015](#) which deals with contracting out of the substantive provisions of the Act.
- 255 The new section 16A inserted by clause 23(1) follows the approach of the Insurance Act 2015 and makes different provision in relation to consumer insurance contracts and non-consumer insurance contracts which attempt to contract out of the term implied by section 13A. The terms "consumer insurance contract" and "non-consumer insurance contract" are defined in section 1 of the 2015 Act. For these purposes, a term of an insurance contract "contracts out" of the implied term if it puts the insured in a worse position as regards the matters covered by section 13A, than the insured would be in by virtue of the implied term.
- 256 Section 16A(1) ensures that (like the rest of the Insurance Act 2015), a term of a consumer insurance contract that purports to contract out of the implied term is of no effect. The obligation to pay valid claims within a reasonable time is therefore mandatory and an insurer

cannot use a term of the contract to put a consumer in a worse position than they would be in by virtue of the implied term.

- 257 Section 16A(2) to (4) deal with contracting out in non-consumer insurance contracts. Subsection (2) prevents a contract term from contracting out of the implied term so far as relating to the consequences of a deliberate or reckless breach of it. Under subsection (4) it is generally possible to contract out of the implied term provided that the insurer complies with the transparency requirements set out at section 17 of the Insurance Act 2015. Under section 17 the insurer must give notice of the term to the insured and the term must be clear and unambiguous as to its effect.
- 258 Clause 23(2) amends section 17(1) of the Insurance Act 2015, which defines what a “disadvantageous term” is for the purposes of the contracting out provisions in that Act, so that it applies also to a “disadvantageous term” of the kind referred to in the new section 16A(4).
- 259 The implied term about payment will apply only to insurance contracts entered into after the provisions come into force. These provisions have UK wide extent, as do the other provisions of the Insurance Act 2015. They deal solely with reserved or non-devolved matters.

## Clause 24: Additional time limit for actions for damages for late payment of insurance claims

- 260 Clause 24(1) inserts a new section 5A into the Limitation Act 1980. The Limitation Act 1980, and the amendments made to it by clause 24(1), extend to England and Wales only.
- 261 Subsection (1) of the new section means that, where the insurer has paid all sums due in respect of an insurance claim under the contract, then the insured may not bring any claim for late payment of those sums more than one year after that payment.
- 262 Subsection (2) provides that the receipt of any form of payment which extinguishes the insurer’s liability in respect of the original insurance claim will constitute the beginning of the one year period for bringing a late payment claim specified in subsection (1). This payment may be, for example, a payment in accordance with a court or arbitral award, or an amount agreed by the insurer and insured in a binding settlement agreement.
- 263 A late payment action will be barred by the expiry of whichever period ends soonest: the one year period after payment of all sums due in respect of the insurance claim, or the usual limitation period (contained in section 5 of the Limitation Act 1980 – time limit for actions founded on simple contract) of six years from the date of breach of the implied term as to payment within a reasonable time.

## Part 6: Non-Domestic Rating

### Clause 25: Disclosure of HMRC information in connection with non-domestic rating

- 264 This clause gives effect to the Government’s commitment to allow greater sharing of information on non-domestic properties.
- 265 The clause amends the [Local Government Finance Act 1988](#) inserting new section 63A, to enable officers of the Valuation Office of Her Majesty’s Revenue and Customs (VOA) to supply information to billing authorities, major precepting authorities, and contractors and service providers working for them in relation to authorities’ non-domestic rating functions. It also allows information to be supplied to the Secretary of State and Welsh Ministers for functions related to the central rating list. The permissive (as opposed to mandatory) nature of section 63A implicitly allows for the VOA to control the release of information and for additional

conditions to be placed on any disclosure. The clause also inserts a new section 63B which makes provision for the lawful onward disclosure of the information and creates a criminal offence in relation to the unlawful disclosure of information which identifies an individual or whose identity can be deduced from the information provided under section 63A. Finally, this clause inserts new section 63C which ensures that information disclosed under the new sections 63A or 63B which identifies a person to which the information relates is exempt from requests under the Freedom of Information Act 2000.

266 These provisions extend to England and Wales only.

## Clause 26: Alteration of Non-Domestic Rating lists

267 This clause reforms the non-domestic rates appeals system.

268 The clause amends section 55 of the [Local Government Finance Act 1988](#), which enables the Secretary of State to provide by regulations for ratepayers to make proposals for alterations to the non-domestic rating list (including who may make a proposal, the circumstances in which a proposal may be made, the time limit to make a proposal, procedure for making a proposal). It also provides that appeals may be made to the Valuation Tribunal for England where there is disagreement between a valuation officer and the person making a proposal.

269 The new subsections (4A) and (4B) inserted by this clause provide that the Secretary of State may make regulations prescribing the steps which must be taken before the ratepayer can make a proposal. This section will allow the introduction of a new 'check' stage. The check stage is intended to ensure that the property's rating assessment is based on accurate and up-to-date facts. This section will also provide for regulations which allow valuation officers to impose a civil financial penalty upon a person who in connection with a proposal knowingly, recklessly or carelessly provides false information and for that civil financial penalty to be appealed. Together with the existing powers, the amendments will allow details of the 'challenge' stage (which is a form of proposal) to be set out in secondary legislation.

270 The clause also extends subsection (5) by inserting new subsection (5A) to allow the Secretary of State to make provision about the grounds on which an appeal may be made to the Valuation Tribunal for England, matters which may not be taken into account in the appeal, and about the submission and handling of new evidence in an appeal. The amendments also provide for powers to enable the Secretary of State to impose fees for an appeal and to make provision allowing for refunds of those fees.

271 The clause substitutes subsection (8) to clarify that the amendments to section 55 apply in England only. Section 55 of the Local Government Finance Act 1988 extends to England and Wales but the amendments made by this clause apply to England only.

## Part 7: Other Enterprise-Related Provisions

### Industrial Development

272 This group of provisions forms part of the law of the United Kingdom, save for clause 28(2) which amends the heading to section 13 of the [Industrial Development Act 1982](#), and does not extend to Northern Ireland.

### Clause 27: Allowable assistance under Industrial Development Act 1982

273 Under section 8 of the [Industrial Development Act 1982](#), the amount of financial assistance that can be given to a project under section 8 of the Industrial Development Act 1982 without a resolution of the House of Commons is £10 million. This clause increases the threshold from £10 million to £30 million. This increase reflects UK inflation since 1982.

274 The amendment to the project cap in section 8 of the Industrial Development Act 1982 will extend and apply to the United Kingdom as a whole.

275 The power in section 8 of the Industrial Development Act 1982 is exercisable by the Secretary of State concurrently with Welsh and Scottish Ministers. Scottish Ministers are only able to exercise the power within devolved competences. Scottish and Welsh Ministers exercising the power are bound by the project cap in section 8(8). Scottish Ministers do not wish to benefit from the proposed increase in the amount which can be spent before a House of Commons resolution is required. Welsh Ministers will benefit from the increase in the project cap.

#### Clause 28: Grants etc towards electronic communications services and networks

276 This clause inserts a new section 13A into the [Industrial Development Act 1982](#) to confer on the Secretary of State the power to make grants or loans towards the costs of improving electronic communication facilities (electronic communications networks and services, and associated facilities) in any area of the United Kingdom. These changes are designed to help the Secretary of State support the roll out of telecommunications and broadband across the United Kingdom.

277 The intention is that the new power to make grants or loans towards the costs of improving electronic communications networks and services in an area of the United Kingdom should only be available to Ministers of the UK Government.

### UK Government Investments Limited

#### Clause 29: UK Government Investments Limited

278 This clause permits the Treasury or the Secretary of State to provide financial assistance of any form or make payments to UK Government Investments Limited (UKGI). UKGI will bring together the two bodies that currently manage most of the taxpayer stakes in businesses – the Shareholder Executive (ShEx) and UK Financial Investments Limited (UKFI) - into a government company owned by HM Treasury. This ensures a specific power for the Government to fund UK Government Investments is in place.

### UK Green Investment Bank

#### Clause 30: Disposal of Crown's shares in UK Green Investment Bank company

279 This clause repeals the majority of Part 1 of the Enterprise and Regulatory Reform Act 2013.

280 Clauses 30(1) and 30(2) repeal in full sections 1, 3 and 5 of the Enterprise and Regulatory Reform Act 2013.

281 Clause 30(3) amends section 2 of the Enterprise and Regulatory Reform Act 2013 by removing subsections (1) to (8) of that section. Clause 30(3)(c) inserts a definition of what is meant by a UK Green Investment Bank company in Part 1 of the Enterprise and Regulatory Reform Act 2013.

282 Clause 30(4) amends the Secretary of State's power in section 4 of the Enterprise and Regulatory Reform Act 2013 to give financial assistance to the UK Green Investment Bank. Clause 30(4)(a) provides that this power applies to a UK Green Investment Bank company at any time when the Crown holds shares in a UK Green Investment Bank company. This is an extension of the original power in section 4(1) which applied only when the Crown owned more than half of the issued share capital in the UK Green Investment Bank. Clause 30(4)(d) ensures that section 4 does not prevent the Treasury or the Secretary of State from providing financial assistance to a UK Green Investment Bank company under powers in other legislation at any time when the Crown holds no shares in a UK Green Investment Bank company.

283 Clause 30(5) amends section 6 of the Enterprise and Regulatory Reform Act 2013 to require the

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Secretary of State to lay a copy of the annual report and accounts of the UK Green Investment Bank before Parliament each year, if at the date of the company's general meeting, the Crown holds at least one share in a UK Green Investment Bank company. Clause 30(5)(c) repeals section 6(3) and 6(4) of the Enterprise and Regulatory Reform Act 2013 which is no longer relevant in light of the repeal of section 2(1) to 2(8) of the Enterprise and Regulatory Reform Act 2013.

284 Clause 30(6) inserts a new section 6A into the Enterprise and Regulatory Reform Act 2013. Section 6A places a duty on the Secretary of State to report to Parliament as soon as reasonably practical after the Crown has disposed of shares in a UK Green Investment Bank company. Subsection (2) of the new section 6A sets out information that must be included in the Secretary of State's report. Subsection (3) of the new section 6A requires the Secretary of State to give a copy of the report to the Scottish Ministers, the Welsh Ministers, and the Office of the First Minister and Deputy First Minister in Northern Ireland, and also provides that the same is required in respect of a report laid before Parliament under clause 31 of this Bill.

### Clause 31: UK Green Investment Bank: transitional provision

285 This clause contains transitional provisions.

286 Clause 31(1) provides that regulations bringing section 30 into force may not be made unless the Secretary of State has made a decision to undertake a disposal of shares held by the Crown in a UK Green Investment Bank company, and has laid before Parliament a report on the proposed disposal(s) including the kind of disposal intended, the expected time-scale for the disposal, and the Secretary of State's objectives for the disposal. Clause 31(2) and 31(3) defines what is meant by a UK Green Investment Bank company in this section.

### Clause 32: Objectives of UK Green Investment Bank

287 Clause 32 sets out additional actions that the Secretary of State shall take prior to a disposal of shares in a UK Green Investment Bank company. It requires the Secretary of State to ensure the statement of the objects in a UK Green Investment Bank company's articles of association are as described in clause 32(1)(a)(i)-(v), and to also ensure that the articles of association of a UK Green Investment Bank company require its directors to act and review their actions against the statement of the objects.

288 Clause 32(1)(c) requires the Secretary of State to create a special share which has no income or capital rights, and no voting rights except on a vote to amend the statement of the objects of a UK Green Investment Bank company and on a vote to alter the rights of the special share. Clause 32(2) provides that any amendment to the company's objects shall require the consent of the special shareholder. Clause 32(4) provides that the issue of another special share of the same class will be deemed an alteration of the rights of the special share.

289 Clause 32(5) requires the Secretary of State to establish a company limited by guarantee registered with the Charity Commission which will own the special share. This company (the "Charitable Company") will have three members, none of which are to be public bodies, with initial members appointed by the Committee on Climate Change. If any member of the Charitable Company ceases to be a member then a replacement member will be nominated by the remaining members. The members of the Charitable Company are required to act unanimously in exercising the voting rights of the special share.

## Pubs Code

### Clause 33: Market rent only: conditions and triggers

290 Clause 33 makes provision which is similar to section 43(1), (6) and (9) of the [Small Business, Enterprise and Employment Act 2015](#) (SBE Act). The Government understands that the

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intended effect of this amendment is to make clear that the Secretary of State does not have power to qualify or limit the circumstances (set out in section 43(6) of the SBEE Act, and now also in subsection (1) of this clause) in which pub-owning businesses will be required to offer a Market Rent Only option to their tied pub tenants.

### Clause 34: Report on pub company avoidance

291 Clause 34 requires the Pubs Code Adjudicator to report to the Secretary of State where pub-owning businesses have unfairly taken steps to avoid the provisions in Part 4 of the SBEE Act to the detriment of their tenants. The report of the Secretary of State should include any recommendations on preventative actions and recommendations on how pub tenants who have suffered from any unfair business practices should be provided with redress. The Secretary of State must respond within three months by issuing a statement that either outlines the actions he or she will take or explains why he or she has decided not to take any action.

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

292 The provisions of this Part extend to the whole of the United Kingdom.

### Clause 35: Restriction on public sector exit payments

293 This clause inserts into the [Small Business, Enterprise and Employment Act 2015](#) new sections 153A through 153C, which provide the framework for a restriction on public sector exit payments.

294 The clause gives effect to Schedule 4 which contains consequential and supplementary provisions.

### New Section 153A: Regulations to restrict public sector exit payments

295 This section confers a power to make regulations to restrict exit payments payable to employees of prescribed public sector authority or holders of prescribed public sector offices as a consequence of them leaving employment or office to a value of £95,000. The section also provides that this value be substituted for a different value by regulations. The section further provides that any restriction must also apply to an aggregate of all exit payments made to the individual within a period of 28 days.

296 The regulations under this section will also:

- Prescribe what payments to an employee or post holder are within the scope of the restriction;
- Provide that certain payments or category of payments are exempt from the restriction; and
- Allow for a different amount to be substituted for the restriction set in this section.

297 The section also confers a power to amend an Act or relevant public sector compensation scheme to make sure they reflect the restriction on public sector exit payments.

### New Section 153B

298 This section provides that the power to make regulations under section 153A is exercisable by Scottish Ministers in relation to payments made by a relevant Scottish Authority or the Treasury in respect of all other payments. The power to amend relevant public sector schemes will, with the consent of the Treasury, also be exercisable concurrently by any Minister of the

Crown.

299 This section also provides that any regulations made under section 153A will be subject to the affirmative resolution procedure if made by the Treasury or a Minister of the Crown or the affirmative procedure if made by Scottish Ministers.

### New Section 153C

300 This section provides that a Minister of the Crown, or where appropriate the Scottish Ministers, may relax the whole or part of any restriction imposed by regulations made under section 153A. The power to relax the restrictions is exercisable in respect of an individual employee or post-holder, or in respect of a class of employees or post-holders.

301 This section also provides that regulations under section 153A may make provision that the power to relax the restrictions is exercisable only with the consent of the Treasury, or in accordance with directions given by the Treasury, and for information in respect of the exercise of any relaxation of the restrictions to be published.

302 This section also provides that regulations made by the Treasury under section 153A(1) may make provision for the power to relax restrictions imposed by regulations under that section to be exercised by Welsh Ministers in relation to exit payments made by a public authority that wholly or mainly exercises functions that have been devolved to the National Assembly for Wales.

### Schedule 4: Restriction on public sector exit payments: consequential and related provisions

303 This Schedule sets out consequential and related provisions.

304 Paragraphs 1 to 3 makes minor amendments to Parts 11 and 12 of the [Small Business, Enterprise and Employment Act 2015](#) required as a consequence of inserting new sections 153A through 153C and to ensure sections 154 and 156 of that Act operate as intended.

305 Paragraph 4 confers a power to make regulations to amend public sector schemes to ensure that where the restriction on exit payments would have the effect of preventing immediate payment of an unreduced pension or preventing an employer paying an extra charge to the scheme, that benefits are instead immediately payable subject to an appropriate early payment deduction, and that an individual may choose to buy out all or part of that deduction.

306 Paragraph 5 makes an amendment to the [Local Government Pension Scheme Regulations 2013](#) that is required to give effect to the restriction on public sector exit payments made to those in local government.

## Part 9: General Provisions

### Clause 36: Consequential amendments, repeals and revocations

307 This clause gives the Secretary of State and the Treasury a power to make regulations containing consequential amendments, repeals and revocations, including transitional, transitory or saving provision. Where the regulations amend, repeal or revoke any provision of primary legislation, such regulations must be made using the affirmative resolution procedure (subsection (4)). In all other cases the negative resolution procedure applies (subsection (5)).

### Clause 37: Transitional, transitory or saving provision

308 This clause provides a regulation making power to make transitional, transitory or saving provision. No parliamentary procedure is required to make such regulations.

## Clause 38: Commencement

309 See paragraphs 312 to 318 below.

## Clause 39: Extent

310 See paragraphs 56 to 62 above and Annex A below.

## Clause 40: Short title

311 This clause is self-explanatory.

# Commencement

312 Clause 38 makes provision about the coming into force of the provisions of the Act. The commentary on individual sections and Schedules includes an explanation of the effect of this section.

313 The Bill provides for Part 9 of the Bill (Final provisions) and certain powers enabling the making of regulations to come into force on the day of Royal Assent, as well as section 31 (UK Green Investment Bank: transitional provision).

314 The Bill provides for the following provisions to come into force two months after the day on which this Bill becomes an Act:

- Section 14 (business impact target: extension to provisions made by regulators etc) (so far as not already in force under subsection(1)) and Schedule 2;
- Section 17 (application of regulators' principles and code: removal of restrictions);
- Section 20 (public sector apprenticeship targets);
- Section 25 (disclosure of HMRC information in connection with non-domestic rating);
- Section 26 (alteration of non-domestic rating lists);
- Sections 27 and 28 (industrial development).

315 The provisions on late payment of insurance claims come into force on the day one year after the Act is passed.

316 Part 8 (Public sector payments: restrictions on exit payments) comes into force on such day or days as the Treasury may by regulations appoint.

317 The remaining provisions of this Bill will come into force on such day or days as the Secretary of State may by regulations appoint.

318 Regulations made under this section may appoint different days for different purposes or different areas.

# Financial implications of the Bill

319 The estimated cost of the establishment of the Small Business Commissioner is £1,100,000, with an estimated annual running cost of £1,300,000.

# Compatibility with the European Convention on Human Rights

320 Section 19 of the [Human Rights Act 1998](#) requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). The Secretary of State for the Department of Business, Innovation and Skills, has made the following statement: "In my view, the provisions of the Enterprise Bill are compatible with the Convention rights."

321 The Government has published a separate memorandum on ECHR issues with an assessment of compatibility of the Bill's provisions with the Convention rights. This memorandum is available on the Government website.

## Related documents

322 The following documents are relevant to the Bill and can be read at the stated locations:

- Impact Assessment - <https://www.gov.uk/government/collections/enterprise-bill>
- Delegated Powers Memorandum - <https://www.gov.uk/government/collections/enterprise-bill>
- European Convention of Human Rights Memorandum - <https://www.gov.uk/government/collections/enterprise-bill>
- [Human Rights Act 1998](#) - <http://www.legislation.gov.uk/ukpga/1998/42>

Part 1:

- [‘Establishing a Small Business Commissioner’](#) - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/450695/BIS-15-438-a-small-business-commissioner.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450695/BIS-15-438-a-small-business-commissioner.pdf)
- [Late Payment of Commercial Debts \(Interest Act\) 1998](#) - <http://www.legislation.gov.uk/ukpga/1998/20>
- [Parliamentary Commissioner Act 1967](#) - <http://www.legislation.gov.uk/ukpga/1967/13>
- [House of Commons Disqualification Act 1975](#) - <http://www.legislation.gov.uk/ukpga/1975/24>
- [Northern Ireland Assembly Disqualification Act 1975](#) - <http://www.legislation.gov.uk/ukpga/1975/25>
- [Freedom of Information Act 2000](#) - <http://www.legislation.gov.uk/ukpga/2000/36>
- [Small Business, Enterprise and Employment Act 2015](#) - <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

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Part 2:

- [Small Business, Enterprise and Employment Act 2015](#)  
-<http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>
- [Legislative and Regulatory Reform Act](#) -  
[http://www.legislation.gov.uk/ukpga/2006/51/pdfs/ukpga\\_20060051\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/51/pdfs/ukpga_20060051_en.pdf)
- [Deregulation Act 2015](#) -  
<http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>

Part 3:

- [Regulatory Enforcement and Sanctions Act 2008](#)  
-<http://www.legislation.gov.uk/ukpga/2008/13>

Part 4:

- [Education Reform Act 1988](#) -  
<http://www.legislation.gov.uk/ukpga/1988/40/contents>
- [Apprenticeships, Skills, Children and Learning Act 2009](#) -  
<http://www.legislation.gov.uk/ukpga/2009/22>
- [Deregulation Act 2015](#) -  
<http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>
- [Employment and Training Act 1973](#) -  
<http://www.legislation.gov.uk/ukpga/1973/50>
- [Employment Rights Act 1996](#) -  
<http://www.legislation.gov.uk/ukpga/1996/18>
- [Consumer Rights Act 2015](#) -  
<http://www.legislation.gov.uk/ukpga/2015/15/enacted>

Part 5:

- [Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment](#) -  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/331733/41872\\_Cm\\_8898\\_WEB.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/331733/41872_Cm_8898_WEB.PDF)
- [Insurance Act 2015](#) -  
<http://www.legislation.gov.uk/ukpga/2015/4/enacted>
- [Consumer Protection from Unfair Trading Regulations 2008](#) -  
<http://www.legislation.gov.uk/ukdsi/2008/9780110811574>

Part 6:

- [Commissioners for Revenue and Customs Act 2005](#) -  
<http://www.legislation.gov.uk/ukpga/2005/11/contents>

- [Administration of Business Rates in England –](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308504/PU1623_administration_of_business_rates_discussion_paper.pdf)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/308504/PU1623\\_administration\\_of\\_business\\_rates\\_discussion\\_paper.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308504/PU1623_administration_of_business_rates_discussion_paper.pdf)
- [Business Rates Interim Findings -](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385276/business_rates_interim_findings_10122014.pdf)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/385276/business\\_rates\\_interim\\_findings\\_10122014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/385276/business_rates_interim_findings_10122014.pdf)
- [Local Government Finance Act 1988 -](http://www.legislation.gov.uk/ukpga/1988/41/contents)  
<http://www.legislation.gov.uk/ukpga/1988/41/contents>
- [Consultation Document on Check, Challenge, Appeal -](https://www.gov.uk/government/consultations/reforming-business-rates-appeals-check-challenge-appeal)  
<https://www.gov.uk/government/consultations/reforming-business-rates-appeals-check-challenge-appeal>

Part 7:

#### Industrial Development

- [Industrial Development Act \(IDA\) 1982](http://www.legislation.gov.uk/ukpga/1982/52)  
[-http://www.legislation.gov.uk/ukpga/1982/52](http://www.legislation.gov.uk/ukpga/1982/52)
- Government [response](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/259542/bis-12-761-revision-industrial-development-act-1982-government-response.pdf) to Revision of 1982 Industrial Development Act consultation -  
  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/259542/bis-12-761-revision-industrial-development-act-1982-government-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/259542/bis-12-761-revision-industrial-development-act-1982-government-response.pdf)

#### UK Government Investments

- [“Managing Public Money” -](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/454191/Managing\\_Public\\_Money\\_AA\\_v2\\_-jan15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf)

#### UK Green Investment Bank

- [Companies Act 2006 -](http://www.legislation.gov.uk/ukpga/2006/46/contents)  
<http://www.legislation.gov.uk/ukpga/2006/46/contents>
- [Enterprise and Regulatory Reform Act 2013 -](http://www.legislation.gov.uk/ukpga/2013/24/contents)  
<http://www.legislation.gov.uk/ukpga/2013/24/contents>
- [“Future of UK Green Investment Bank plc” -](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477493/BIS-15-630-future-of-the-uk-green-investment-bank.pdf)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/477493/BIS-15-630-future-of-the-uk-green-investment-bank.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477493/BIS-15-630-future-of-the-uk-green-investment-bank.pdf)

#### Pubs Code

- [Small Business, Enterprise and Employment Act 2015 -](http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted)  
<http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

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- Consultations on the implementation of the Pubs Code, Part 1 and Part 2 -  
<https://www.gov.uk/government/consultations/pubs-code-and-adjudicator-market-rent-only-option-and-rent-assessments>  
<https://www.gov.uk/government/consultations/pubs-code-and-adjudicator-fees-enforcement-and-other-parts-of-the-code>

Part 8:

- The Government announced on 23 May 2015 that it intended to [end six figure exit payments for public sector workers](https://www.gov.uk/government/news/government-ends-six-figure-exit-payouts) -  
<https://www.gov.uk/government/news/government-ends-six-figure-exit-payouts>
- [Small Business, Enterprise and Employment Act 2015](http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted) -  
<http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>
- [Local Government Pension Scheme Regulations 2013](http://www.legislation.gov.uk/uksi/2013/2356/made) -  
<http://www.legislation.gov.uk/uksi/2013/2356/made>

## Annex A – Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Is the matter devolved in Wales?	Extends and applies to Scotland?	Is the matter devolved in Scotland?	Extends and applies to Northern Ireland?	Is the matter devolved in Northern Ireland?
<b>Clauses 1-19</b>	Yes	Yes	N/A	Yes	N/A	Yes	N/A
<b>Clauses 20-21</b>	Yes	No	Yes	No	Yes	No	Yes
<b>Clauses 22-23</b>	Yes	Yes	N/A	Yes	N/A	Yes	N/A
<b>Clause 24</b>	Yes	Yes	No	No	No	No	Yes
<b>Clause 25</b>	Yes	Yes*	Yes	No	Yes	No	Yes
<b>Clause 26</b>	Yes	No	Yes	No	Yes	No	Yes
<b>Clauses 27-32</b>	Yes	Yes	N/A	Yes	N/A	Yes	N/A
<b>Clauses 33-34</b>	Yes	Yes	No	No	Yes	No	Yes
<b>Clause 35-40</b>	Yes	Yes	N/A	Yes	N/A	Yes	N/A
<b>Schedule 1</b>	Yes	Yes	N/A	Yes**	N/A	Yes	N/A
<b>Schedules 2-4</b>	Yes	Yes	N/A	Yes	N/A	Yes	N/A

\* The Welsh Government has asked that this clause applies in Wales and confirmed that there would be support for an LCM

\*\* Except paragraphs 1 and 15

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## Subject matter and legislative competence of devolved administrations

### *Part 4: Apprenticeships*

323 Clause 20 provides the Secretary of State with a power to set targets for public bodies in relation to the number of apprentices who work for them. The provision extends to England and Wales but applies to England only.

324 Clause 21 prohibits a person, acting in the course of business, from providing or offering a course or training as an apprenticeship in England unless it is a statutory apprenticeship. The provision extends to England and Wales but applies to England only.

### *Part 5: Late Payment of Insurance*

325 Insurance law falls within the reserved matter of financial services as respects Scotland (A3 of Schedule 5 to the Scotland Act 1998), Wales (paragraph 4 of Part 1 of Schedule 7 to the Government of Wales Act 2006) and Northern Ireland (paragraph 23 of Schedule 3 to the Northern Ireland Act 1998). Clause 24 concerns the limitation periods for a claim for late payment of insurance monies, and amends the Limitation Act 1980 as regards such claims. The Limitation Act 1980 only applies in England & Wales, and amendments to it are reserved to Westminster. Scotland and Northern Ireland each have their own limitation enactments.

326 Limitation is generally a devolved matter in Scotland but, because of sections 29(2)(b) and 29(4) of the Scotland Act 1998, any provision about limitation relating only to insurance law, a reserved matter, does not fall within the legislative competence of the Scottish Parliament. An amendment to the limitation/prescription period in Scotland (under the Prescription and Limitation (Scotland) Act 1973) is not proposed.

327 Limitation is a transferred matter in Northern Ireland. In this instance, any amendment to the Limitation (Northern Ireland) Order 1989 would have the potential to affect the transferred matter “other than incidentally” and it is therefore a matter on which the Northern Ireland Assembly would have competence. An amendment to the limitation period in Northern Ireland (under the Limitation (Northern Ireland) Order 1989) is not proposed.

### *Part 6: Non- Domestic Rating (commonly known as Business Rates)*

328 Business rates policy is devolved to Wales (see para 12 of Part 1 of Schedule 7 to the Government of Wales Act 2006), Northern Ireland and Scotland. The Welsh Government wishes to extend the application of clause 25 to Wales and will support an LCM, therefore this measure will apply to England and Wales. Under clause 26 existing provision in section 55 to the Local Government Finance Act 1988 will be amended, in respect of England, to include new enabling powers allowing the Secretary of State for Communities and Local Government to make regulations in respect of the new business rates appeals system. Section 55 will continue to apply to Wales.

329 The provisions in clauses 25 and 26 do not extend or apply in relation to Scotland and Northern Ireland as the Valuation Office Agency does not perform local taxation valuations for them. In Scotland assessment of values for business rates and council tax purposes is done by Assessors appointed by Scottish Local Authorities. Whilst similar to the English process, the actors involved in the process of appeals are also different; business rates appeals in Scotland are dealt with by the Valuation Appeal Committee. In light of this, the corresponding provision in Scotland would be information sharing provisions between the local authority assessors, the Valuation Appeal Committee and Scottish Ministers - all of which would be within devolved competence. In Northern Ireland valuations are carried out by Land and Property Services and appeals are to the Commissioner for Valuation and then to the Northern Ireland Valuation

Tribunal. As such here the corresponding provision would be information sharing provisions between Land and Property Services, the Commissioner for Valuation and Northern Ireland Ministers - all of which would be within devolved competence. Valuations in Wales are carried out by the Valuation Office Agency, however, since business rates is a devolved matter different requirements could apply in line with Welsh policy on business rates. Appeals in Wales are considered by the Valuation Tribunal for Wales. As such, corresponding provision in Wales would be provision for sharing information between the Valuation Office Agency, Valuation Tribunal for Wales and Welsh Ministers. Even though business rates are devolved, this corresponding provision would not be within devolved competence for the purposes of Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business. That is because of the effect of section 18(4)(e)(ia) of the Commissioners for Revenue and Customs Act 2005 in relation to information held by the Valuation Office Agency, which is an agency of HMRC. Section 18(4)(e)(ia) would prevent the Welsh Assembly from making provision permitting disclosure of the relevant information. (However, for the reasons given above, corresponding provision is within devolved competence in Scotland and Northern Ireland, for the purposes of the Standing Orders.)

*Part 7: Other Enterprise Related Provisions*

330 Clause 33 makes provision in relation to Part 4 of the Small Business, Enterprise and Employment (SBEE) Act 2015 which requires the Secretary of State to introduce a statutory Pubs Code and Adjudicator. The clause relates to matters which should be included in the Pubs Code and should apply to tied tenants falling within scope of the SBEE Act. Part 4 of the SBEE Act only applies to England and Wales. Accordingly, the Pubs Code will have the same application. Therefore, although this clause currently extends to the United Kingdom, it will only ever apply to England and Wales.

331 Clause 34 also makes provision in relation to Part 4 of the SBEE Act. It relates to the Pubs Code Adjudicator who will be appointed under the SBEE Act to carry out the functions specified in that Act and the Pubs Code. The clause relates only to matters within Part 4 of the SBEE Act which only applies to England and Wales. Accordingly, whilst this clause extends to the United Kingdom, it will only apply to England and Wales.

332 The matters contained in Part 4 of the SBEE Act, dealing with a statutory Pubs Code and Pubs Code Adjudicator are within the legislative competence of the Scottish Parliament and the Northern Ireland Assembly.

# ENTERPRISE BILL [HL]

## EXPLANATORY NOTES

These Explanatory Notes relate to the Enterprise Bill [HL] as brought from the House of Lords on 16 December 2015 (Bill 112).

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