

ENTERPRISE BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Enterprise Bill [HL] as brought from the House of Commons on 10 March 2016.
- 2 These Explanatory Notes have been prepared by the Department for Business, Innovation and Skills in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons amendments themselves, refer to Bill 112, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- 5 All of the Commons Amendments were tabled in the name of the Minister, although Amendment 7 was altered as a result of a non-government amendment at Commons Report.

Commentary on Commons amendments

Commons Amendments to Part 2: Power of Welsh Ministers to apply regulators' principles and code of practice

Commons Amendment 1

- 6 **Commons Amendment 1** would give powers to Welsh Ministers (instead of a Minister of the Crown) to apply the regulators' principles and code of practice in relation to functions relating to matters within the legislative competence of the National Assembly for Wales, or in respect of which functions are exercisable by Welsh Ministers. This amendment ensures that the power to make orders relating to the Regulators' Code is divided between Welsh Ministers and the Ministers of the Crown along the lines of legislative competence and in a way that reflects the devolution settlement.

Commons Amendments to Part 3: Extending the primary authority scheme

Commons Amendments 2 to 11

- 7 **Commons Amendments 2, 4, 5, 7, 8 and 10** and subsections (1) and (2) of the new clause inserted by **Amendment 11** would replace references to a Welsh ministerial matter in the Regulatory Enforcement and Sanctions Act 2008 with references to a devolved Welsh matter. They would also replace references in the amendments made to that Act by this Bill. Subsection (4) of the new clause inserted by Amendment 11 defines a "devolved Welsh matter" so that, in addition to Welsh ministerial matters, it would also cover matters within the legislative competence of the National Assembly for Wales. This seeks to reflect the

devolution settlement more accurately.

- 8 **Commons Amendments 3, 6 and 9** and subsection (3) of the new clause inserted by Amendment 11 would replace references to functions exercisable “in Wales” in the Regulatory Enforcement and Sanctions Act 2008 with references to functions exercisable “in relation to Wales”. Amendments 3, 6 and 9 would also replace references in the amendments made to that Act by this Bill. This is aimed at providing consistency with the wording of section 108 of the Government of Wales Act 2006, and thereby seeks to clarify the extent to which provisions are applicable in Wales.

Commons Amendments to Part 4: Apprenticeships

Commons Amendments 12, 13 and 52: Institute for Apprenticeships

- 9 **Commons Amendment 12** and **Commons Amendment 52** would introduce a new clause and a new Schedule, which amends the Apprenticeships, Skills, Children and Learning Act 2009 to establish the Institute for Apprenticeships and make provision about its functions.
- 10 **Commons Amendment 13** would insert a new clause, which makes transitional provision relating to the establishment of the Institute for Apprenticeships. This would ensure that standards and assessment plans previously approved by the Secretary of State will be treated as if they were approved by the Institute for Apprenticeships.

Commons Amendments 14 and 15: Public Sector Apprenticeships Targets

- 11 **Commons Amendments 14 and 15** would ensure that the information which must be published by a public body subject to an apprenticeship target includes the number of persons who are employed by the body in England at the beginning of the reporting period.

Commons Amendments 16 and 17: Apprenticeships: Information Sharing and Funding

- 12 **Commons Amendment 16** would insert a new Part into the Apprenticeships, Skills, Children and Learning Act 2009 providing for the sharing of information between HM Revenue and Customs (HMRC) and the Secretary of State, and between HMRC and devolved authorities, for purposes connected with apprenticeships.
- 13 **Commons Amendment 17** would enable Government to make payments directly to employers in relation to the full range of English apprenticeships that can be funded by the Secretary of State.
- 14 As background, the Government announced its intention to introduce a UK wide apprenticeship levy on 8 July 2015. Legislation to establish and collect the levy and set the rate and scope will be included in the upcoming Finance Bill. As the levy will be imposed across the UK, **Amendment 16** is aimed at enabling HMRC and devolved authorities to exchange similar information about levy payments, so this data can be used in relation to devolved apprenticeship programmes.

Commons Amendments to Part 6: Alteration of non-domestic rating lists

Commons Amendments 18 to 26

- 15 **Commons Amendments 18 to 23** would extend the amendments made by clause 26 to section 55 of the Local Government Finance Act 1988, which currently apply to England only, so that the Welsh Ministers would have the power to make regulations in relation to proposals to alter local or central non-domestic rating lists for Wales equivalent to that for the Secretary of State in relation to English rating lists.

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- 16 **Commons Amendments 24 to 26** would provide for regulations made by the Welsh Ministers to be subject to procedure before the National Assembly for Wales equivalent to the procedure before Parliament which is required for regulations made by the Secretary of State under section 55 of the Local Government Finance Act 1988.

Commons Amendments to insert new Part 7: Sunday Working

Commons Amendment 27 and 53

- 17 **Commons Amendment 27** would introduce a new Schedule to the Bill containing amendments to the Employment Rights Act 1996 and the Employment Act 2002 in relation to Sunday working.
- 18 **Commons Amendment 53** would add a new Schedule that amends employment legislation. The amendments seek to: (a) shorten the notice period for opting out of Sunday work in the case of shop workers at large shops, (b) confer on shop workers a new right to object to working additional hours on Sunday, (c) require employers to give statements explaining these rights, (d) confer on shop workers protections against detriment and unfair dismissal in relation to the new right to object to working additional hours on Sundays, and (e) provide for fines in tribunal proceedings for employers who fail to give explanatory statements.

Commons Amendments to Part 7: Pubs Code

Commons Amendments 28, 29, 31 and 32

- 19 **Commons Amendments 28 and 31** would remove clause 33 and replace it with a new clause. The changes are intended to achieve what the Government understands is the intended effect of the Lords amendment, namely to ensure that the Pubs Code will require pub-owning businesses to offer tied pub tenants a market rent only option in connection with a rent assessment (including a rent assessment required at a scheduled rent review) whether the rent proposed is an increase, a decrease or is unchanged.
- 20 **Commons Amendments 29 and 32** would remove clause 34 and replace it with a new clause. The changes are intended to clarify the effect of the Lords amendment. Instead of containing freestanding provisions, the new clause inserts provision into Part 4 of the Small Business, Enterprise and Employment Act 2015. There are small changes to the detail of the drafting, principally to clarify that it applies to all regulations made under Part 4 of the 2015 Act and that the Adjudicator can report on business practices engaged in after royal assent of that Act.
- 21 Inserting the new clauses into Part 4 the Small Business, Enterprise and Employment Act would clarify that both clauses extend to England and Wales only.

Commons Amendments to Part 7: Objectives of the Green Investment Bank

Commons Amendment 30

- 22 **Commons Amendment 30** would remove clause 32 from the Bill. The clause was inserted by non-Government amendment in the House of Lords and was opposed by the Government. The clause set out actions which the Secretary of State should take prior to a disposal of shares in a UK Green Investment Bank company, including the creation of a special share. The Government announced on 2 February 2016 (Second Reading of the Enterprise Bill in the House of Commons) that the UK Green Investment Bank would put in place a special share structure to protect its green objectives, but that this would be done outside of legislation.

Commons Amendments to Part 8: Restrictions on Public Sector Exit Payments

Commons Amendments 33 to 39

- 23 **Commons Amendments 33 to 39 would** extend the powers to make regulations to restrict exit payments to Welsh Ministers in relation to relevant Welsh exit payments.
- 24 The amendments would provide that a draft of the statutory instrument containing the regulations must be laid before, and approved by, the National Assembly for Wales before being made by the Welsh Ministers. The amendments would also ensure that Welsh Ministers have the power to relax restrictions imposed by their regulations, and the power to delegate the power to relax restrictions to another person. This mirrors the powers given to the Treasury and Scottish Ministers in respect of their regulations.
- 25 **Amendments 38 and 39** would provide that any regulations made by the Treasury to impose restrictions on exit payments must, if they make provision in respect of exit payments made by relevant Welsh authorities, provide that the power to relax those restrictions is exercisable by the Welsh Ministers instead of a Minister of the Crown. Further, the amendments would provide that any regulations made by the Treasury may make such provision in respect of exit payments made by other authorities that mainly or exercise functions in relation to Wales. In respect of the former, the amendments would also exclude the power for Treasury regulations to impose limitations on the exercise of the power to relax restrictions.

Commons Amendments to Part 9: Commencement

Commons Amendments 40 to 44

Sunday Working

- 26 **Commons Amendment 40** would provide for the power to make regulations under new Sections 41A to 41C of the Employment Rights Act 1996 to come into force on Royal Assent. These provisions confer powers to make regulations about the meaning of "normal Sunday working hours" and the form and content of explanatory statements.

Regulators

- 27 **Commons Amendment 41** would provide for paragraph 2 of Schedule 2 to come into force on Royal Assent. **Commons Amendment 42 would** clarify that although Schedule 2 is generally to come into force 2 months after Royal Assent, one of its provisions (paragraph 2) will come into force on Royal Assent under subsection (1) of clause 38.

UK Government Investments

- 28 **Commons Amendment 43** would provide for clause 29 to come into force by regulations made by the Treasury (instead of by regulations made by the Secretary of State).

Remaining Provisions

- 30 **Commons Amendment 44 is** a minor and technical amendment which is intended to clarify drafting in order to avoid misunderstanding. **Amendment 44** would acknowledge that provisions that are to come into force by regulations under subsection (5) of clause 38 may already have come into force for particular purposes under preceding provisions of the clause.

Commons Amendments to Part 9: Extent

Commons Amendments 45 to 50: Extent

- 31 **Commons Amendments 45, 48 and 50** seek to ensure drafting consistency.
- 32 **Commons Amendment 46** seeks to clarify that subsections (5) to (9) of clause 14 on the Business Impact Target extend to England and Wales, Scotland and Northern Ireland. This amendment acknowledges that the extent of certain amendments of enactments made by the Bill is provided for by subsection (1). **Commons Amendment 46** would also provide for **Amendments 16 and 17** on apprenticeships and data sharing to have UK wide extent.
- 33 **Commons Amendment 47** seeks to clarify the extent of clause 24 on Late Payment of Insurance.
- 34 **Commons Amendment 49** would provide for **Amendment 13** (containing transitional provision relating to the Institute for Apprenticeships) to extend to England and Wales.

Commons Amendments to Part 9: Short Title

Commons Amendment 51

- 35 **Commons Amendment 51** would remove the privilege amendment inserted by the Lords.
- 36 **Commons Amendment 54** would amend the title to include reference to the new clause that would be inserted by Amendment 27 (Sunday Working).

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