



# 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.

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- (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;

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- (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).

#### *Business payment practices*

### **3 Companies: duty to publish report on payment practices and performance**

- (1) The Secretary of State may by regulations impose a requirement, on such descriptions of companies as may be prescribed, to publish, at such intervals and in such manner as may be prescribed, prescribed information about—
- (a) the company's payment practices and policies relating to relevant contracts of a prescribed description, and
  - (b) the company's performance by reference to those practices and policies.
- (2) For the purposes of this section—
- “company” has the meaning given by section 1(1) of the Companies Act 2006 (but see subsection (3));
- a contract is a “relevant contract” if—
- (a) it is a contract for goods, services or intangible assets (including intellectual property), and
  - (b) the parties to the contract have entered into it in connection with the carrying on of a business;
- “prescribed” means prescribed by the regulations.
- (3) The regulations may not impose a requirement on a company in relation to any time during which—
- (a) it qualifies as a micro-entity for the purposes of section 384A of the Companies Act 2006,

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- (b) the small companies regime under that Act applies to it (see section 381 of that Act), or
  - (c) it qualifies as medium-sized for the purposes of section 465 or 466 of that Act.
- (4) “The company's payment practices and policies” has such meaning as may be prescribed and the information which may be prescribed may, in particular, include information—
- (a) about the standard payment terms of the company and whether these are part of any code of conduct or code of ethics of the company,
  - (b) about payment terms of the company which are not standard,
  - (c) about the processing and payment of invoices,
  - (d) by reference to such codes of conduct or standards as may be prescribed and as are applicable to companies generally or to companies of a prescribed description,
  - (e) about disputes relating to the payment of invoices, including any dispute resolution mechanism that the company uses,
  - (f) about payments owed or paid by the company due to late payment of invoices, whether in respect of interest or otherwise.
- (5) The regulations may require that information published in accordance with the regulations must be approved or signed by such description of person as may be prescribed.
- (6) The regulations may require such of the information required to be published as may be prescribed to be given, in such form as may be prescribed, to prescribed persons.
- (7) The regulations may make provision for a prescribed breach by a prescribed description of person of a requirement imposed by the regulations to be an offence punishable on summary conviction—
- (a) in England and Wales, by a fine;
  - (b) in Scotland or Northern Ireland, by a fine not exceeding level 5 on the standard scale.
- (8) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (9) Regulations under this section are subject to affirmative resolution procedure.

#### *Financial information about businesses*

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

- (1) The Treasury may make regulations that impose—
- (a) a duty on designated banks to provide information about their small and medium sized business customers to designated credit reference agencies, and
  - (b) a duty on designated credit reference agencies to provide information about small and medium sized businesses to finance providers.
- (2) The regulations must provide that the duty in subsection (1)(a) only applies where—
- (a) a credit reference agency makes a request to a bank, and
  - (b) the business customer to whom the information relates has agreed to the information being provided to a credit reference agency.

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- (3) The regulations must provide that the duty in subsection (1)(b) only applies where—
  - (a) a finance provider makes a request to a credit reference agency, and
  - (b) the business to whom the information relates has agreed to the information being provided to the finance provider.
- (4) The regulations may provide that the duty in subsection (1)(b) only applies where other conditions are met, such as the finance provider—
  - (a) complying with the credit reference agency's terms and conditions, and
  - (b) providing information on its small and medium sized business customers to the credit reference agency (subject to the agreement of those customers).
- (5) The regulations must describe the information—
  - (a) to which the duty in subsection (1)(a) applies;
  - (b) to which the duty in subsection (1)(b) applies;
  - (c) which may be required as mentioned in subsection (4)(b).
- (6) The regulations may make provision about—
  - (a) how a request for information must be made by a credit reference agency or finance provider;
  - (b) the time period within which information must be provided following a request;
  - (c) the form in which information must be provided;
  - (d) how a business may indicate agreement for the purposes of subsection (2)(b), (3)(b) or (4)(b) (and for the purposes of subsection (2)(b) this may include imposing an obligation on a designated bank to include an appropriate term in its standard terms and conditions or to otherwise seek agreement).
- (7) The regulations must make provision for the designation of banks and credit reference agencies by the Treasury, and the regulations may in particular provide for—
  - (a) conditions that must be met for a bank or credit reference agency to be designated;
  - (b) considerations that the Treasury may take into account before deciding whether to designate a bank or credit reference agency;
  - (c) the Treasury to consider the advice of another person before making a designation;
  - (d) the procedure for designating a bank or credit reference agency;
  - (e) how the list of designated banks and credit reference agencies must be published;
  - (f) the revocation of a designation.

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

- (1) Where—
  - (a) a small or medium sized business has applied to a designated bank for a loan or other credit facility, and
  - (b) the application has been unsuccessful,the Treasury may by regulations impose a duty on the bank to provide specified information about the business to designated finance platforms.
- (2) The regulations—

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- (a) must provide that the duty only applies where the business to which the information relates agrees to its information being provided to the designated finance platforms;
  - (b) may require a bank—
    - (i) to seek the agreement of a business for the purposes of paragraph (a);
    - (ii) to ask the business for any of the specified information that the bank does not already have;
    - (iii) to provide the information to the finance platforms within a specified time period.
- (3) The regulations may make further provision about the duty in subsection (1), which may in particular include provision about—
- (a) the types of loans and credit facilities that trigger the duty,
  - (b) the circumstances in which an application is to be considered unsuccessful, and
  - (c) the finance platforms to which information must be provided.
- (4) Where a finance platform has received information by virtue of subsection (1), the Treasury may by regulations—
- (a) impose a duty on the finance platform to provide specified information to all finance providers requesting access to the information, and
  - (b) impose a duty on the finance platform to provide specified information about a particular business to a finance provider where—
    - (i) the finance provider has requested information about the business, and
    - (ii) the business has agreed to its information being provided to the finance provider.
- (5) Information specified for the purposes of subsection (4)(a) must be in such a form that no individual business, and no person associated with the business, can be identified.
- (6) The regulations may provide that the duty in subsection (4)(a) or (b) does not apply unless—
- (a) the finance provider or business agrees to the finance platform's terms and conditions;
  - (b) the finance provider complies with specified requirements about the use and disclosure of the information.
- (7) The regulations may make further provision about the duties in subsection (4)(a) and (b), including in particular provision—
- (a) requiring the finance platform to provide the information within a specified time period;
  - (b) setting out how a request by a finance provider must be made to a finance platform;
  - (c) setting out how a business may indicate agreement for the purposes of subsection (4)(b)(ii);
  - (d) about the time period for which information must be kept by the finance platform;
  - (e) about the removal of information from the finance platform.
- (8) The regulations may make provision—

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- (a) prohibiting finance platforms from charging fees to small and medium sized businesses, or
  - (b) permitting finance platforms to charge fees to small and medium sized businesses.
- (9) The regulations must make provision for the designation of banks and finance platforms by the Treasury, and the regulations may in particular provide for—
- (a) conditions that must be met for a bank or finance platform to be designated;
  - (b) considerations that the Treasury may take into account before deciding whether to designate a bank or finance platform;
  - (c) the Treasury to consider the advice of another person before making a designation;
  - (d) the procedure for designating a bank or finance platform;
  - (e) how the list of designated banks and finance platforms must be published;
  - (f) the revocation of a designation.
- (10) In this section “specified” means specified or described in the regulations.

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

- (1) Regulations under sections 4 and 5 may make provision enabling the Financial Conduct Authority to take action for monitoring and enforcing compliance with the regulations.
- (2) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 or subordinate legislation made under that Act, with or without modification.
- (3) Those provisions include in particular—
- (a) provisions about investigations, including powers of entry and search and criminal offences;
  - (b) provisions for the grant of an injunction (or, in Scotland, an interdict) in relation to a contravention or anticipated contravention;
  - (c) provisions giving the Financial Conduct Authority powers to impose disciplinary measures (including financial penalties) or to give directions;
  - (d) provisions giving a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) or the Financial Conduct Authority powers to make subordinate legislation;
  - (e) provisions for the Financial Conduct Authority to charge fees.
- (4) Regulations under sections 4 and 5 may make provision that enables complaints about the activities of designated credit reference agencies or designated finance platforms to be dealt with under the scheme established by Part 16 of the Financial Services and Markets Act 2000 (financial ombudsman scheme), and for that purpose the regulations may—
- (a) apply, or make provision corresponding to, any of the provisions of that Part or rules made under that Part (with or without modifications);
  - (b) impose obligations on—
    - (i) the Financial Conduct Authority;
    - (ii) the scheme operator (within the meaning of that Part);
    - (iii) an ombudsman (within the meaning of that Part).

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- (5) Regulations under section 4 may impose a duty on designated credit reference agencies to provide information received by virtue of section 4(1)(a) or (4)(b) to the Bank of England, and may allow or require the Bank of England to share that information with persons or for purposes specified or described in the regulations; but the regulations must include provision protecting the confidentiality of information so provided.
- (6) Regulations under section 4 may provide that a failure to comply with a duty imposed by virtue of section 4(1) may be actionable at the suit of a person who has suffered loss as a result of it (subject to the defences and other incidents applying to actions for breach of statutory duty).
- (7) Regulations under section 4 may provide that the following provisions apply to designated credit reference agencies in the same way as they apply to credit reference agencies within the meaning of those provisions—
- (a) sections 157 to 160 of the Consumer Credit Act 1974 (duties to disclose and correct information) and regulations made under those sections;
  - [<sup>F1</sup>(b) Article 15(1) to (3) of the GDPR (confirmation of processing, access to data and safeguards for third country transfers);]
  - [<sup>F2</sup>(c) . . . . .]
- [<sup>F3</sup>(7A) In subsection (7) “the GDPR” has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(10), (11) and (14) of that Act).]
- (8) Regulations under section 4 may 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 credit reference agency.
- (9) Regulations under section 5 may impose a duty on designated finance platforms to provide statistical information to the Treasury.
- (10) Regulations under section 4 or 5 are subject to affirmative resolution procedure.

#### Textual Amendments

- F1** S. 6(7)(b) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 190\(2\)\(a\)](#) (with [ss. 117, 209, 210](#)); [S.I. 2018/625](#), reg. 2(1)(g)
- F2** S. 6(7)(c) omitted (25.5.2018) by virtue of [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 190\(2\)\(b\)](#) (with [ss. 117, 209, 210](#)); [S.I. 2018/625](#), reg. 2(1)(g)
- F3** S. 6(7A) inserted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 190\(3\)](#) (with [ss. 117, 209, 210](#)); [S.I. 2018/625](#), reg. 2(1)(g)

## 7 Sections 4 to 6: interpretation

- (1) For the purposes of sections 4 to 6, a business is a small or medium sized business if—
- (a) it has an annual turnover of less than £25 million,
  - (b) it carries out commercial activities,
  - (c) it does not carry out regulated activities as its principal activity, and
  - (d) it is not owned or controlled by a public authority.

Regulations under those sections may make further provision for the purposes of determining which businesses they apply to (including provision about the calculation of turnover and the determination of control).



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(2) In sections 4 to 6 and this section—

“designated bank” means a bank that has been designated by the Treasury by virtue of section 4(7) or 5(9);

“designated credit reference agency” means a credit reference agency that has been designated by the Treasury by virtue of section 4(7);

“designated finance platform” means a finance platform that has been designated by the Treasury by virtue of section 5(9);

“finance platform” means a person that provides a service for the exchange of information between finance providers and businesses that require finance;

“finance provider” means a body corporate that—

- (a) lends money or provides credit in the course of a business,
- (b) arranges or facilitates the provision of debt or equity finance in the course of a business, or
- (c) provides, arranges or facilitates invoice discounting or factoring in the course of a business,

and regulations under sections 4 and 5 may make further provision for the purpose of determining which finance providers they apply to;

“public authority” has the same meaning as in the Freedom of Information Act 2000 (see section 3 of that Act);

“regulated activities” has the same meaning as in the Financial Services and Markets Act 2000 (see section 22 of that Act);

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).

(3) The Treasury may by regulations change the figure for the time being specified in subsection (1)(a).

(4) Before making regulations under subsection (3) the Treasury must consult such persons as they consider appropriate.

(5) Regulations under subsection (3) are subject to affirmative resolution procedure.

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

(1) The Commissioners for Her Majesty's Revenue and Customs may disclose to a person (“P”) any of the information included in the VAT registration of another person (“V”) if the disclosure is for the purpose of enabling or assisting P to assess—

- (a) V's creditworthiness,
- (b) V's compliance with regulatory requirements relating to financial matters, or
- (c) the risk of fraud by V.

(2) But subsection (1) does not authorise the Commissioners to disclose any information which is, in the Commissioners' view, financial information relating to any business carried on by V.

(3) If VAT registration information is disclosed to a person in accordance with subsection (1), that person must not further disclose any of the information unless the Commissioners consent to the disclosure.

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- (4) If VAT registration information is disclosed to a person in accordance with subsection (3) or this subsection, that person must not further disclose any of the information unless the Commissioners consent to the disclosure.
- (5) A person does not contravene subsection (3) or (4) by disclosing a financial assessment made wholly or partly in reliance on the VAT registration information, if the financial assessment itself does not include any VAT registration information.
- (6) If VAT registration information is disclosed to a person in accordance with subsection (1), (3) or (4), that person must not use that information except for the purposes of making a financial assessment.
- (7) A person does not contravene subsection (6) by using, for any purpose, a financial assessment made wholly or partly in reliance on the VAT registration information.
- (8) The Commissioners for Her Majesty's Revenue and Customs may make arrangements with any person about disclosures of information to that person (the "recipient") under subsection (1).
- (9) The arrangements may (in particular) provide for—
  - (a) a fee to be payable by the recipient for the disclosure of information;
  - (b) conditions to apply to the recipient in relation to information disclosed (including conditions relating to the transfer, holding and processing of the information);
  - (c) financial penalties to be payable by the recipient for a failure to meet conditions which apply to the recipient under the arrangements.
- (10) The Treasury may, by regulations, amend this section so that it authorises the Commissioners to disclose VAT registration information included in a person's VAT registration for additional purposes.
- (11) In this section—
  - “financial assessment” means an assessment of a kind mentioned in subsection (1)(a), (b) or (c);
  - “VAT registration” means registration under the Value Added Tax Act 1994;
  - “VAT registration information” means information of the kind that the Commissioners are authorised to disclose under subsection (1) (as read with subsection (2)).
- (12) Regulations under this section are subject to affirmative resolution procedure.

## **9 Offences for the purposes of section 8**

- (1) A person commits an offence if the person discloses information in contravention of section 8(3) or (4).
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that the person reasonably believed that the disclosure of the information was lawful.
- (3) A person commits an offence if the person uses information in contravention of section 8(6).
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed that the use of the information was lawful.

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- (5) Section 19(4) to (7) of the Commissioners for Revenue and Customs Act 2005 apply to an offence under this section as they apply to an offence under section 19 of that Act.
- (6) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of section 8(1), (3), (4) or (6) (whether or not this section applies to the contravention).

### *Exports*

## **10 Disclosure of exporter information**

- (1) The Commissioners for Her Majesty's Revenue and Customs may, by regulations, make provision authorising officers of Revenue and Customs to disclose prescribed information about the export of goods from the United Kingdom.
- (2) In subsection (1) “prescribed information” means information of a kind that is prescribed in the regulations.
- (3) But the regulations may only prescribe the following kinds of information—
  - (a) the commodity code of goods that have been exported from the United Kingdom (a “prescribed code”);
  - (b) a description of the category of goods covered by a prescribed code;
  - (c) the names and addresses of persons who have exported goods covered by a prescribed code;
  - (d) the years and months in which a particular person has exported goods covered by a prescribed code.
- (4) Regulations under this section may make such provision as the Commissioners think appropriate in connection with the provision authorising officers of Revenue and Customs to disclose prescribed information (including provision about the manner in which information may be disclosed).
- (5) In this section “commodity code” means a code or other identifier applied to a category of goods in connection with the preparation of statistics on exports from the United Kingdom (whether or not it is also applied for other purposes).
- (6) Regulations under this section are subject to affirmative resolution procedure.

## **11 Power of the Secretary of State under section 1 of the EIGA 1991**

- (1) Section 1 of the Export and Investment Guarantees Act 1991 (assistance in connection with exports of goods and services) is amended as follows.
- (2) For subsections (1) and (1A) substitute—
  - “(1) The Secretary of State may make arrangements under this section which the Secretary of State considers are conducive to supporting or developing (whether directly or indirectly) supplies or potential supplies by persons carrying on business in the United Kingdom of goods, services or intangible assets (including intellectual property) to persons carrying on business outside the United Kingdom.”
- (3) After subsection (4) insert—

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“(5) The arrangements that may be made under this section also include the provision of advice or information.”

(4) For the heading of the section substitute “ Arrangements for the support and development of supplies, etc ”.

## 12 EIGA 1991: further amendments

(1) The Export and Investment Guarantees Act 1991 is amended as follows.

(2) In subsection (1) of section 6 (limit on the Secretary of State's commitments under the Act) for paragraphs (a) and (b) substitute “ 67,700 million special drawing rights ”.

(3) In subsection (3) of that section, for paragraphs (a) and (b) substitute “ 26,200 million special drawing rights ”.

(4) In subsection (4) of that section—

(a) in paragraph (a)—

(i) for “either of the limits” substitute “ the limit ”;

(ii) omit “£5,000 million or, as the case may be,”;

(b) in paragraph (b)—

(i) for “either of the limits” substitute “ the limit ”;

(ii) omit “£3,000 million or, as the case may be,”;

(c) omit “but the Secretary of State shall not in respect of any limit exercise the power on more than three occasions”.

(5) At the end of subsection (4) of that section, insert “ after the commencement of section 12 of the Small Business, Enterprise and Employment Act 2015 ”.

(6) After subsection (4) of that section insert—

“(4A) The Secretary of State must not in respect of either limit mentioned in subsection (4) exercise the power to make an order on more than three occasions.”

(7) In subsection (5) of that section—

(a) omit paragraphs (c) and (d);

(b) in paragraph (e) omit “in foreign currency”.

(8) In subsection (6) of that section, for “(1)(b) or (3)(b)” substitute “ (1) or (3) ”.

(9) In section 7(2) of that Act (reports and returns), leave out “in sterling and in foreign currency”.

(10) In section 13 of that Act (Export Credits Guarantee Department and Export Guarantees Advisory Council), omit subsection (4).

### *Presentment of cheques etc*

## 13 Electronic paying in of cheques etc

(1) The Bills of Exchange Act 1882 is amended as follows.

(2) After section 89 insert—

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## “PART 4A

### PRESENTMENT OF CHEQUES AND OTHER INSTRUMENTS BY ELECTRONIC MEANS

#### **89A Presentment of instruments by electronic means**

- (1) Presentment for payment of an instrument to which this section applies may be effected by provision of an electronic image of both faces of the instrument, instead of by presenting the physical instrument, if the person to whom presentment is made accepts the presentment as effective.

This is subject to regulations under subsection (2) and to section 89C.

- (2) The Treasury may by regulations prescribe circumstances in which subsection (1) does not apply.
- (3) Regulations under subsection (2) may in particular prescribe circumstances by reference to—
- (a) descriptions of instrument;
  - (b) arrangements under which presentment is made;
  - (c) descriptions of persons by or to whom presentment is made;
  - (d) descriptions of persons receiving payment or on whose behalf payment is received.
- (4) Where presentment for payment is made under subsection (1)—
- (a) any requirement—
    - (i) that the physical instrument must be exhibited, presented or delivered on or in connection with presentment or payment (including after presentment or payment or in connection with dishonour for non-payment), or
    - (ii) as to the day, time or place on or at which presentment of the physical instrument may be or is to be made, and
  - (b) any other requirement which is inconsistent with subsection (1), does not apply.
- (5) Subsection (4) does not affect any requirement as to the latest time for presentment.
- (6) References in subsections (4) and (5) to a requirement are to a requirement or prohibition, whether imposed by or under any enactment, by a rule of law or by the instrument in question.
- (7) Where an instrument is presented for payment under this section—
- (a) any banker providing the electronic image,
  - (b) any banker to whom it is provided, and
  - (c) any banker making payment of the instrument as a result of provision of the electronic image,

are subject to the same duties in relation to collection and payment of the instrument as if the physical instrument had been presented.

This is subject to any provision made by or under this Part.

*Status: Point in time view as at 04/07/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 1. (See end of Document for details)*

### **89B Instruments to which section 89A applies**

- (1) Subject to subsection (2), section 89A applies to—
  - (a) a cheque, or
  - (b) any other bill of exchange or any promissory note or other instrument—
    - (i) which appears to be intended by the person creating it to enable a person to obtain payment from a banker indicated in it of the sum so mentioned,
    - (ii) payment of which requires the instrument to be presented, and
    - (iii) which, but for section 89A, could not be presented otherwise than by presenting the physical instrument.
- (2) Section 89A does not apply to any banknote (within the meaning given in section 208 of the Banking Act 2009).
- (3) The reference in subsection (1) to the person creating an instrument is—
  - (a) in the case of a bill of exchange, a reference to the drawer;
  - (b) in the case of a promissory note, a reference to the maker.
- (4) For the purposes of subsection (1)(b)(i) an indication may be by code or number and need not indicate that payment is intended to be obtained from the banker.

### **89C Banker's obligation in relation to accepting physical instrument for presentment**

Provision of an electronic image of an instrument does not constitute presentment of the instrument under section 89A if the arrangements between—

- (a) the banker authorised to collect payment of the instrument on behalf of a customer, and
- (b) that customer,

do not permit the customer to pay in the physical instrument but instead require an electronic image to be provided (whether to that banker or to any other person).

### **89D Copies of instruments and evidence of payment**

- (1) The Treasury may by regulations make provision for—
  - (a) requiring a copy of an instrument paid as a result of presentment under section 89A to be provided, on request, to the creator of the instrument by the banker who paid the instrument;
  - (b) a copy of an instrument provided in accordance with the regulations to be evidence of receipt by a person identified in accordance with the regulations of the sum payable by the instrument.
- (2) Regulations under subsection (1)(a) may in particular—
  - (a) prescribe the manner and form in which a copy is to be provided;

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- (b) require the copy to be certified to be a true copy of the electronic image provided to the banker making the payment on presentment under section 89A;
  - (c) provide for the copy to be accompanied by prescribed information;
  - (d) require any copy to be provided free of charge or permit charges to be made for the provision of copies in prescribed circumstances.
- (3) The reference in subsection (1)(a) to the creator of the instrument is—
- (a) in the case of a bill of exchange, a reference to the drawer;
  - (b) in the case of a promissory note, a reference to the maker.

### **89E Compensation in cases of presentment by electronic means**

- (1) The Treasury may by regulations make provision for the responsible banker to compensate any person for any loss of a kind specified by the regulations which that person incurs in connection with electronic presentment or purported electronic presentment of an instrument.
- (2) In this section “electronic presentment or purported electronic presentment of an instrument” includes—
- (a) presentment of an instrument to which section 89A applies under that section;
  - (b) presentment of any other instrument by any means involving provision of an electronic image by which it may be presented for payment;
  - (c) purported presentment for payment by any means involving provision of an electronic image of an instrument that may not be presented for payment in that way;
  - (d) provision, in purported presentment for payment, of—
    - (i) an electronic image that purports to be, but is not, an image of a physical instrument (including an image that has been altered electronically), or
    - (ii) an electronic image of an instrument which has no legal effect; or
  - (e) provision, in presentment or purported presentment for payment, of an electronic image which has been stolen.
- (3) In this section, the “responsible banker”, in relation to electronic presentment or purported electronic presentment of an instrument, means—
- (a) the banker who is authorised to collect payment of the instrument on a customer's behalf, or
  - (b) if the holder of the instrument is a banker, that banker.
- (4) In this section—
- (a) references to an instrument include references to an instrument which has no legal effect (whether because it has been fraudulently altered or created, or because it has been discharged, or otherwise);
  - (b) in relation to an electronic image which is not an image of a physical instrument, references to the instrument are to a purported instrument (of which it purports to be an image); and

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- (c) in relation to an instrument which is not a bill of exchange or promissory note, references to the holder are to the payee or indorsee of the instrument who is in possession of it or, if it is payable to bearer, the person in possession of it.
- (5) Regulations under this section may in particular make provision for—
  - (a) the responsible banker to be required to pay compensation irrespective of fault;
  - (b) the amount of compensation to be reduced by virtue of anything done, or any failure to act, by the person to whom compensation is payable.
- (6) Nothing in this section or regulations under it is to be taken to—
  - (a) prevent the responsible banker claiming a contribution from any other person, or
  - (b) affect any remedy available to the responsible banker in contract or otherwise.
- (7) Except so far as regulations under this section provide expressly, nothing in this section or regulations under it is to be taken to affect any liability of the responsible banker which exists apart from this section or any such regulations.

### **89F Supplementary**

- (1) Regulations under this Part may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (2) The power to make regulations under this Part is exercisable by statutory instrument.
- (3) An instrument containing—
  - (a) regulations under section 89A or 89D, or
  - (b) the first regulations to be made under section 89E,
 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (4) An instrument containing any other regulations under section 89E is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) For the purposes of this Part, a banker collects payment of an instrument on behalf of a customer by—
  - (a) receiving payment of the instrument for the customer, or
  - (b) receiving payment of the instrument for the banker (but not as holder), having—
    - (i) credited the customer's account with the amount of the instrument, or
    - (ii) otherwise given value to the customer in respect of the instrument.



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- (6) Section 89E(4) applies for the purposes of subsection (5) in its application to section 89E.”
- (3) In section 52(4) (bills of exchange: duties of holder on presentment and payment), at the beginning insert “ Subject to Part 4A (presentment by electronic means), ”.
- (4) Omit sections 74B and 74C (which provide for alternative means of presentment of cheque for payment by banker).
- (5) In section 87 (promissory notes: presentment for payment), at the end insert—
- “(4) This section is subject to Part 4A (presentment by electronic means).”
- (6) The amendments made by this section have effect in relation to presentment of instruments after it comes into force, including instruments created before that time.

#### **Commencement Information**

- II** S. 13 partly in force; s. 13 in force for specified purposes at Royal Assent otherwise in force at 31.7.2016, see s. 164(4)

### *Payment systems*

#### **14 Powers of the Payment Systems Regulator**

- (1) Part 5 of the Financial Services (Banking Reform) Act 2013 (regulation of payment systems) is amended as follows.
- (2) Section 58 (power to require disposal of interest in payment system) is amended as provided in subsections (3) and (4).
- (3) In subsection (1), for the words following “interest in” substitute “—
- (a) the operator of a regulated payment system, or
- (b) an infrastructure provider in relation to such a system,
- to dispose of all or part of that interest. ”
- (4) After subsection (2) insert—
- “(2A) The reference in subsection (2) to a restriction or distortion of competition includes, in particular, a restriction or distortion of competition—
- (a) between different operators of payment systems,
- (b) between different payment services providers, or
- (c) between different infrastructure providers.”
- (5) In section 108 (relationship with Part 8 of the Payment Services Regulations 2009), in subsection (1)—
- (a) for “this Part” substitute “ sections 54 to 58 ”,
- (b) for “obtain access to, or otherwise participate in,” substitute “ obtain direct access to ”, and
- (c) for “does not apply” substitute “ applies ”.

**Status:**

Point in time view as at 04/07/2018.

**Changes to legislation:**

There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 1.