

Enterprise Bill [HL]

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

The amendments have been marshalled in accordance with the Instruction of 22nd October 2015, as follows –

Clause 1	Schedule 3
Schedule 1	Clauses 18 to 26
Clauses 2 to 13	Schedule 4
Schedule 2	Clauses 27 to 31
Clauses 14 to 17	Title

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

- 1** Page 1, line 5, at end insert –
- “() Her Majesty may by Letters Patent from time to time appoint a person to be the Commissioner.
- () A person appointed to be the Commissioner shall hold office until the end of the period for which he or she is appointed.
- () A person appointed to be the Commissioner may be –
- (a) relieved of office by Her Majesty at his or her own request, or
 - (b) removed from office by Her Majesty, on the ground of gross misconduct.
- () Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed to be the Commissioner is incapable for medical reasons –
- (a) of performing the duties of his or her office, and
 - (b) of requesting to be relieved of it.

**Amendment
No.**

Clause 1 – continued

- () A person appointed to be the Commissioner is not eligible for re-appointment.”

LORD STONEHAM OF DROXFORD
LORD MENDELSON
LORD STEVENSON OF BALMACARA

- 2** Page 1, line 9, leave out paragraph (b) and insert –
“(b) to consider complaints from small businesses relating to matters in connection with the supply of goods and services to –
(i) larger businesses, and
(ii) public authorities;
and make recommendations.”

Schedule 1

LORD MENDELSON
LORD STEVENSON OF BALMACARA

- 3** Page 50, line 5, leave out paragraph 1
4 Page 50, line 28, leave out “staff,”
5 Page 50, line 29, at end insert –
“ The Small Business Commissioner has the authority to appoint and recruit his or her own team.”

LORD HODGSON OF ASTLEY ABBOTTS

- 6** Page 50, line 29, at end insert –
“Advisory Panel
The Commissioner may establish an Advisory Panel with membership drawn from different regions and industrial and commercial sectors to assist in the efficacy of the Commissioner’s work.”

Clause 3

LORD HODGSON OF ASTLEY ABBOTTS

- 7** Page 3, line 4, at end insert –
“() The Commissioner may publish, or give to small businesses, general advice or information that the Commissioner considers may be useful to small businesses in connection with their relationships with relevant regulators as defined under Part 2.”

Amendment
No.

Clause 3 – *continued*

LORD MENDELSON
LORD STEVENSON OF BALMACARA

- 8 Page 3, line 10, at end insert –
“() tax rates, allowances and thresholds of relevance to small business owners.”

LORD MITCHELL

- 9 Page 3, line 10, at end insert –
“() guidance on payday loan rates and their appropriateness.”

LORD HODGSON OF ASTLEY ABBOTTS

- 10 Page 3, line 29, at end insert –
“() The Commissioner may publish details of cases in which, in his view, there have been delays in legal process which have acted to the detriment of small business.”

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

- 11 Page 3, line 43, at end insert –
“() Where a recommendation is made under subsection (8), the Commissioner may take the relevant action in response to the recommendations where he or she sees fit.”

After Clause 3

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

- 12 Insert the following new Clause –
“Role in dispute resolution
The Commissioner may assist small businesses by taking an active and direct role in resolving, mediating or facilitating the resolution of disputes.”

**Amendment
No.**

Clause 4

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

- 13** Page 4, line 25, at end insert—
“() is made by a small business (“the complainant”) which has an agreement to supply, or has supplied or may supply, goods or services to another small or medium sized business (“the respondent”),”

LORD MENDELSON
LORD STEVENSON OF BALMACARA

- 14** Page 4, line 25, at end insert—
“() relates to allegations of unfair treatment or unfair contracts,”

- 15** Page 4, line 27, leave out paragraph (c)

- 16** Page 4, line 27, at end insert—

“() A complaint under subsection (3) may be made anonymously.”

- 17** Page 4, line 40, leave out subsection (5)

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

- 18** Page 5, line 27, at end insert—
““small or medium sized business” has the meaning given by section 7(1) of the Small Business, Enterprise and Employment Act 2015.”

Clause 5

LORD STONEHAM OF DROXFORD

- 19** Page 5, line 30, at end insert—
“() In conducting activity under this section, the Commissioner must take all reasonable steps not to identify the complainant, unless the complainant consents.”

LORD MENDELSON
LORD STEVENSON OF BALMACARA

- 20** Page 5, line 35, at end insert—
“() Where the respondent fails to provide information voluntarily, the Commissioner has the authority to investigate and enforce compliance with information requests on contract terms.”

**Amendment
No.**

Clause 5 – continued

- 21** Page 5, line 37, at end insert –
- “() In support of a complaint being determined under the SBC complaints scheme, the following bodies may provide information or answer questions during the course of the Commissioner’s investigations –
- (a) government departments;
 - (b) local authorities;
 - (c) public sector bodies;
 - (d) companies.”
- 22** Page 5, line 44, at end insert –
- “() A recommendation made under subsection (6) may be that the complainant and respondent enter mediation to resolve their dispute.
- () Where a party declines mediation the relevant party shall provide an outline to the Commissioner on costs relating to litigation.”

LORD STONEHAM OF DROXFORD

- 23** Page 6, line 9, leave out subsection (11)

BARONESS HAYTER OF KENTISH TOWN
LORD MENDELSON
LORD STONEHAM OF DROXFORD

- 24** Page 6, line 10, at end insert –
- “() On the advice of the Commissioner, courts may declare an unfair contract term void.”

Clause 6

LORD STONEHAM OF DROXFORD

- 25** Page 6, line 12, leave out “may” and insert “must”
- 26** Page 6, line 15, at end insert “but such a report must identify the respondent”
- 27** Page 6, leave out lines 16 to 18
- 28** Page 6, line 23, leave out subsection (4)
- 29** Page 6, line 27, at end insert –
- “() Where a report contains one or more recommendations as to the steps that ought to be taken by the respondent to remedy, resolve or mitigate any issue which is the subject of the complaint, or to prevent a similar issue from arising in future, and the Commissioner considers the recommendations relate to a relevant function, the Commissioner may send a copy of the report to the Competition and Markets Authority.
- () In this section “relevant function” means a function of the Competition and Markets Authority as set out in Part 3 of and Schedule 5 to the Enterprise and Regulatory Reform Act 2013.”

Amendment
No.

After Clause 6

LORD MENDELSON
LORD STEVENSON OF BALMACARA

30 Insert the following new Clause –

“Small business access to finance

Where the Commissioner identifies thematic and systemic complaints relating to small business access to finance, the Commissioner may make recommendations to the Secretary of State for the provision of measures to encourage small business access to finance.”

LORD STONEHAM OF DROXFORD

31 Insert the following new Clause –

“Repeated complaints: late payments

- (1) Where –
 - (a) the Commissioner determines that a particular respondent has been the subject of repeated complaints relating to the late payment of invoices,
 - (b) the Commissioner has considered the complaints and made a determination which has included recommendations to the respondent, and
 - (c) the respondent has repeatedly failed to make changes recommended by the Commissioner,
 the Commissioner may request that the Secretary of State propose a fine on the respondent.
- (2) Where a request is made by the Commissioner under subsection (1), the Secretary of State must issue a fine to the relevant respondent unless the Secretary of State considers such a fine would be damaging to the long-term viability of the respondent’s business.
- (3) The Secretary of State may by regulation make further provision for the effective functioning of this section including, but not limited to –
 - (a) the definition of “repeated complaints”,
 - (b) the maximum level of fine that may be levied,
 - (c) whether a different maximum level should be prescribed based on the size of the respondent’s business, and
 - (d) the test by which the Secretary of State should consider the long-term viability of the business.
- (4) Regulations under this section shall be made by statutory instrument, and may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Amendment
No.

Clause 7

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

32 Page 7, line 24, leave out sub-paragraph (vii)

Clause 8

LORD MENDELSON
LORD STEVENSON OF BALMACARA

33 Page 8, line 32, at end insert—

- “(3) The Commissioner must ensure that all information provided by complainants, litigants and other parties against respondents is handled with confidentiality.
- (4) The Commissioner must not release the information outlined in subsection (3) without the consent of the complainant, litigant or relevant party.”

After Clause 8

LORD MENDELSON
LORD STEVENSON OF BALMACARA

34 Insert the following new Clause—

“Power to facilitate group litigation or representative action

- (1) The Small Business Commissioner may facilitate group litigation or representative action taken by a number of small business claimants in a case where a number of small businesses have complaints against the same company which share common characteristics.
- (2) The complaints outlined in subsection (1) must be found to be legitimate and must not have been dismissed prior to the Commissioner initiating group litigation or representative action.”

Clause 9

LORD HODGSON OF ASTLEY ABBOTTS

35 Page 8, line 37, at end insert “including details of any visits to the different regions of the United Kingdom”

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

36 Page 8, line 42, at end insert—

- “(d) outlines a summary of relevant complaints made by—
- (i) small businesses against other businesses, and
 - (ii) small businesses against government departments.

Amendment
No.

Clause 9 – continued

(1A) In subsection (1)(d), “relevant complaints” has the meaning given by section 4(3) and (4).”

37 Page 9, line 3, leave out subsection (3) and insert –

“(3) The Commissioner must lay a copy of the Report before both Houses of Parliament.”

Clause 10

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

38 Page 9, line 26, at end insert –

“() The Commissioner may assist other branches and agencies of government to develop legislation, government procedures and administration that provide alternative ways in which small businesses can comply with the requirements of the legislation, procedures and administration.”

Clause 11

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

The above-named Lords give notice of their intention to oppose the Question that Clause 11 stand part of the Bill.

After Clause 12

LORD ABERDARE

39 Insert the following new Clause –

“Payment practices: protection of retention monies in the construction industry

- (1) The Secretary of State shall arrange a review of the practice in the construction industry of withholding monies which would otherwise be due under a contract, the effect of which is to provide the paying party with security for the current and future performance by the party carrying out construction operations of any or all of the latter’s obligations under the contract (“retention monies”).
- (2) The review shall make recommendations regarding –
 - (a) the maximum period of time for which retention monies can be withheld; and
 - (b) the most effective mechanism for protecting retention monies against the risk of the paying party becoming insolvent.
- (3) The review shall be completed by the end of the period of 9 months beginning with the day on which this Act is passed.

**Amendment
No.**

After Clause 12—continued

- (4) On completion of the review the Secretary of State shall lay a copy of the report of the review before each House of Parliament.
- (5) Within the period of 18 months following completion of the review the Secretary of State shall by regulations implement the recommendations in the review.”

BARONESS HAYTER OF KENTISH TOWN
LORD MENDELSON

40 Insert the following new Clause—

“Small businesses and consumer rights legislation

- (1) Businesses with fewer than ten employees and which are purchasing goods or services for use within their commercial activities will be considered consumers with regards to the protections provided by the Consumer Rights Act 2015.
- (2) Businesses with fewer than ten employees and which are purchasing goods or services for use within their commercial activities will be considered consumers for the purposes of the Alternative Dispute Resolution for Consumer Disputes Regulations 2015.”

LORD MENDELSON
LORD STEVENSON OF BALMACARA
LORD STONEHAM OF DROXFORD

41 Insert the following new Clause—

“Companies: payment terms with suppliers

- (1) On the advice of the Commissioner, the Secretary of State may make regulations—
 - (a) imposing a limit on the number of days after receipt of a supplier’s invoice a company can seek to challenge that invoice,
 - (b) prohibiting the practice of a company seeking to change the payment terms of a supplier company unilaterally, and
 - (c) prohibiting a company from requiring a supplier company to make a payment in order to join that company’s list of suppliers.
- (2) The regulations may make provision for a prescribed breach by a prescribed description of person of a requirement or prohibition imposed by the regulations to be an offence punishable on summary conviction—
 - (a) in England and Wales by a fine;
 - (b) in Scotland or Northern Ireland, by a fine not exceeding level 5 on the standard scale.
- (3) The regulations may specify the size of company and supplier company to which they will apply.
- (4) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Amendment
No.

After Clause 12—*continued*

- (5) Regulations under this section shall be made by statutory instrument, and may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) For the purposes of this section “company” has the meaning given by section 1(1) of the Companies Act 2006.”

LORD MENDELSON
LORD STEVENSON OF BALMACARA

42 Insert the following new Clause—

“Duty to pay: private sector

- (1) Companies in the private sector are required to settle all outstanding payments owed to their small business suppliers by the date originally agreed to in the contract terms.
- (2) Where companies fail to make payments to their small business suppliers on time, it is a requirement that companies provide quarterly reports to the Small Business Commissioner relating to late payment of invoices.
- (3) The report in subsection (2) must contain, but need not be limited to, the following information—
 - (a) lists of all payments to suppliers which were made over 28 days after the date indicated by the suppliers’ agreed payment terms, without a formal query having been registered with the suppliers within a period as may be prescribed; and
 - (b) confirmation, for each instance listed under paragraph (a), that interest, equalling the Bank of England base rate plus 8% APR, was paid to compensate the supplier for overdue payment; or
 - (c) assurance, for each instance listed under paragraph (a) where confirmation of compensation under paragraph (b) cannot be provided, of a payment plan in place to compensate suppliers on the basis set out in that paragraph.”

43 Insert the following new Clause—

“Duty to pay: public sector

- (1) Public sector bodies are required to settle all outstanding payments owed to their small business suppliers by the date originally agreed to in the contract terms.
- (2) Where public sector agencies fail to make payments to their small business suppliers on time, it is a requirement that they provide quarterly reports to the Small Business Commissioner relating to late payment of invoices.
- (3) The report in subsection (2) must contain, but need not be limited to, the following information—
 - (a) lists of all payments to suppliers which were made over 28 days after the date indicated by the suppliers’ agreed payment terms, without a formal query having been registered with the suppliers within a period as may be prescribed; and

Amendment
No.

After Clause 12—continued

- (b) confirmation, for each instance listed under paragraph (a), that interest, equalling the Bank of England base rate plus 8% APR, was paid to compensate the supplier for overdue payment; or
- (c) assurance, for each instance listed under paragraph (a) where confirmation of compensation under paragraph (b) cannot be provided, of a payment plan in place to compensate suppliers on the basis set out in that paragraph.”

LORD STEVENSON OF BALMACARA
LORD MENDELSON

44 Insert the following new Clause—

“Duty to report outstanding interest payments on unpaid invoices

- (1) A company with outstanding liabilities relating to overdue payments at the end of an accounting period must record these in their statutory accounts.
- (2) Where any of the outstanding liabilities include interest on overdue payments, the company must disclose these amounts by way of a note to the accounts, which should also record comparable outstanding liabilities, if any, for the preceding six financial years.
- (3) Where companies fail to disclose this information during the course of an audit, their auditors are required to report that failure to the Small Business Commissioner, and may comment on the issue of their audit report.”

LORD MENDELSON
LORD STEVENSON OF BALMACARA

45 Insert the following new Clause—

“Invoice payment terms

Companies’ invoice payment terms cannot exceed more than 30 days.”

LORD STEVENSON OF BALMACARA
LORD MENDELSON
LORD STONEHAM OF DROXFORD

46 Insert the following new Clause—

“Payment practices: retention of monies

- (1) The Secretary of State may by regulations impose requirements on certain companies to publish information about their policies, practices and performance in holding, safeguarding and releasing sums withheld by, or in behalf of, a payer from monies which would otherwise be due under a contract, the effect of which would provide the payer with security for the current and future performance by the payee of any or all of the payee’s obligations under the contract (“retention monies”).
- (2) The regulations under subsection (2) may prescribe—
 - (a) the companies, or type of companies, to which the regulations apply;
 - (b) the information required to be published;

Amendment
No.

After Clause 12—*continued*

- (c) the intervals at which, and format and manner in which, publication must take place; and
 - (d) the type of description of contractual provision to which the regulations apply.
- (3) The restrictions on regulations in subsection (3) of section 3 of the Small Business, Enterprise and Employment Act 2015 shall apply to regulations made under subsection (1) of this section.
- (4) The Secretary of State shall arrange a review of the operation of the type of contractual provisions mentioned in subsection (1) after a period of 18 months following the coming into force of the first regulations made under subsection (1), and the Secretary of State shall lay a copy of the report of the review before each House of Parliament.
- (5) The review provided for under subsection (3) may make recommendations for requirements and obligations to be imposed upon certain types or descriptions of companies in relation to the practice of retaining monies as described in subsection (1).
- (6) After public consultation, the Secretary of State may by regulations impose such requirements and obligations on prescribed companies as were recommended by the review, in whole or in part, and with such amendments as the Secretary of State believes to be required in order to—
- (a) ensure that the practice of withholding retention monies does not give rise to unfair treatment of payees;
 - (b) provide assurance that retention monies are held securely; and
 - (c) ensure that the position of a payee company from whom retention monies are being withheld is protected when a payer company becomes insolvent.”

LORD MENDELSON
LORD STEVENSON OF BALMACARA

47 Insert the following new Clause—

“Support for growth of enterprise

The Secretary of State may publish information, or give advice to small businesses, about the availability of Early Investment Scheme tax relief for institutional investors who wish to invest in early stage small businesses.”

BARONESS HAYTER OF KENTISH TOWN
LORD MENDELSON

48 Insert the following new Clause—

“Goods sold to small businesses under rent-to-buy agreements and conditional sales contracts

- (1) This section applies to a contract under which a small business purchases goods from a trader under—
- (a) a hire-purchase agreement (as defined in section 7 of the Consumer Rights Act 2015),

**Amendment
No.**

After Clause 12—continued

- (b) a conditional sales contract (as defined in section 5(3) of the Consumer Rights Act 2015).
- (2) The trader—
 - (a) must provide information and adequate explanations to the small business before a contract is made, which would allow the small business to compare the total sum that he or she would pay under that contract and a representative retail price for the goods;
 - (b) must not require the small business to purchase an insurance policy which is sold or brokered by the trader as a condition of entering into a contract.
- (3) Within 12 months of the passing of this Act, the Secretary of State shall, by regulations made by statutory instrument—
 - (a) specify steps that a trader must take before taking action to enforce rights under a contract or to take possession of the goods;
 - (b) specify steps that a trader must take before a contract is made to ensure that that contract is affordable and appropriate for the small business.”

Clause 14

LORD HODGSON OF ASTLEY ABBOTTS

- 49** Page 12, line 3, at end insert—
- “(c) details of the activities, including the costs, of any organisation employed to undertake work on behalf of the regulator”

Clause 18

LORD STONEHAM OF DROXFORD

- 50** Page 34, leave out lines 30 to 32

Clause 19

LORD STONEHAM OF DROXFORD

- 51** Page 36, line 10, at end insert—
- “() In describing an apprenticeship that is a statutory apprenticeship scheme, P must also stipulate whether the apprenticeship is a higher level apprenticeship or not.”

Amendment
No.

After Clause 19

LORD STONEHAM OF DROXFORD
BARONESS SHARP OF GUILDFORD

52 Insert the following new Clause –

“Review of state support for apprenticeships

- (1) Within 12 months of the coming into force of this Part, the Secretary of State must publish a report on –
 - (a) the level of government support provided to fund apprenticeship schemes in England and Wales,
 - (b) the impact of funding apprenticeships on private sector enterprise, and
 - (c) the levels of apprenticeship starts and age of those entering into apprenticeships.
- (2) A report under subsection (1) must include, in particular, analysis of the impact of placing a levy on business to fund apprenticeships.
- (3) The report to be published under subsection (1) must be laid before each House of Parliament.”

After Clause 25

BARONESS NEVILLE-ROLFE

53 Insert the following new Clause –

“UK Green Investment Bank

Omit Part 1 of the Enterprise and Regulatory Reform Act 2013 (UK Green Investment Bank).”

Clause 26

LORD WILLS
LORD LOW OF DALSTON

54 Page 44, line 9, at end insert “except in the case of exit payments for potential claims under Part IVA of the Employment Rights Act 1996 (protected disclosures)”

LORD WILLS

55 Page 47, line 30, at end insert –

“153D Reporting and referral mechanisms to be included in regulations under section 153A

- (1) The Secretary of State shall by regulation make provision in relation to restrictions imposed by section 153A where the exit payment relates to a potential claim under Part 1VA of the Employment Rights Act 1996 (protected disclosures).

Amendment
No.

Clause 26 – *continued*

- (2) Regulations under subsection (1) shall –
 - (a) provide for the creation of a regulatory referral system, to apply where an exit payment relates to a potential claim under Part 1VA of the Employment Rights Act 1996, in circumstances where –
 - (i) the Minister of the Crown as described in section 153C considers it appropriate; and
 - (ii) there has been suspected or likely wrongdoing, malpractice, health and safety risk, breach of law or regulation; and
 - (b) provide that any individual who is subject to an exit payment as described in subsection (1) shall have access to legal advice on section 43J of the Employment Rights Act 1996.
- (3) The Secretary of State or the Treasury shall periodically produce guidance on exit payments made in accordance with section 153D(1) for relevant public sector employees as described in section 153A(2).”

Enterprise Bill [HL]

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

23rd October 2015

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