

# **SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: ACCESS TO FINANCE**

##### **Financial information about businesses**

##### ***Section 4: Small and medium sized businesses: information to credit reference agencies***

118. **Section 4** gives the Treasury the power to make regulations imposing a duty on designated banks to provide information about their small and medium sized business customers to designated credit reference agencies (“CRAs”), and to impose a duty on designated CRAs to provide information about small and medium-sized businesses to finance providers. Subsections (2) and (3) require that the recipient request the information and the business to which the information relates agree to the information being provided, before the duties apply. Subsection (4) enables the regulations to impose other conditions that must be met before the duty applies to a CRA, such as the finance provider that has requested the data providing information about its small and medium sized business customers to the CRA.
119. Subsection (5) requires the regulations to describe the information that must be provided by designated banks and CRAs (and by finance providers requesting information, if a condition is imposed requiring the provision of data by finance providers). Subsection (7) requires the regulations to provide for the designation of banks and CRAs by the Treasury, which may include matters such as conditions that banks or CRAs must meet before they may be designated, considerations or advice that the Treasury may take into account, how the list of designated banks and CRAs is to be published, and the revocation of designations.
120. The Act allows regulations to make different provision for different purposes, cases or areas. This means that the regulations may make different provisions for banks, CRAs and finance providers, or for particular types of bank, CRA or finance provider. The regulations may also provide that the criteria for designating banks or CRAs under subsection (7) differ as between different parts of the UK.

##### ***Section 5: Small and medium sized businesses: information to finance platforms***

121. **Section 5** gives HMT the power to make regulations imposing a duty on designated banks to provide information about small and medium sized business customers that they reject for finance to designated finance platforms. Subsection (2) requires that this duty may only apply where the business has agreed to its information being shared with designated platforms, and enables the regulations to require designated banks to seek such agreement or further information from businesses, and to provide the information to the designated platforms within a specified period. Subsection (3) allows

the regulations to make further provision about the duty on designated banks, including specifying the types of applications that will be in scope of the duty, what constitutes a rejection, and which platforms must be provided with the information.

122. Subsection (4)(a) allows the regulations to impose a duty on designated platforms to provide the information they receive to finance providers who request access to it. Subsection (5) requires that such information must be anonymised. Subsection (4)(b) allows the regulations to require platforms to provide information about a particular business where a finance provider has requested it and the business has agreed to its provision. Subsection (6) allows the regulations to provide that the duty on platforms to share information with finance providers does not apply to finance providers that have not agreed to platforms' terms and conditions or do not comply with specified requirements about use and disclosure of the information.
123. Subsection (7) allows the regulations to make further provision about the duty on finance platforms to provide information to finance providers; including the timeframe in which platforms must provide information to finance providers; how requests for information must be made to finance platforms, how businesses may agree to their information being provided to finance providers; how long platforms must retain information on businesses; and the removal of information from the finance platform.
124. Subsection (8) allows the regulations to prohibit or permit the charging of fees by platforms to small and medium sized businesses for their service.
125. Subsection (9) requires the regulations to provide for the designation of banks and finance platforms by the Treasury, which may include matters such as conditions that banks or platforms must meet to be designated, considerations or advice that the Treasury may take into account, how the list of designated banks and platforms is to be published, and the revocation of designations.

#### ***Section 6: Sections 4 and 5: supplementary***

126. This section supplements the power for the Treasury to make regulations in sections 4 and 5. Subsections (1) to (3) enable the regulations to confer functions on the Financial Conduct Authority, to do with the monitoring and enforcement of compliance with the regulations, which may include applying a modified version of the monitoring and enforcement regime in the Financial Services and Markets Act 2000.
127. Subsection (4) provides the Treasury with a power to extend the remit of the Financial Ombudsman Service (FOS) so that a complaint may be referred to the FOS about a designated CRA or designated finance platform. This will allow the remit of the FOS to be amended such that a person who would be able to seek a FOS decision when dealing with a CRA or finance platform authorised by the Financial Conduct Authority is also able to seek a FOS decision when dealing with a designated CRA or finance platform that is not so authorised. And it will also enable all those businesses that generally have recourse to the FOS (those with turnover of less than £2 million) to seek FOS decisions in respect of the activities of designated CRAs and finance platforms, rather than just individuals and small firms as at present.
128. Subsection (5) enables the regulations to require designated CRAs to provide information received under the regulations to the Bank of England, subject to provision to protect the confidentiality of the information.
129. Subsection (6) enables the regulations to provide that where a designated bank or CRA has failed to comply with a duty to provide information, a person may sue to recover any loss suffered as a result of that failure.
130. Subsection (7) enables the regulations to apply provisions in the Data Protection Act 1998 and the Consumer Credit Act 1974 about access and correction of information about individuals and small firms to designated CRAs that are not authorised by the Financial Conduct Authority under the Financial Services and Markets Act 2000 in the

same way that those provisions apply to CRAs that are authorised, so that the same protections apply to information about individuals and small firms provided to a CRA under the regulations, whatever the status of the CRA.

131. Subsection (8) enables the regulations to provide a small or medium-sized business with the right to apply to a court for an order to rectify, block, erase or destroy data held about the business by a designated CRA. This enables the regulations to mirror an equivalent provision in section 14 of the Data Protection Act 1998 which applies only to personal data about individuals.
132. Subsection (9) provides for the regulations to impose a duty on designated finance platforms to provide statistical information to the Treasury.
133. Subsection (10) requires regulations under sections 4 and 5 to be approved by both Houses of Parliament before being made by the Treasury.

### ***Section 7: Sections 4 to 6: interpretation***

134. Section 7(1) defines the small and medium sized businesses about which regulations may be made under sections 4 and 5, one element of which is a turnover of less than £25 million, and subsections (3) to (5) enable the Treasury to make regulations changing the figure of £25 million. Subsection (2) defines finance platforms, and the finance providers to which designated CRAs and finance platforms may be required to provide information under sections 4 and 5.

### ***Section 8: Disclosure of VAT registration information***

135. Section 8 provides for HMRC to release non-financial VAT data for the purpose of assessing creditworthiness, the risk of fraud or compliance with regulations relating to financial matters (a “financial assessment”). Further disclosure of any information shared is barred without the specific consent of HMRC.
136. The section also makes provision for HMRC to attach conditions as part of the sharing of information with any ‘person’ and lists specific (although non-exhaustive) examples of the type of conditions that may be provided for in such arrangements. Finally, it enables additional purposes for which data may be disclosed to be provided for by regulations made by the Treasury. Any such regulations will be subject to the affirmative resolution procedure.

### ***Section 9: Offences for the purposes of Section 8***

137. Section 9 creates offences for the misuse of any data shared under section 8. These are equivalent to those which already exist under section 19 of CRCA. The section also applies the sanctions which apply under that section.