



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 1

#### ACCESS TO FINANCE

##### *Assignment of receivables*

#### **1 Power to invalidate certain restrictive terms of business contracts**

- (1) The appropriate authority may by regulations make provision for the purpose of securing that any non-assignment of receivables term of a relevant contract—
  - (a) has no effect;
  - (b) has no effect in relation to persons of a prescribed description;
  - (c) has effect in relation to persons of a prescribed description only for such purposes as may be prescribed.
- (2) A “non-assignment of receivables term” of a contract is a term which prohibits or imposes a condition, or other restriction, on the assignment (or, in Scotland, assignation) by a party to the contract of the right to be paid any amount under the contract or any other contract between the parties.
- (3) A contract is a relevant contract if—
  - (a) it is a contract for goods, services or intangible assets (including intellectual property) which is not an excluded financial services contract, and
  - (b) at least one of the parties has entered into it in connection with the carrying on of a business.
- (4) An “excluded financial services contract” is a contract which—
  - (a) is for financial services (see section 2) or is a regulated agreement within the meaning of the Consumer Credit Act 1974 (see section 189 of that Act); and
  - (b) is of a prescribed description.

- (5) “Prescribed” means prescribed by the regulations.
- (6) The “appropriate authority” means—
  - (a) in relation to contracts to which the law of Scotland applies, the Scottish Ministers, and
  - (b) in relation to other contracts, the Secretary of State.
- (7) The power of the Scottish Ministers to make regulations under this section includes power to make such provision as the Scottish Ministers consider appropriate in consequence of the regulations.
- (8) The power conferred by subsection (7) includes power—
  - (a) to make transitional, transitory or saving provision;
  - (b) to amend, repeal, revoke or otherwise modify any provision made by or under an enactment (including an enactment contained in this Act and any enactment passed or made in the same Session as this Act).
- (9) In subsection (8) “enactment” includes an Act of the Scottish Parliament.
- (10) Regulations under this section—
  - (a) if made by the Scottish Ministers, are subject to the affirmative procedure;
  - (b) if made by the Secretary of State, are subject to affirmative resolution procedure.

## **2 Section 1(4)(a): meaning of “financial services”**

- (1) In section 1(4)(a) “financial services” means any service of a financial nature, including (but not limited to)—
  - (a) insurance-related services consisting of—
    - (i) direct life assurance;
    - (ii) direct insurance other than life assurance;
    - (iii) reinsurance and retrocession;
    - (iv) insurance intermediation, such as brokerage and agency;
    - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
  - (b) banking and other financial services consisting of—
    - (i) accepting deposits and other repayable funds;
    - (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
    - (iii) financial leasing;
    - (iv) payment and money transmission services (including credit, charge and debit cards, travellers’ cheques and bankers’ drafts);
    - (v) providing guarantees or commitments;
    - (vi) financial trading (as defined in subsection (2));
    - (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
    - (viii) money brokering;

- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
  - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
  - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).
- (2) In subsection (1)(b)(vi) “financial trading” means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in—
- (a) money market instruments (including cheques, bills and certificates of deposit);
  - (b) foreign exchange;
  - (c) derivative products (including futures and options);
  - (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);
  - (e) transferable securities;
  - (f) other negotiable instruments and financial assets (including bullion).