

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: INSOLVENCY

Regulation of insolvency practitioners: amendments to existing regime

Section 139: Oversight of recognised professional bodies

784. RPBs are bodies, or professional organisations, who authorise IPs to act. They regulate these IPs by maintaining and enforcing rules for securing that those who they permit to act, are fit and proper persons to do so and have the correct levels of education, experience and practical training. The RPBs also have the power to discipline members. A body may be recognised by the Secretary of State pursuant to section 391(1) or (2).
785. This section introduces new sections 391D to 391K to the Insolvency Act 1986. These sections set out the way in which the Secretary of State will be able to sanction RPBs and also the appeals process available to them.
786. New sections 391D and 391E of the Insolvency Act 1986 will allow the Secretary of State to issue directions to an RPB; they set out what sort of requirements the directions may impose and the procedure for issuing such directions. The Secretary of State would consider using the power to direct an RPB to take such steps as the Secretary of State considers will counter any adverse impact of a failure to act compatibly with the objectives, mitigate its effect or prevent its occurrence or recurrence. An example which might prompt a direction might be if the RPB has failed to address the Secretary of State concerns following a review of the way the RPB handles complaints or an RPB's failure to carry out a targeted monitoring visit of its IPs where the Insolvency Service has requested that it be done.
787. These sections set out the procedure and the way in which the Secretary of State may direct a recognised body to act following an act or omission which has resulted in one or more of the regulatory objectives not being complied with or which has an unfavourable impact on those objectives. The Secretary of State must give at least 28 days notice to the RPB of the proposed direction. The RPB will have the opportunity to make written representations to the Secretary of State, which must be considered before a direction is imposed.
788. New sections 391F, 391G, 391H and 391I concern the ability of the Secretary of State to impose a financial penalty on an RPB if it has failed to comply with a direction imposed under section 391D, or any other requirement imposed on it under the Insolvency Act 1986 or secondary legislation made under that Act, and it is appropriate to impose a financial penalty. Such a penalty should deter future transgressions. Any sums paid over to the Secretary of State under this provision will be paid into the Consolidated Fund. There is no financial limit on the penalty. Before imposing a financial penalty, the

*These notes refer to the Small Business, Enterprise and Employment
Act 2015 (c.26) which received Royal Assent on 26 March 2015*

Secretary of State must give at least 28 days notice of the proposed financial penalty, during which time the RPB can make written representations to the Secretary of State. Before imposing any penalty, the Secretary of State must have considered any such representations.

789. An RPB may appeal a financial penalty on a number of grounds. These grounds are set out in new section 391H and include that the Secretary of State was not acting within his powers; that the RPB had in fact complied with the requirement – that is the financial penalty should not have been imposed; the correct procedure had not been followed; the amount of the penalty was unreasonable; or that the time given to pay was unreasonable.
790. New sections 391J and 391K introduce a reprimand as a sanction available to the Secretary of State. This means that the Secretary of State will be able to publish a statement reprimanding a RPB for an act or omission which has an adverse impact on one or more of the regulatory objectives. This provision enables the Secretary of State to publicly register his disapproval of a RPB's act or omission if it has (or has had) an adverse impact on the regulatory objectives. The RPB must have been given at least 28 days notice of the Secretary of State's proposal to use the power under this section and the Secretary of State must consider any written representations that are made by the RPB ahead of publishing the reprimand.
791. New section 415(1B) clarifies that the fee the Secretary of State is able to charge the RPBs for the maintenance of their recognition can include, but is not limited to, the costs in connection with a direction issued to an RPB under sections 391D and E, a reprimand to an RPB given under sections 391J and K and revocation of an RPB's recognition, where it has been requested under section 391N.