

# SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: REGULATORY REFORM**

##### **Review of business appeals procedures**

###### *Section 17: Review of regulators' complaints and appeals procedures*

170. Subsection 1 places a duty on a Minister of the Crown to appoint a Champion in respect of certain regulatory functions.
171. The Champion must be appointed by the relevant Minister of the Crown for the regulator, either as a statutory office holder within the regulator (where legal basis of that regulator permits) or a statutory officeholder appointed by a Minister of the Crown in respect of the regulatory functions of a regulator. In most cases, the Minister of the Crown (as defined in subsection (12)) will be the relevant Secretary of State of the parent department of the Regulator, but where Departments are not headed by a Secretary of State, the most relevant Minister will make the appointment.
172. The Government's intention is that one Champion will be appointed in respect of each national non-economic regulator or, in some cases, group of regulators (for instance, where several regulators regulate a similar industry, group of businesses or have similar functions). The means of specifying the relevant regulatory functions (and therefore bringing regulators within scope of section 17) is set out in section 18.
173. Describing the Champion by reference to regulatory functions allows appointment to (or in respect of) regulators in a wide range of circumstances (for example where there is no legal personality or where the legislation founding the regulator is too prescriptive to allow the appointment).
174. The section wording also allows for the Champions' to have a wide range of job descriptions. For example, the Minister of the Crown could designate an existing Committee member or Board member of the regulator or Department to the role. Further types of appointment are also possible.
175. The section also sets out the duties and functions of the Champion. In the context of an overall objective to encourage the regulator to improve and simplify the appeals and complaints processes that business should follow if they wish to challenge or appeal a regulatory decision, subsections (2), (4) and (6) state that, once appointed, every year, each Reviewer must:
  - i. review the effectiveness of the relevant regulator's procedures for handling and resolving complaints and appeals by businesses; and

- ii. prepare a report about his findings, which may include an assessment of whether these are accessible and fair as well as recommendations for improvement. These recommendations could either be directed to the relevant Minister of the Crown if they involve changes in law, or to the regulator for other matters such as changes in procedures.
176. In these sections, ‘business’ has a wide definition, and the intention is that the Champions’ scope should cover all businesses, but should focus particularly on the experience of small businesses.
177. Subsections (7), (8) and (9) require the Champion to send this report to the regulator and the relevant Minister of the Crown as soon as reasonably practicable. The regulator has three months to prepare a response. The report, and the regulator’s response, must be published and laid before Parliament by the relevant Minister.
178. Subsection (5) prevents the Champion from intervening in individual appeal or complaint cases. His role is confined to reviewing the processes for appeals and complaints.
179. Subsection (10) puts a duty on the Regulator (or relevant Minister of the Crown) to provide the Champion with relevant information on request. By default, the Champion is bound to handle any information provided appropriately and in line with existing legal restrictions on the disclosure, handling and disposal of sensitive information.
180. Subsection (11) clarifies that the duty in subsection (10) does not apply if there is prior legislation that would prevent the regulator from disclosing such information (unless that legislation contains provision for such disclosure where another Act, such as this, requires that information is provided). This is to prevent a situation where the regulator is both under a duty to disclose information to the Champion but is prevented from doing so by other legislation. In all circumstances, it is expected that the regulator will meet information requests where possible and think of alternative ways to provide the information requested by the Champion if there is legislation that prevents him from fulfilling the original request.

### ***Section 18: Power to specify regulatory functions***

181. This section sets out the process for specifying regulatory functions and bringing them within the Reviewer’s remit. It provides that the Secretary of State may, by making regulations, specify regulatory functions to which the duty set out in section 17 applies. Subsection (3) permits him to refer either to the regulator undertaking the functions by name, or to the enactment under which those functions were conferred, which facilitates greater flexibility.
182. Subsection (2) defines the “regulatory functions” in respect of which the power may be used, by reference to s32 of the Legislative and Regulatory Reform Act 2006. In that Act, “regulatory functions” means:
- i. a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or
  - ii. a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.
183. That Act allows the Secretary of State to issue statutory guidance to regulators about the performance of their functions. The power has been used as the basis for the revised Regulators’ Code which was approved by Parliament in April 2014.
184. Broadly, it is the Government’s intention that Reviewers should be appointed in respect of national non-economic regulators currently in scope of the Regulators’ Code. However, Government will give individual consideration to the application

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

of the policy to each regulator before implementation, given the range of statutory arrangements and practices involved, and some regulators within the scope of the Regulators' Code will be excluded (for example, the financial services regulators – the Prudential Regulation Authority and the Financial Conduct Authority - due to their existing statutory arrangements).

185. Subsection (4) provides that Reviewers can only be appointed in respect of “reserved matters” – i.e. they cannot be appointed in respect of regulatory functions which are the responsibility of the devolved administrations in Scotland, Northern Ireland and Wales.
186. Under subsection (5), regulations specifying the regulators in scope will be subject to the Parliamentary affirmative resolution procedure.

***Section 19: Guidance by the Secretary of State***

187. This section allows the Secretary of State to publish guidance on how the Reviewers should exercise their functions. The intention is that this guidance, to which the Reviewer must refer when exercising their functions, will play a key role in shaping the role of the Reviewer. The section gives a power to the Secretary of State to revise this guidance when appropriate.