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

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: INSOLVENCY

Office-holder actions

Section 117: Power for administrator to bring claim for fraudulent or wrongful trading

710. This section amends the Insolvency Act 1986 to permit an administrator to bring an action for wrongful or fraudulent trading where a director (or in the case of fraudulent trading, any person) has caused the business of an insolvent company to trade wrongfully or fraudulently.

711. Sections 246ZA and 246ZB mirror the analogous provisions which apply to liquidators under sections 213 and 214 of the Insolvency Act 1986.

Section 118: Power for liquidator or administrator to assign causes of action

712. This section amends the Insolvency Act 1986 to allow a liquidator or administrator ('the office-holder') to assign causes of action that arise on a company going into liquidation or administration.

713. The causes of action to which the section relates are actions which already exist within insolvency law (or are introduced by section 117) whereby liquidators and administrators can take action on behalf of the body of creditors to recover monies or reverse certain transactions where the directors and others have acted in a way that has caused harm to creditors.

714. The section allows the office-holder to assign not only the right to bring the action itself but also the proceeds of such an action.

Section 119: Application of proceeds of office-holder claims

715. This section amends the Insolvency Act 1986 to clarify the order of priority for the distribution of proceeds arising from an office-holder claim or from the assignment (or assignation in Scotland) of such a claim (see section 118). New section 176ZB codifies the legal position established by case law by providing that the proceeds of these types of claim do not form part of the company's property which is available for the satisfaction of debts owed to a creditor with floating charge security.

Removing requirements to seek sanction

Section 120: Exercise of powers by liquidator: removal of need for sanction

716. This section amends Part 4 of and Schedule 4 to the Insolvency Act 1986. The amendment gives liquidators the ability to exercise any of the powers contained in Schedule 4 without the need to obtain sanction (approval) of either the court or a creditors' committee (or where there is none, the Secretary of State or a meeting of creditors).

717. Removing the requirement to obtain sanction brings the provisions for liquidations into line with administration, in that administrators do not need sanction for any of the acts, which if undertaken by a liquidator would require sanction.

Section 121: Exercise of powers by trustee in bankruptcy: removal of need for sanction

718. This section amends Part 9 and Schedule 5 to the Insolvency Act 1986. The amendment gives trustees in bankruptcy the ability to exercise any of the powers contained within Schedule 5 and section 314(2)) without the need to obtain sanction (approval) of either the court or a creditors' committee (or where there is none, the Secretary of State).

719. These amendments mirror, for bankruptcy, the amendments made to the liquidation regime by section 120 (see above).

Position of creditors

Section 122: Abolition of requirements to hold meetings: company insolvency and Section 123: Abolition of requirements to hold meetings: individual insolvency

720. The process of having a meeting of creditors to agree a resolution in insolvency proceedings is longstanding. At a meeting of creditors, attendees are able to vote on proposals and give their approval to the office-holder for certain actions, for example agreeing a voluntary arrangement proposal, approving an office holder's release from office, or approving the office-holder's remuneration. Meetings of contributories, who are current or former shareholders of a company liable to contribute to its assets, may also take place in insolvency proceedings. Provisions are already in place for all of these meetings to take place remotely or, in certain cases, for resolutions to be made by correspondence.

721. These sections amend the Insolvency Act 1986 so that physical meetings will not be the default mechanism for seeking decisions from creditors and contributories in insolvency proceedings. The changes will apply to England and Wales and Scotland in respect of company insolvency, and to England and Wales in respect of individual insolvency. They will come into force by commencement regulations.

722. The sections allow office-holders in insolvency proceedings to choose the most appropriate way of engaging with creditors and contributories when required to do so, with the exception that there will only be a physical meeting if this has been requested certain numbers of the creditors or contributories, as the case may be.

723. Those numbers are stated as being 10% of the total value of claims, 10% of the total number of creditors or contributories, and an absolute number of 10 requests. There is provision for these thresholds to be altered by regulations using the affirmative resolution procedure.

724. The sections set out a process of deemed consent, where office holders will be able to write to creditors or contributories with a proposal, and provided that objections are received from less than 10% of creditors or contributories by total value of claims, the proposal will be deemed to be approved. In the event that more than that amount object to the proposal, the office holder will be required to use an alternative decision

making process if they still wish to seek a decision on the matter. The amount of 10% by total value of claims is also subject to alteration by regulations, using the affirmative resolution procedure.

725. Deemed consent may not be used for approval of an office holder's remuneration, or where a particular decision is expressly required to be made by way of a decision-making procedure, either in legislation or by the court.

726. The sections make provision for the Insolvency Rules to prescribe how creditors or contributories may request that a physical meeting be held and to prescribe further in relation to the deemed consent and other decision making procedures. The Insolvency Rules will also be able to provide for the use of particular methods of decision making, including physical meetings of creditors or contributories, under specific circumstances and for certain parties, such as company officers and bankrupt individuals to be able to participate, but not vote, in decision making procedures.

Section 124: Ability for creditors to opt not to receive certain notices: company insolvency and Section 125: Ability for creditors to opt not to receive certain notices: individual insolvency

727. Creditors are kept informed of the progress of insolvency proceedings by way of notices, such as the results of decision making processes, progress reports, and receipts and payments accounts from the office holder.

728. These sections amend the Insolvency Act 1986 by providing that, where the rules require notices to be given to a company's, or an individual's creditors, the rules will be able to state that these will not need to be sent to creditors who have opted out of receiving such notices

729. Creditors who have opted out will still receive notices of any intended dividends. They will be able to opt back in to receiving correspondence at any time.

730. Section 124, which applies to company insolvency, will apply to England and Wales and Scotland, and section 125, which applies to individual insolvency, will apply to England and Wales.

Section 126: Sections 122 to 125: further amendments

731. This section introduces Schedule 9, which contains amendments of the Insolvency Act 1986, needed in order that the policy underpinning sections 122 to 125 can work effectively for the various insolvency processes described. Schedule 9 removes requirements to hold physical meetings of creditors and contributories, and makes provision for notices to no longer be sent to opted-out creditors.

732. Schedule 9 also removes the requirement for final company meetings in liquidation proceedings.

Administration

Section 127: Extension of administrator's term of office

733. Administration is an insolvency proceeding where the affairs, business and property of the company are managed by an administrator. The primary aim of an administration is to ensure the company's survival as a going concern, and failing that to achieve a better result for the company's creditors than would be likely if the company was wound up. An administrator may be appointed by the company, directors or a qualifying floating charge holder by giving notice and filing prescribed documents at court. Alternatively, an administrator may be appointed by the court on application by the company, directors or creditors.

734. This section amends paragraph 76 of Schedule B1 to the Insolvency Act 1986 and like that Schedule applies to England and Wales and Scotland. The amendment extends the maximum time period creditors may consent to an extension of an administration to a specified period not exceeding one year.

735. Administration automatically ends after one year, a feature designed to emphasise that the administrator should progress matters expeditiously to allow for the swift resolution of the administration. Administration may already be extended by the court or with the consent of creditors. Currently paragraph 76(2)(b) of Schedule B1 to the Insolvency Act 1986 provides that an administration may be extended with the consent of creditors for a specified period not exceeding six months.

736. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Section 128: Administration: payments to unsecured creditors

737. This section amends Part II and Schedule B1 of the Insolvency Act 1986 to provide that the court's permission is not required where the administrator makes the prescribed part payment to unsecured creditors. This will apply to England and Wales and Scotland.

738. In administration and insolvent liquidations (creditors' voluntary and court winding up) proceedings, part of a company's net property must be set aside for a payment to unsecured creditors, and this is known as the prescribed part.

739. In an administration, the office holder must seek the court's permission before making payments to unsecured creditors. The reason for this is that where there are funds left over after secured creditors have been paid, the office holder should consider whether the administration should be converted into a creditors' voluntary liquidation, a process which provides for increased engagement of unsecured creditors. The requirement to seek the court's permission has been widely interpreted as applying to payments made to unsecured creditors from the prescribed part.

740. A similar amendment is made to the process whereby the administration may be converted to a creditors' voluntary liquidation to reflect that a prescribed part payment should not trigger this change.

741. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Section 129: Administration: sales to connected persons

742. The section creates a power for the Secretary of State to make regulations prohibiting or imposing conditions on sales, disposals or, hiring out of the assets or business of the company in administration to connected parties.

743. The power to make regulations will enable the Secretary of State to:

   i. prohibit sales

   ii. allow sales to take place subject to the imposition of restrictions or conditions.

   iii. provide for the requirement to obtain approval from the court, the creditors of the company, or other person of a description specified in the regulations.

744. The section targets the restriction on 'connected persons' – which is where a person or the company purchasing the business has a relationship with the insolvent company. This includes directors, shadow directors or their associates. Associate captures, amongst other connections, where the person buying the company is the spouse, civil partner, relation of, or in business partnership with those acting as directors of the insolvent company.

745. The section also captures where common individuals exercise control over both companies. The existing legislative definition of 'control' of a company includes those persons who are not directors but whom the directors are accustomed to acting in accordance with their instructions.

Section 130: Attachment of floating charges on administration (Scotland)

746. Administration is an insolvency proceeding where the affairs, business and property of the company are managed by an administrator. The primary aim of an administration is to ensure the company's survival as a going concern, and failing that to achieve a better result for the company's creditors than would be likely if the company was wound up. An administrator may be appointed by the company, directors or a qualifying floating charge holder by giving notice and filing prescribed documents at court. Alternatively, an administrator may be appointed by the court on application by the company, directors or creditors.

747. This section amends paragraph 115 of Schedule B1 to the Insolvency Act 1986 and like that paragraph forms part of the law of England and Wales and Scotland. The amendment inserts a trigger point for the crystallisation of a floating charge in Scotland which is activated when the court t gives permission to an administrator to make a distribution to a creditor of the company who is neither secured nor preferential.

748. A payment to a floating charge-holder can only be made once the charge has attached or crystallised over the assets covered by the charge. In England and Wales, this 'crystallisation trigger' can be contractual but in Scotland the trigger points are provided for in statute, and it is not competent for parties to provide by contract for a floating charge to attach.

749. Currently paragraph 115 provides that in Scotland a floating charge attaches to the property which is subject to the charge at the point when an administrator files a notice at Companies House stating that the company has insufficient property to make a payment to unsecured creditors, thereby crystallising the charge.

750. This works well in cases where only payments to the holder of a floating charge are expected. However, it does not work in cases where there are also likely to be payments to unsecured creditors.

751. This is because the order of priority in insolvency proceedings requires that holders of floating charges be paid in full before any funds are returned to non-preferential unsecured creditors. However, as stated above, for payments to floating charge-holders to be made in Scottish administrations, the charge must have first attached to the assets. This attachment cannot happen in cases where the administrator wishes to distribute to unsecured creditors, as the statutory trigger is the filing of a notice by the administrator stating that there is insufficient property held by the company for such payments to be made. In such cases, it is necessary for the administrator to put the company into liquidation (which is another statutory route to crystallise the charge), before distributing the funds to floating charge-holders and unsecured creditors. This section will avoid the need for such action.

Small debts

Section 131: Creditors not required to prove small debts: company insolvency

752. To receive a dividend in an insolvency, a creditor must first submit a claim to the officeholder, which must contain certain statutory information. The office-holder may ask for further evidence from the creditor if thought necessary. Such claims must be scrutinised by the office-holder prior to distribution.

753. This section creates a power to make rules which will allow an officeholder in a corporate insolvency to pay a dividend to a creditor without the need for the creditor

to submit a claim where the debt owed to a creditor in respect of which the dividend relates, is below a prescribed amount (the intention is to set this initially at £1,000). The officeholder may do so on the basis the creditor's debt has been recorded based on the insolvent's statement of affairs submitted to the officeholder or their accounting records.

754. Where a creditor disputes the amount shown in the insolvent's statement of affairs or accounting records, they will still be able to submit a claim and provide documentary evidence in support of it. Where the officeholder is unclear on the amount owed, or has other doubts regarding the claim, they may still require a claim form and/or ask for documentary evidence from the creditor.

Section 132: Creditors not required to prove small debts: individual insolvency

755. This section provides the like power to that in section 131 to make rules for the payment of debts without a claim being submitted in bankruptcy proceedings.

Trustees in bankruptcy

Section 133: Trustees in bankruptcy

756. The Insolvency Act 1986 currently provides that when the court makes a bankruptcy order the official receiver (the "OR") is appointed receiver and manager of the bankrupt's estate unless the court appoints an insolvency practitioner as trustee. This means that the OR's duties are limited to protecting the estate and dealing with any urgent realisations of asset that are required pending the appointment of a trustee. In many bankruptcy cases it is the OR who is subsequently appointed as the trustee, who then has full powers to deal with all the assets.

757. The initial appointment as receiver and manager has not been shown to have any practical benefit in the administration of bankruptcy cases and serves to delay the realisation of assets.

758. This section introduces a new section 291A to the Insolvency Act 1986 which provides for the OR to be appointed trustee on the making of the bankruptcy order unless the court orders otherwise. It also introduces Schedule 10, which contains consequential amendments to Part IX and Schedule 10 of the Insolvency Act 1986, and also to Schedule 19 to the Enterprise and Regulatory Reform Act 2013. It will apply to England and Wales.

759. At present under section 293 the OR must decide whether to summon a meeting of creditors within 12 weeks of the bankruptcy order to appoint a trustee. The amendments in this section will remove that obligation, but will not remove the option for an insolvency practitioner to be appointed trustee in place of the official receiver or the ability of the creditors to request that this occurs.

760. This section will come into force by commencement order.

Voluntary arrangements

Section 134: Time limit for challenging IVAs

761. This section amends section 262(3) of the Insolvency Act 1986 so that a challenge to the outcome of a process whereby creditors consider an individual voluntary arrangement, where there was no previous interim order, must be made within 28 days of the date of the decision. Like section 262, this section extends only to England and Wales.

762. Interested parties such as creditors may challenge the outcome of a process where an individual voluntary arrangement is considered, on the grounds either that there is an unfair prejudice of interests, or that there has been some kind of material irregularity.

763. In cases where the court has made an interim order protecting the debtor from action prior to consideration of the proposal, the time limit for this challenge is 28 days from the date on which the report of the decision is filed with the court

764. However in most other situations there is no equivalent time limit prescribed where the court has not made an interim order. The amendment seeks to provide a time limit of 28 days for those situations.

765. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Section 135: Abolition of fast-track voluntary arrangements

766. Fast-track voluntary arrangements (FTVA) are a streamlined Individual Voluntary Arrangement (IVA) procedure for cases where a debtor has already been made bankrupt. They were first introduced in April 2004, along with other changes to the personal insolvency regime included within the Enterprise Act 2002.

767. In a FTVA the official receiver acts as nominee and supervisor. One of the requirements of an FTVA is that the debtor is an undischarged bankrupt at the time the proposal is made. There is no private sector insolvency practitioner involvement in FTVAs.

768. FTVAs have been little used since they were enacted, and in the last 4 years there have only been 4 FTVAs approved.

769. This section amends Part 8 of the Insolvency Act 1986 by removing the provisions for FTVAs.

770. Individuals who are undischarged bankrupts who wish to propose an IVA will still be able to do so, but an insolvency practitioner will act as nominee and supervisor, not the official receiver.

Progress reports

Section 136: Voluntary winding-up: progress reports

771. This section amends sections 92A and 104A of the Insolvency Act 1986 to clarify that a progress report must be issued if the liquidator changes within the first year of the liquidation.

772. Where a voluntary liquidation continues for more than a year, the liquidator is required to issue the members of the company and creditors with an annual progress report, which includes information about receipts and payments into the estate, unrealised assets, and the office holder's remuneration.

773. A progress report also becomes due if the liquidator changes, and on each anniversary of the change thereafter. However, as presently drafted this trigger only takes effect after the liquidation has continued for more than a year.

774. Sections 92A and 104A apply to England and Wales only but extend to Great Britain. Similarly, the section extends to Great Britain but will, therefore, only apply in England and Wales.

775. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.

Regulation of insolvency practitioners: amendments to existing regime

Section 137: Recognised professional bodies: recognition

776. This section replaces section 391 of the Insolvency Act 1986. It relates to the recognition of professional bodies and sets out the way in which a body may apply to the

Secretary of State to become a Recognised Professional Body ('RPB'). It requires that, going forward, RPBs rules and practices for authorising and regulating insolvency practitioners ('IPs') are designed to ensure that the regulatory objectives (as set out in section 138) are met.

777. Currently, the Insolvency Act does not prescribe the way in which a body may make an application for recognition, this section inserts new section 391A which provides for an application process.

778. This section will not affect the recognition of any current RPBs under the existing section 391.

Section 138: Regulatory objectives

779. This section inserts new sections 391B and 391C into the Insolvency Act 1986.

780. These new sections define the meaning of regulatory functions and regulatory objectives which will apply to RPBs. At present, these do not exist in law.

781. The introduction of regulatory objectives will provide RPBs with a framework within which to carry out their activities. Regulatory objectives are intended to encourage consistency of approach, and to provide a reference point for discussions between IPs and RPBs, and between RPBs and the Secretary of State "oversight" regulator.

782. New section 391B sets out that RPBs must act and carry out their functions in a way that is compatible with the regulatory objectives.

783. The regulatory objectives are set out in new section 391C and are intended to ensure that:

   i. the RPBs have a system of regulating IPs that:

      a. delivers fair treatment for persons affected by an IPs' acts and omissions;

      b. reflects the regulatory principles: that the RPB's regulatory activities are transparent, accountable, proportionate, consistent and targeted; and

      c. ensures consistent outcomes;

   ii. the RPBs are encouraging an independent and competitive IP profession, whose members deliver high quality services at a fair and reasonable cost, act with transparency and integrity and consider the interests of creditors in the case;

   iii. IPs seek to maximise returns to creditors and are prompt in making those returns; and

   iv. the public interest is protected and promoted during the insolvency process.

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 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.

Section 140: Recognised professional bodies: revocation of recognition

792. This section introduces new sections 391L, 391M and 391N to the Insolvency Act 1986. It relates to removal of an RPB's recognition and subsequently, its ability to regulate and approve a person to act as an insolvency practitioner. The revocation of the recognition to authorise insolvency practitioners can be at the instigation of the Secretary of State (section 391L) or at the instigation of the RPB itself (section 391N). At present, revocation of recognition is the only sanction available to the Secretary of State.

793. Currently, the Secretary of State is not required to follow a statutory procedure before revoking an RPB'S recognition. The new sections inserted by this section introduce the conditions to be met before a revocation order is made, the procedure to be followed and the date from which a revocation order comes into effect. This section allows for two types of revocation order: a revocation order and a partial revocation order. Partial revocation of a body's recognition will mean that the RPB is no longer recognised as capable of providing IPs with both full and partial authorisation, only as capable of providing partial authorisations of the kind specified. Full authorisation enables individuals to act in relation to both company and personal insolvency, whilst partial authorisation enables individuals to act only in relation to either company or personal insolvency.

Section 141: Court sanction of insolvency practitioners in public interest cases

794. This section introduces new sections 391O, 391P, 391Q and 391R to the Insolvency Act 1986. These new sections introduce the power for the Secretary of State to apply to the court for a direct sanctions order against an IP when it is in the public interest for the Secretary of State to take such action.

795. New section 391O sets out the sanctions that the court may impose, if certain conditions set out in new section 391Q are satisfied (see below), which include requiring the relevant RPB to take the necessary steps to ensure that:

   i. the IP is no longer authorised to act as such;

   ii. the IP is no longer fully authorised to act, but may be partially authorised to act as specified;

   iii. the IP's authorisation is suspended;

   iv. other restrictions (as specified in the court order) are placed on the IP while so acting; and

   v. the IP repays part of what he/she has received or expects to receive as remuneration from a particular case to particular creditor(s).

796. The Secretary of State will not be able to seek a direct sanctions order against an IP whose authorisation to act as an IP is or was granted by the Department of Enterprise, Trade and Investment in Northern Ireland. This is because the Secretary of State is not responsible for overseeing the regulation of such IPs.

797. New section 391P sets out that the Secretary of State should only apply to the court for a direct sanctions order if it appears to the Secretary of State that it would be in the public interest for the order to be made. As part of its consideration of the application, the court will have regard to what, if any, disciplinary action the relevant RPB may have taken against the IP.

798. New section 391Q sets out the conditions that must be satisfied before a court will impose a direct sanctions order. Of these conditions the first must be satisfied (that is that the person acting as an IP has not complied with the rules of their profession) and at least one other. The other conditions include: that the person is not a fit and proper person to act as an IP; the person is not a fit and proper person to act as a fully authorised IP (but could be to partially act); that a loss has been suffered to creditors as a result of the IP's failure to comply with the rules of their profession.

799. New section 391R allows the Secretary of State to give a direction to the relevant RPB, in relation to a person acting as an IP who is authorised by them, to impose any sanction available under a direct sanctions order, provided the IP has consented to this. This would occur instead of the Secretary of State applying to the court for a direct sanctions order. The conditions set out in 391Q also apply to a direct sanctions direction.

Section 142: Power for Secretary of State to obtain information

800. This section introduces new section 391S to the Insolvency Act 1986 which gives the Secretary of State the power to require information from specified people to enable the Secretary of State to carry out functions under Part 13 of the Insolvency Act 1986.

801. The people that the Secretary of State can in writing require information from are:

   i. an RPB;

   ii. any individual who is or has been authorised to act as an IP; and

   iii. any person who is connected to such an individual.

802. A person 'connected' to the IP in question includes an employee of that individual, a person who acted on that IP's behalf in any other way and; the employer of the IP.

Section 143: Compliance orders

803. This section introduces new section 391T into the Insolvency Act 1986. It will allow the Secretary of State to make an application to the court if it appears that an RPB has failed to comply with a requirement imposed under Part 13 of the Act or that any person has failed to comply with a requirement under section 391S.

804. This section will apply to an RPB which has failed to comply with, for example, a direction imposed under new section 391D or to a person who has failed to provide the Secretary of State with the information required under new section 391S.

Power to establish single regulator of insolvency practitioners

Section 144: Power to establish single regulator of insolvency practitioners

805. This section allows the Secretary of State, by regulations made by the affirmative resolution procedure, to designate a body for the purposes of authorising and regulating IPs. The body may be a new body set up by regulation, or it may be an existing body. The power to move to a single regulator will only be used if the changes proposed by sections 137 to 143 do not succeed in improving confidence in the regulatory regime for IPs.

806. The section sets out the functions that the regulations may confer on the designated body and include:

   i. setting out the criteria for assessing whether a person is fit and proper to act as an IP, including the requirements as to education, practical experience and training they must meet;

   ii. setting out technical standards for IPs and enforcing compliance with those standards; and

   iii. investigating complaints about IPs.

807. The section allows the regulations to require that the designated body, in discharging regulatory functions, acts in a way which is compatible with the regulatory objectives (as introduced by section 138 of this Act).

808. It introduces Schedule 11 which makes supplementary provisions in relation to the designation of a body by regulations. For example, how many members the body should have; appointing the chair of the body and the setting of fees.

Section 145: Regulations under section 144: designation of existing body

809. This section sets out that the Secretary of State may make regulations designating an existing body as the single regulator if the body is able and willing and it has

arrangements in place for its functions to be exercised effectively. It sets out in what circumstances an existing body may become the single regulator and what the Secretary of State must do to make this designation.

Section 146: Regulations under section 144: timing and supplementary

810. This section sets out that the powers to make regulations designating a single regulator of IPs will expire unless they are used within seven years of coming into force. The power to designate a single regulator will only be used if the changes to the regulatory regime in sections 137-143 of this Act do not bring about the intended improvements.

811. To the extent that the regulations made under this power are hybrid, this section allows them to be treated as if they are not hybrid. Although the introduction of a single regulator would have a significant impact on the current RPBs, the power would not be used without full consultation and assessment of the costs and benefits of the proposed change.

Section 147: Equal Pay: Transparency

812. This section requires the Government to make regulations under section 78 of the Equality Act 2010 (gender pay gap information). Regulations are to be made no later than a year after Royal Assent to the Act and the Government must consult before laying those regulations.

813. Section 78 of the Equality Act 2010, which is not yet commenced, enables a Minister of the Crown to make regulations requiring specified employers with at least 250 employees in Great Britain to publish information about the differences in pay between their male and female employees. The regulations may specify, among other things, the form and timing of the publication, which will be no more frequently than annually. The regulations may also specify penalties for non-compliance. Regulations under section 78 are subject to the affirmative procedure and may not be made unless a draft of the regulations has been laid before and approved by both Houses of Parliament.