



# Enterprise Act 2016

## 2016 CHAPTER 12

### PART 1

#### THE SMALL BUSINESS COMMISSIONER

##### *The Commissioner*

#### **1 Small Business Commissioner**

- (1) A Small Business Commissioner is established.
- (2) The Commissioner's principal functions are—
  - (a) to provide general advice and information to small businesses (see section 3), and
  - (b) to consider complaints from small businesses relating to payment matters in connection with the supply of goods and services to larger businesses, and make recommendations (see sections 4 to 8).
- (3) Schedule 1 makes provision about the Commissioner.

#### **Commencement Information**

- II** [S. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)](#)

##### *“Small businesses”*

#### **2 Small businesses in relation to which the Commissioner has functions**

- (1) In this Part “small business” means a relevant undertaking which—
  - (a) has a headcount of staff of less than 50,
  - (b) if the business threshold condition applies to the relevant undertaking, meets that condition, and

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- (c) is not a public authority.
- (2) The Secretary of State may by regulations (“SBC scope regulations”) make further provision about the meaning of “small business” in this Part.
- (3) For the purposes of subsection (1)(b), the business threshold condition applies to a relevant undertaking if—
- (a) SBC scope regulations provide for that condition to apply in relation to all relevant undertakings, or
  - (b) the relevant undertaking falls within a description of undertakings to which SBC scope regulations apply that condition.
- (4) A relevant undertaking meets the business threshold condition if it has a turnover, or balance sheet total, of an amount less than or equal to the small business threshold.
- (5) SBC scope regulations may (amongst other things) make provision about—
- (a) the date (“the assessment date”) on which, or the period (“the assessment period”) for which, a relevant undertaking must meet a requirement of subsection (1)(a) or (b) in order to be a small business;
  - (b) the calculation of the headcount of staff, turnover or balance sheet total of a relevant undertaking at the assessment date or for the assessment period;
  - (c) the circumstances in which a relevant undertaking which has been established for less than a complete assessment period is to be regarded as meeting a requirement for that period.
- (6) SBC scope regulations may provide that a relevant undertaking of a specified description is not a small business even if it falls within the definition.
- (7) SBC scope regulations may—
- (a) make transitional or transitory provision or savings;
  - (b) make different provision for different purposes.
- (8) SBC scope regulations are to be made by statutory instrument.
- (9) A statutory instrument containing SBC scope regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (10) In this section—
- “balance sheet total”, “headcount of staff”, “turnover” and “small business threshold” have such meanings as may be specified;
- “relevant undertaking” means a person who is carrying on one or more businesses and whose registered office or principal place of business is in the United Kingdom;
- “specified” means specified in SBC scope regulations.

#### Commencement Information

**I2** S. 2 in force at Royal Assent for specified purposes, see s. 44(1)

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### *General advice and information*

#### **3 General advice and information**

- (1) The Commissioner may publish, or give to small businesses, general advice or information that the Commissioner considers may be useful to small businesses in connection with their supply relationships with larger businesses.
- (2) In considering under subsection (1) what advice and information may be useful, the Commissioner must, in particular, consider how useful any advice or information would be for the purposes of encouraging small businesses to resolve disputes with larger businesses or preventing such disputes arising.
- (3) General advice or information published or given under subsection (1) may include general advice or information about—
  - (a) principles of the law of contract;
  - (b) other sources of rights or obligations in relation to the supply of goods or services;
  - (c) dispute resolution.
- (4) General advice or information published or given under subsection (1) may also include general advice or information about—
  - (a) complaint-handling bodies, ombudsmen, regulators or other persons (other than courts or tribunals) who, in connection with small businesses' supply relationships with larger businesses, may be able—
    - (i) to resolve or facilitate the resolution of disputes, or
    - (ii) to give other advice or assistance to small businesses;
  - (b) statutory rights to refer disputes in connection with such relationships for adjudication by a person other than a court or tribunal.
- (5) The Commissioner may publish, or give to small businesses, general advice or information about—
  - (a) complaint-handling bodies, ombudsmen, regulators or public authorities (other than courts or tribunals) who, in connection with the supply relationships of small businesses with public authorities, may be able—
    - (i) to resolve or facilitate the resolution of disputes, or
    - (ii) to give other advice or assistance to small businesses;
  - (b) statutory rights to refer disputes in connection with such relationships for adjudication by a person other than a court or tribunal.
- (6) Advice published or given under this section must be impartial, and information published or given under this section must be presented in an impartial manner.
- (7) The powers conferred on the Commissioner by this section to publish or give general advice or information may be exercised by making arrangements with any other person in accordance with which that person publishes or provides that advice or information.
- (8) The Commissioner may make recommendations to the Secretary of State about the publication, or provision to small businesses, by the Secretary of State of advice or information of a kind which the Commissioner is authorised to publish or give under this section.

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- (9) Where a recommendation is made under subsection (8), the Secretary of State must inform the Commissioner whether anything is to be done in response to the recommendation and, if it is, give details of the action to be taken.
- (10) For the purposes of this section a small business has a “supply relationship” with a larger business or public authority if—
- (a) the small business has an agreement to supply, has supplied or may supply, goods or services to the larger business or public authority, or
  - (b) the larger business or public authority has an agreement to supply, has supplied or may supply, goods or services to the small business.
- (11) In this section—
- “dispute” includes any difference;
- “larger business” means a person carrying on one or more businesses who—
- (a) is not a small business,
  - (b) has a place of business in the United Kingdom, and
  - (c) is not a public authority.

#### **Commencement Information**

**I3** S. 3 in force at Royal Assent for specified purposes, see s. 44(1)

### *Complaints scheme*

#### **4 The SBC complaints scheme**

- (1) The Commissioner must establish, maintain and administer a scheme (in this Part referred to as “the SBC complaints scheme”) under which the Commissioner—
- (a) enquires into, considers and determines relevant complaints, and
  - (b) may make recommendations as to how the issues raised by those complaints may be remedied, resolved or mitigated or how similar issues may be prevented from arising in future.
- (2) The Commissioner must establish, maintain and administer the SBC complaints scheme in accordance with regulations made by the Secretary of State under section 7 (scheme regulations).
- (3) “Relevant complaint” means a complaint which—
- (a) is made by a small business (“the complainant”) which has an agreement to supply, or has supplied or may supply, goods or services to a larger business (“the respondent”),
  - (b) relates to a payment matter (see subsection (4)), and
  - (c) is not excluded from the scheme (see subsection (5)).
- (4) A complaint relates to a payment matter if it relates to—
- (a) a request or other act, or a failure to pay or other omission, in relation to a payment—
    - (i) for or in connection with the supply of goods or services, or

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- (ii) in connection with the relationship or possible relationship between the small business and the larger business so far as relevant to the supply, or
  - (b) any provision made or proposed to be made in connection with the supply or that relationship which restricts, or purports to restrict, any right of the small business to make a complaint under the SBC complaints scheme or to have a complaint enquired into, considered or determined under the scheme.
- (5) A complaint is excluded from the scheme if—
  - (a) it relates to the appropriateness of the price payable or proposed to be payable under a contract for the goods or services supplied or to be supplied by the small business under the contract by comparison with those goods or services,
  - (b) it concerns matters which are currently the subject of legal proceedings or adjudication proceedings,
  - (c) it falls within the jurisdiction of an ombudsman, regulator or public authority (other than the Commissioner, a court or a tribunal),
  - (d) the complainant has a statutory right to refer the complaint for adjudication by a person other than a court or tribunal,
  - (e) the complaint relates to—
    - (i) an act or omission which occurred before the appointed start date, or
    - (ii) an act or omission in accordance with a term of a contract entered into before that date, where that term has not been varied on or after that date, or
  - (f) it is of a description specified by regulations made by the Secretary of State.
- (6) For the purposes of paragraph (e) of subsection (5), “the appointed start date” means the date appointed by the Secretary of State by regulations.
- (7) Regulations under this section may—
  - (a) make transitory or transitional provision or savings;
  - (b) make different provision for different purposes.
- (8) Regulations under subsection (6) may appoint different dates for different areas.
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this section (other than regulations under subsection (6)) must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) In this section “larger business” has the meaning given by section 3(11).

#### **Commencement Information**

**I4** S. 4 in force at Royal Assent for specified purposes, see s. 44(1)

## **5 Enquiry into, consideration and determination of complaints**

- (1) This section applies where a complaint is to be determined under the SBC complaints scheme.

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- (2) The Commissioner may ask the complainant or the respondent to provide the Commissioner voluntarily with any information or documents relevant to the complaint.
- (3) The Commissioner must give the respondent, and may give the complainant, an opportunity to make representations to the Commissioner.
- (4) In enquiring into, considering and determining a complaint, the Commissioner must act impartially as between the complainant and the respondent.
- (5) A complaint is to be determined under the SBC complaints scheme by reference to what is, in the Commissioner's opinion, fair and reasonable in all the circumstances of the case.
- (6) The determination may contain one or more recommendations as to the steps that ought to be taken by the complainant or the respondent to remedy, resolve or mitigate any issue which is the subject of the complaint or to prevent a similar issue from arising in future.
- (7) Where a complaint has been determined, the Commissioner must prepare a written statement of the determination.
- (8) The statement must give the Commissioner's reasons for the determination (including any recommendations).
- (9) If the determination does not contain any recommendations, the statement must contain the Commissioner's reasons for this.
- (10) The Commissioner must give a copy of the statement to the complainant and the respondent.
- (11) A determination made under the SBC complaints scheme is not legally binding.

#### Commencement Information

**I5** S. 5 in force at Royal Assent for specified purposes, see s. 44(1)

## 6 Reports on complaints

- (1) The Commissioner may publish a report of the enquiry into, consideration and determination of a complaint under the SBC complaints scheme.
- (2) A report under subsection (1) must not identify the complainant, unless the complainant consents.  
  
See also section 7(7) which requires provision to be made about factors to be taken into account when deciding whether to identify the respondent in a report.
- (3) A report identifies a person if it—
  - (a) mentions the person's name, or
  - (b) includes any particulars which, in the Commissioner's opinion, are likely to identify the person.
- (4) Before publishing a report under subsection (1), the Commissioner must give the respondent and the complainant an opportunity to make representations to the

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Commissioner about the proposed publication of the report (including, in the case of the respondent, about any proposal to identify the respondent in the report).

#### **Commencement Information**

**I6** S. 6 in force at Royal Assent for specified purposes, see s. 44(1)

## **7 Scheme regulations**

- (1) The Secretary of State must make regulations (“scheme regulations”) about—
  - (a) the making of complaints for consideration under the SBC complaints scheme,
  - (b) the consideration and determination of complaints by the Commissioner, and the making of any recommendations, and
  - (c) the preparation and publication of reports under section 6.
- (2) Scheme regulations must—
  - (a) provide that a complaint (or part of a complaint) is, except in specified circumstances, to be dismissed if the Commissioner considers that the complainant has not previously communicated the substance of the complaint (or part) to the respondent and given the respondent a reasonable opportunity to deal with it;
  - (b) provide that a complaint is not to be entertained under the SBC complaints scheme unless the complainant has referred it under the scheme before the expiry of the applicable time limit (determined in accordance with the scheme regulations);
  - (c) provide that the Commissioner may extend that time limit in specified circumstances.
- (3) Scheme regulations may, among other things—
  - (a) make provision about the content and form of a complaint and the manner in which it is to be made;
  - (b) allow the Commissioner to fix time limits for any aspect of the proceedings and to extend a time limit;
  - (c) provide that a complaint may, or may in specified circumstances, be dismissed, if or to the extent that the Commissioner considers—
    - (i) that the complaint is frivolous or vexatious,
    - (ii) that the complaint concerns matters which are more appropriately dealt with in another way,
    - (iii) that the complainant has not suffered, and is not likely to suffer, any financial loss, material distress, material inconvenience or other material adverse effect, as a result of the matter to which the complaint relates,
    - (iv) that the matter to which the complaint relates has been remedied,
    - (v) that the complainant is seeking an outcome other than a recommendation of the kind that can be made under the scheme,
    - (vi) that the complaint concerns matters that have been the subject of legal proceedings or adjudication proceedings,
    - (vii) that the matter to which the complaint relates has previously been considered under the SBC complaints scheme or by another complaints-handling body, ombudsman or regulator,

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- (viii) that any other condition specified by the scheme regulations is met, or
  - (ix) that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the SBC complaints scheme;
  - (d) provide that a complaint is to be dismissed if or to the extent that it becomes the subject of legal proceedings or adjudication proceedings;
  - (e) require the Commissioner to notify the person who makes a complaint under the scheme if the Commissioner considers that it is not a relevant complaint or it is dismissed in accordance with the scheme regulations;
  - (f) authorise or require the Commissioner to notify the person against whom a complaint is made if it is not a relevant complaint or it is dismissed in accordance with the scheme regulations.
- (4) For the purposes of regulations under subsections (2)(a) and (3)(c) and (d) it does not matter whether there has been a consideration of the merits of the complaint by the time it is dismissed.
- (5) Scheme regulations must also specify matters which are to be taken into account, or are to be taken into account in specified circumstances, by the Commissioner in determining under the scheme whether an act or omission was fair and reasonable.
- Those matters must include any relevant law.
- (6) But nothing in this section requires or authorises scheme regulations to specify that particular practices are to be regarded by the Commissioner, in making that determination, as “fair” or “unfair”.
- (7) Scheme regulations must make provision about factors which are to be taken into account, or are to be taken into account in specified circumstances, by the Commissioner when deciding whether to identify the respondent in a report under section 6(1).
- (8) Scheme regulations may—
- (a) confer a discretion on the Commissioner;
  - (b) make transitional or transitory provision or savings;
  - (c) make different provision for different purposes.
- (9) Before making scheme regulations the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (10) Regulations under this section are to be made by statutory instrument.
- (11) A statutory instrument containing regulations under this section must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (12) In this section—
- “relevant complaint” has the meaning given by section 4(3);
  - “specified” means specified in scheme regulations.

#### Commencement Information

I7 S. 7 in force at Royal Assent for specified purposes, see s. 44(1)



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## 8 Confidentiality

- (1) The Commissioner may not make a disclosure of information that the Commissioner considers is likely to cause someone to think that a particular person has made a complaint under the SBC complaints scheme, except where subsection (2) applies.
- (2) This subsection applies if—
  - (a) the Commissioner has obtained the consent of the person concerned,
  - (b) the disclosure is made by the Commissioner to the respondent in relation to the complaint or in a report published under section 6,
  - (c) the disclosure is required for the purposes of any EU obligation,
  - (d) the disclosure is required, under rules of court or rules of a tribunal, or an order of a court or tribunal, for the purposes of legal proceedings of any description, or
  - (e) the information has already been made available to the public from other sources.

### Commencement Information

**18** S. 8 in force at Royal Assent for specified purposes, see s. 44(1)

## *Reports and reviews*

## 9 Annual report

- (1) After the end of each reporting period, the Commissioner must prepare and publish a report which—
  - (a) describes what the Commissioner has done during the period,
  - (b) contains a summary of the matters which the Commissioner considers to be the most significant matters raised by small businesses with the Commissioner during the period, and
  - (c) states the Commissioner's recommendations (if any) as to how any of these matters might be addressed.
- (2) As well as publishing the report, the Commissioner must send a copy to the Secretary of State.
- (3) The Secretary of State must lay a copy of the report before Parliament.
- (4) In this section “reporting period” means—
  - (a) the period beginning with the day on which section 1 comes into force and ending with the following 31 March, and
  - (b) each successive period of 12 months.

### Commencement Information

**19** S. 9 in force at Royal Assent for specified purposes, see s. 44(1)

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## 10 Review of Commissioner's performance

- (1) The Secretary of State must review the Commissioner's performance for each review period.
- (2) For the purposes of subsection (1), the Secretary of State may direct the Commissioner to provide the Secretary of State with information specified in the direction.
- (3) The first review period is the period beginning with the day on which section 1 comes into force and ending 2 years after the following 31 March.
- (4) Subsequent review periods are each successive period of 3 years after the first review period.
- (5) A review must, in particular, assess how effective the Commissioner has been in carrying out his or her functions, and in doing so may, in particular, assess the impact of the Commissioner's actions on—
  - (a) improving payment practices in commercial transactions;
  - (b) the awareness of small businesses of, or the use by small businesses of, alternative dispute resolution procedures.
- (6) As soon as practicable after a review period, the Secretary of State must—
  - (a) publish a report of the findings of the review for that period, and
  - (b) lay a copy of the report before Parliament.

### Commencement Information

**I10** S. 10 in force at Royal Assent for specified purposes, see s. 44(1)

### *Power to abolish*

## 11 Power to abolish the Commissioner

- (1) The Secretary of State may, by regulations, abolish the office of Small Business Commissioner if, as a result of a review under section 10, the Secretary of State is satisfied that—
  - (a) it is no longer necessary for there to be a Small Business Commissioner carrying out the functions under this Part, or
  - (b) the Commissioner's role has not been sufficiently effective to justify the office's continued existence.
- (2) For the purposes of subsection (1)(b), the Secretary of State must, in particular, take account of the Commissioner's role in—
  - (a) carrying out any of the functions under this Part,
  - (b) improving payment practices in commercial transactions, and
  - (c) improving the awareness of small businesses of alternative dispute resolution procedures.
- (3) For the purposes of giving effect to the abolition of the office of Small Business Commissioner, the regulations may amend or repeal this Part or any provision made by or under any other enactment (whether passed or made before or after this Act).

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- (4) Regulations under this section may make incidental, supplemental, consequential, transitional or transitory provision or savings.
- (5) Before making regulations under this section, the Secretary of State must consult—
  - (a) the Small Business Commissioner (unless that office is vacant),
  - (b) such other persons as appear to the Secretary of State to be persons affected by the regulations, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (6) If, as a result of consultation under subsection (5), the Secretary of State considers it appropriate to change the whole or part of the proposed regulations, the Secretary of State must carry out such further consultation with respect to the changes as seems appropriate.

#### Commencement Information

**III** S. 11 in force at Royal Assent for specified purposes, see s. 44(1)

## 12 Regulations under section 11: procedure

- (1) In this section “regulations” means regulations under section 11.
- (2) If after consultation under section 11, the Secretary of State considers it appropriate to proceed with the making of regulations, the Secretary of State may lay before Parliament—
  - (a) draft regulations, and
  - (b) an explanatory document.
- (3) The explanatory document must—
  - (a) explain why the Secretary of State considers that one of the conditions in section 11(1) is met, and
  - (b) contain a summary of representations received in the consultation.
- (4) The Secretary of State may not act under subsection (2) before the end of the period of 12 weeks beginning with the day on which the consultation began under section 11(5).
- (5) Subject to subsections (6) to (13), if after the expiry of the 40-day period the draft regulations laid under subsection (2) are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (6) The procedure in subsections (7) to (10) applies to the draft regulations instead of the procedure in subsection (5) if—
  - (a) either House of Parliament so resolves within the 30-day period, or
  - (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.
- (7) The Secretary of State must have regard to—
  - (a) any representations,
  - (b) any resolution of either House of Parliament, and

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- (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations, made during the 60-day period with regard to the draft regulations.
- (8) If after the expiry of the 60-day period the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (9) If after the expiry of the 60-day period the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
- (a) revised draft regulations, and
  - (b) a statement giving a summary of the changes proposed.
- (10) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
- (11) For the purposes of this section regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.
- (12) In this section, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament.
- (13) For the purposes of subsection (12) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.
- (14) Regulations are to be made by statutory instrument.

#### **Commencement Information**

**I12** S. 12 in force at Royal Assent for specified purposes, see s. 44(1)

### *Definitions*

#### **13 Definitions used in Part 1**

In this Part—

- “adjudication” includes arbitration;
  - “the Commissioner” means the Small Business Commissioner;
  - “the complainant” has the same meaning as in section 4;
  - “legal proceedings” means civil or criminal proceedings in or before a court or tribunal;
  - “public authority” means—
- (a) a public authority within the meaning of section 3(1) of the Freedom of Information Act 2000, or
  - (b) a Scottish public authority within the meaning of section 3(1) of the Freedom of Information (Scotland) Act 2002;
- “SBC complaints scheme” has the meaning given by section 4(1);

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“small business” has the meaning given by section 2;  
“the respondent” has the same meaning as in section 4.

#### Commencement Information

**I13** S. 13 in force at Royal Assent for specified purposes, see s. 44(1)

## PART 2

### REGULATORS

#### *Business impact target*

#### **14 Extension of target to provisions made by regulators**

- (1) Section 22 of the Small Business, Enterprise and Employment Act 2015 (definition of “qualifying regulatory provisions” etc) is amended as follows.
- (2) In subsection (6)(c) (“statutory provision” includes a provision which has effect by virtue of the exercise of a function conferred on a Minister of the Crown by an Act)—
  - (a) after “Minister of the Crown” insert “ or a relevant regulator ”;
  - (b) after “by”, in the second place, insert “ or under ”.
- (3) After subsection (8) insert—
  - “(9) In this section a “relevant regulator” means a body or other person specified in regulations made by the Secretary of State.
  - (10) Regulations under subsection (9) are subject to affirmative resolution procedure.”
- (4) Schedule 2 makes amendments consequential on subsections (1) to (3), and related amendments.
- (5) The amendments made by this section and Schedule 2 apply in relation to the whole of the relevant period in which this section comes into force.
- (6) The first regulations made under section 22(9) of the 2015 Act (as inserted by subsection (3)) apply in relation to the whole of the relevant period in which they come into force.
- (7) If those regulations come into force in a reporting period mentioned in any of section 23(7)(b) to (d) of the 2015 Act then, in respect of past reporting periods—
  - (a) section 24A(3) of the 2015 Act (as inserted by paragraph 4 of Schedule 2) does not apply;
  - (b) the required documents (see subsection (2) of that section) must be published no later than two weeks after the end of the reporting period in which the regulations come into force.
- (8) Subsequent regulations made under section 22(9) of the 2015 Act may make provision corresponding to subsections (6) and (7) in respect of the relevant period in which the regulations come into force.

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(9) In this section—

- “relevant period” has the meaning given by section 21(7) of the 2015 Act;
- “reporting period” has the same meaning as in section 23 of the 2015 Act (see subsection (7) of that section);
- “the 2015 Act” means the Small Business, Enterprise and Employment Act 2015.

#### Commencement Information

**I14** S. 14 in force at Royal Assent for specified purposes and at 4.7.2016 in so far as not already in force, see s. 44(1)(b)(2)(a)

PROSPECTIVE

### *Reporting requirements*

#### **15 Duty to report on effect of regulators' code**

After section 23 of the Legislative and Regulatory Reform Act 2006 insert—

##### **“23A Code of practice: performance reports and information requirements**

- (1) A relevant regulator must prepare and publish a performance report in respect of each reporting period.
- (2) A performance report is a report about the effect of performance of the duties in section 22 (duties to have regard to code of practice) on the way the relevant regulator exercised its relevant functions.
- (3) A relevant regulator is a person with regulatory functions to which section 22 applies, other than a local authority.
- (4) A performance report must include—
  - (a) the relevant regulator's assessment—
    - (i) of the views of persons carrying on businesses about the effect mentioned in subsection (2), and
    - (ii) of the impact on such persons of that effect;
  - (b) a description of the effect the relevant regulator expects performance of the duties in section 22 to have on the way it exercises its relevant functions in future.
- (5) In preparing and publishing a performance report a relevant regulator must follow any guidance given from time to time by a Minister of the Crown, unless the regulator considers that there is a good reason not to do so.
- (6) Guidance under subsection (5) may, in particular, include guidance as to—
  - (a) information or other matters to be included in a performance report;
  - (b) information to be obtained for the purposes of a performance report;

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- (c) the means by which information should be obtained for the purposes of a performance report.
- (7) A performance report must be published no later than three months after the end of the reporting period concerned.
- (8) A reporting period is a period of 12 months, except as provided by subsection (13)(b).
- (9) A new reporting period begins immediately after the end of each reporting period.
- (10) A relevant regulator other than the Commission for Equality and Human Rights must give to a Minister of the Crown any information that the Minister may from time to time request which relates to—
- (a) the effect of performance of the duties in section 22 on the way the relevant regulator performs, has performed, or is expected to perform, its relevant functions,
  - (b) the views of persons carrying on businesses about the effect mentioned in paragraph (a) or the impact on such persons of that effect, or
  - (c) any aspect of a performance report in relation to which it appears to the Minister that guidance under subsection (5) has not been followed.
- (11) This section is subject to any express restriction on disclosure imposed by another enactment (ignoring any restriction which allows disclosure if authorised by an enactment).
- (12) In this section—
- “local authority” means—
- (a) a county or district council in England;
  - (b) a London borough council;
  - (c) the Common Council of the City of London;
  - (d) the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple;
  - (e) the Council of the Isles of Scilly;
  - (f) a port health authority in England;
  - (g) an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities for Greater London and metropolitan counties);
  - (h) a county or county borough council in Wales;
  - (i) a fire and rescue authority in Wales;
  - (j) a port health authority in Wales;
  - (k) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
  - (l) a district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972;
- “relevant functions” means functions in the exercise of which a relevant regulator is required by section 22 to have regard to the code of practice under subsection (1) of that section.
- (13) A relevant regulator's first reporting period—

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- (a) begins—
  - (i) on the day on which section 15 of the Enterprise Act 2016 comes into force, or
  - (ii) in the case of a person that becomes a relevant regulator after that day, on the day on which the person becomes a relevant regulator;
- (b) is of a length determined by the relevant regulator, but is not to exceed 12 months.”

## 16 Duty to report on effect of economic growth duty

- (1) After section 110 of the Deregulation Act 2015 insert—

### “110A Duty under section 108: performance reports and information requirements

- (1) A person with regulatory functions to which section 108 applies (a “regulator”) must prepare and publish a performance report in respect of each reporting period.
- (2) A performance report is a report about the effect of performance of the duty under section 108(1) on the way the regulator exercised its functions to which that section applies (its “relevant functions”).
- (3) A performance report must include—
  - (a) the regulator's assessment—
    - (i) of the views of persons carrying on businesses about the effect mentioned in subsection (2), and
    - (ii) of the impact on such persons of that effect;
  - (b) a description of the effect the regulator expects performance of the duty under section 108(1) to have on the way it exercises its relevant functions in future.
- (4) In preparing and publishing a performance report a regulator must follow any guidance given from time to time by a Minister of the Crown, unless the regulator considers that there is a good reason not to do so.
- (5) Guidance under subsection (4) may, in particular, include guidance as to—
  - (a) information or other matters to be included in a performance report;
  - (b) information to be obtained for the purposes of a performance report;
  - (c) the means by which information should be obtained for the purposes of a performance report.
- (6) A performance report must be published no later than three months after the end of the reporting period concerned.
- (7) A reporting period is a period of 12 months, except as provided by subsection (12)(b).
- (8) A new reporting period begins immediately after the end of each reporting period.



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- (9) A regulator must give to a Minister of the Crown any information that the Minister may from time to time request which relates to—
- (a) the effect of performance of the duty under section 108(1) on the way the regulator performs, has performed, or is expected to perform, its relevant functions,
  - (b) the views of persons carrying on businesses about the effect mentioned in paragraph (a) or the impact on such persons of that effect, or
  - (c) any aspect of a performance report in relation to which it appears to the Minister that guidance under subsection (4) has not been followed.
- (10) A regulator is not required by this section to include in a performance report, or to give to a Minister of the Crown, information about the exercise of functions in relation to a particular person.
- (11) This section is subject to any express restriction on disclosure imposed by another enactment (ignoring any restriction which allows disclosure if authorised by an enactment).
- (12) A regulator's first reporting period—
- (a) begins—
    - (i) on the day on which section 16 of the Enterprise Act 2016 comes into force, or
    - (ii) in the case of a person that becomes a regulator (see subsection (1)) after that day, on the day on which the person becomes a regulator;
  - (b) is of a length determined by the regulator, but is not to exceed 12 months.”
- (2) In section 111 of that Act (interpretation of sections 108 to 110)—
- (a) in the heading and subsection (1) for “110” substitute “ 110A ”, and
  - (b) in subsection (4) for “and 110” substitute “ to 110A ”.

*Application of regulators' principles and code of practice*

VALID FROM 01/10/2016

**17 Power of Welsh Ministers to apply regulators' principles and code of practice**

In section 24 of the Legislative and Regulatory Reform Act 2006 (application of regulators' principles and code of practice to functions specified by order)—

- (a) for paragraph (c) of subsection (3) (Wales: limit on power of Minister of the Crown to specify functions) substitute—

“(c) a Welsh regulatory function.”;
- (b) in subsection (4) (power of Welsh Ministers to specify functions) for “regulatory functions exercisable only in or as regards Wales” substitute “ Welsh regulatory functions ”;
- (c) in subsection (10) (definitions) at the appropriate place insert—

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““Welsh regulatory function” means a regulatory function, so far as exercisable in relation to Wales, if or to the extent that the function relates to matters—

- (a) within the legislative competence of the National Assembly for Wales (see section 108 of the Government of Wales Act 2006), or
- (b) in respect of which functions are exercisable by the Welsh Ministers.”

## 18 Removal of restrictions

Omit subsection (5) of section 24 of the Legislative and Regulatory Reform Act 2006 (which prevents the regulators' principles and code from being applied to regulatory functions of the Gas and Electricity Markets Authority, the Office of Communications, the Office of Rail and Road or the Water Services Regulation Authority).

VALID FROM 01/10/2016

*Secondary legislation: duty to review*

## 19 Secondary legislation: duty to review

In section 30 of the Small Business, Enterprise and Employment Act 2015 (meaning of “provision for review” in section 28(2)(a) of that Act), in subsection (3)

- (a) after “must” insert “ so far as is reasonable ”, and
- (b) omit third “the”.

## PART 3

### REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

## 20 Extending the primary authority scheme

- (1) For Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (co-ordination of regulatory enforcement) substitute—

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## “PART 2

### REGULATORY ENFORCEMENT

#### *Introductory*

#### 22A “Regulated person” and “regulated group”

- (1) A person is a “regulated person” for the purposes of this Part if the Secretary of State is satisfied that—
  - (a) the person carries on, or proposes to carry on, an activity, and
  - (b) a qualifying regulator has a relevant function which is, or would be, exercisable in relation to the person in respect of the activity.
- (2) A group of persons is a “regulated group” for the purposes of this Part if the Secretary of State is satisfied that—
  - (a) a member of the group carries on, or proposes to carry on, an activity, and
  - (b) a qualifying regulator has a relevant function which is, or would be, exercisable in relation to the member in respect of the activity.

#### 22B “Qualifying regulator”

- (1) In this Part, “qualifying regulator” means—
  - (a) a local authority, or
  - (b) a specified regulator.
- (2) In this Part, “local authority” means a local authority in England, Wales, Scotland or Northern Ireland.
- (3) In this Part—
  - (a) references to a local authority in England or Wales have the same meaning as in Part 1;
  - (b) references to a local authority in Scotland are to a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;
  - (c) references to a local authority in Northern Ireland are to a district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972.
- (4) In this Part, “specified regulator” means a person (other than a local authority) who—
  - (a) has regulatory functions, and
  - (b) is specified for the purposes of this Part by regulations made by the Secretary of State.
- (5) Regulations under subsection (4)(b) require the consent of the Welsh Ministers to specify a regulator whose functions relate only to devolved Welsh matters.

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## 22C “Relevant function”

- (1) In this Part, “relevant function”—
  - (a) in relation to a local authority in England or Wales, has the same meaning as in Part 1;
  - (b) in relation to a local authority in Scotland, means a regulatory function exercised by that authority and specified for the purposes of this Part by regulations made by the Secretary of State;
  - (c) in relation to a local authority in Northern Ireland, means a regulatory function exercised by that authority and specified for the purposes of this Part by regulations made by the Secretary of State;
  - (d) in relation to a specified regulator, means a regulatory function exercised by that regulator and specified for the purposes of this Part by regulations made by the Secretary of State.
- (2) Regulations under subsection (1)(b) or (c) may only specify a regulatory function—
  - (a) which is a relevant function for the purposes of Part 1 in relation to local authorities in England or Wales or both, or
  - (b) which, for the purposes of local authorities in Scotland or Northern Ireland, is equivalent to such a function.
- (3) Regulations under subsection (1)(d) may only specify a regulatory function—
  - (a) which is a relevant function for the purposes of Part 1 in relation to local authorities in England or Wales or both, or
  - (b) which, for the purposes of the specified regulator, is equivalent to such a function.
- (4) Regulations under subsection (1)(b) or (d) may not specify a regulatory function so far as exercisable in Scotland, if or to the extent that the function relates to matters which are not reserved matters.
- (5) Regulations under subsection (1)(c) or (d) may not specify a regulatory function so far as exercisable in Northern Ireland, if or to the extent that the function relates to matters which are transferred matters.
- (6) Regulations under subsection (1)(d) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (7) Regulations under subsection (1)(d) may make different provision for—
  - (a) different purposes;
  - (b) different areas.

### *Primary authorities*

## 23A Primary authorities for regulated persons and regulated groups

- (1) For the purposes of this Part, the Secretary of State—

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- (a) may nominate, in relation to a regulated person, a qualifying regulator to be the “primary authority” for the exercise of the partnership functions in relation to that person (a “direct primary authority”);
  - (b) may nominate, in relation to a regulated group, a qualifying regulator to be the “primary authority” for the exercise of the partnership functions in relation to the members of the group (a “co-ordinated primary authority”).
- (2) The “partnership functions” are the functions specified by the nomination under subsection (1) as covered by it.
- (3) A function may be so specified only if condition A or B is met.
- (4) Condition A is that the function—
- (a) is a relevant function of the primary authority, and
  - (b) is, or (in the case of an activity proposed to be carried on) would be, exercisable by the primary authority in relation to the regulated person or a member of the regulated group.
- (5) Condition B is that the function—
- (a) is a relevant function of a qualifying regulator other than the primary authority,
  - (b) is, or (in the case of an activity proposed to be carried on) would be, exercisable by that other regulator in relation to the regulated person or a member of the regulated group, and
  - (c) is equivalent to a relevant function of the primary authority.
- (6) The Secretary of State may from time to time revise the specification of partnership functions included in a nomination under subsection (1) if—
- (a) the requirements of subsections (3) to (5) are met in relation to the revised specification,
  - (b) in the case of a nomination under subsection (1)(a), the primary authority and the regulated person have agreed in writing to the revision, and
  - (c) in the case of a nomination under subsection (1)(b), the primary authority and the co-ordinator of the regulated group have agreed in writing to the revision.
- (7) This Part applies to a revised specification of partnership functions as it applies to a specification of partnership functions under subsection (1); and references in this Part to the partnership functions include partnership functions in the revised specification.

### **23B Nomination of primary authorities**

- (1) The Secretary of State may only nominate a qualifying regulator as a direct primary authority if the regulator and the regulated person have agreed in writing to the nomination.
- (2) The Secretary of State may only nominate a qualifying regulator as a co-ordinated primary authority if—
  - (a) there is a co-ordinator of the regulated group, and

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- (b) the regulator and the co-ordinator have agreed in writing to the nomination.
- (3) The Secretary of State may at any time revoke a nomination under section 23A(1).
- (4) The Secretary of State must—
  - (a) maintain, or cause to be maintained, a register of nominations under section 23A(1), and
  - (b) make the register available for inspection free of charge.

### 23C “Co-ordinator” of a regulated group

- (1) For the purposes of this Part, there is a “co-ordinator” of a regulated group if there is a person nominated by the Secretary of State to be the co-ordinator of the group.
- (2) The Secretary of State may only nominate a person under subsection (1) if the person has agreed in writing to the nomination.
- (3) The Secretary of State may at any time revoke a nomination under subsection (1).
- (4) If at any time the co-ordinator of a regulated group is unable to act, the Secretary of State may nominate another person to exercise the functions of the co-ordinator of the group under this Part.
- (5) Subsections (2) and (3) apply to a nomination under subsection (4) as they apply to a nomination under subsection (1).
- (6) The Secretary of State must secure that the register of nominations maintained and made available under section 23B(4) includes, in relation to each co-ordinated primary authority, the name of—
  - (a) the co-ordinator of the regulated group concerned, and
  - (b) any person nominated under subsection (4) to exercise the co-ordinator's functions.

### 23D Membership of a regulated group

- (1) This section applies where a qualifying regulator is nominated as a co-ordinated primary authority.
- (2) The co-ordinator of the regulated group concerned must—
  - (a) maintain, or cause to be maintained, a list of members of the group, and
  - (b) secure, as far as is reasonably practicable, that the list is accurate and kept up-to-date.
- (3) The list must include in relation to each member—
  - (a) the member's name and address,
  - (b) when the person became a member, and
  - (c) if applicable, when the person ceased to be a member.

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- (4) The co-ordinator of the regulated group must make a copy of the list available free of charge, on request, to—
  - (a) the Secretary of State,
  - (b) the primary authority, and
  - (c) a qualifying regulator who has a function which is both a relevant function of the regulator and a partnership function.
- (5) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (6) For the purposes of this Part, the list is conclusive as to whether a person is a member of the group at a particular time.

### 23E Application of sections 24A to 28B

- (1) The following provisions apply in each case where a qualifying regulator has been nominated under section 23A(1) as a primary authority—
  - (a) section 24A (primary authority advice and guidance);
  - (b) sections 25A to 25D and Schedule 4A (enforcement action);
  - (c) sections 26A to 26C (inspection plans);
  - (d) section 27A (power for primary authority to recover costs);
  - (e) section 28A (support of primary authority by other regulators);
  - (f) section 28B (other regulators to act consistently with primary authority advice etc).
- (2) References in those provisions to “the primary authority”, “a partnership function” and other terms defined in or for the purposes of this Part are to be read accordingly.
- (3) But see sections 29A to 29D in relation to cases where more than one qualifying regulator has been nominated as the primary authority for the exercise of the same function in relation to the same person.

#### *Advice and guidance*

### 24A Primary authority advice and guidance

- (1) The primary authority, if it is a direct primary authority, has the function of—
  - (a) giving advice and guidance to the regulated person in relation to each partnership function;
  - (b) giving advice and guidance, in relation to each partnership function, to other qualifying regulators as to how they should exercise it in relation to the regulated person.
- (2) The primary authority, if it is a co-ordinated primary authority, has the function of—
  - (a) giving advice and guidance to the co-ordinator of the regulated group in relation to each partnership function;

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- (b) giving advice and guidance, in relation to each partnership function, to other qualifying regulators as to how they should exercise it in relation to a member of the group.
- (3) The primary authority may make arrangements with the regulated person or the co-ordinator of the regulated group as to how the authority will discharge its functions under subsection (1) or (2).
- (4) In the case of a co-ordinated primary authority, the co-ordinator of the regulated group must notify any advice or guidance given to the co-ordinator under subsection (2)(a) to those members of the group to whom the co-ordinator considers it may be relevant.
- (5) Advice or guidance may be given under subsection (1)(b) or (2)(b) only with the consent of the Secretary of State.
- (6) Subsections (1)(b) and (2)(b) do not require advice and guidance to be given to a qualifying regulator in relation to a partnership function if it is not a relevant function of that regulator.

#### *Enforcement action*

#### 25A “Enforcement action”

- (1) In this Part, “enforcement action” means—
  - (a) action which relates to securing compliance with a restriction, requirement or condition in the event of breach (or putative breach) of a restriction, requirement or condition;
  - (b) action taken with a view to, or in connection with, the imposition of a sanction (criminal or otherwise) in respect of an act or omission;
  - (c) action taken in connection with the pursuit of a remedy conferred by an enactment in respect of an act or omission.
- (2) But the Secretary of State may by regulations, with the consent of the Welsh Ministers, specify—
  - (a) action which is to be regarded as enforcement action for the purposes of this Part or any provision of this Part specified in the regulations;
  - (b) action which is not to be regarded as enforcement action for the purposes of this Part or any provision of this Part specified in the regulations.
- (3) Regulations under subsection (2) may make different provision for different purposes.

#### 25B Enforcement action by primary authority

- (1) This section applies if—
  - (a) the primary authority proposes to take enforcement action against the regulated person or a member of the regulated group pursuant to a relevant function of the primary authority which is a partnership function, and



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- (b) in the case of proposed enforcement action against a member of the regulated group, the primary authority is aware that the member belongs to the group.

But see section 25D (which imposes a duty to prescribe circumstances in which this section does not apply).

- (2) The primary authority—
  - (a) must notify the regulated person or the member in writing before taking the proposed enforcement action, and
  - (b) may not take the action during the referral period mentioned in paragraph 5(2) of Schedule 4A (period in which the regulated person or the member may refer the action to the Secretary of State) unless notified in writing by the regulated person or the member that no such reference is to be made.
- (3) Parts 1 and 3 of Schedule 4A contain provision for questions arising under this section to be referred to the Secretary of State.
- (4) Where another enactment limits the period within which the primary authority may take the proposed enforcement action, any time during which it is prohibited under this section or paragraph 5(7) of Schedule 4A from taking the action is to be disregarded in calculating that period.

#### **25C Enforcement action other than by primary authority**

- (1) This section applies if—
  - (a) a qualifying regulator other than the primary authority proposes to take enforcement action against the regulated person or a member of the regulated group pursuant to a relevant function of the regulator which is a partnership function, and
  - (b) in the case of proposed enforcement action against a member of the regulated group, the regulator is aware that the member belongs to the group.

But see section 25D (which imposes a duty to prescribe circumstances in which this section does not apply).

- (2) The qualifying regulator (the “enforcing authority”)—
  - (a) must notify the primary authority in writing before taking the proposed enforcement action, and
  - (b) may not take the action during the relevant period.
- (3) If—
  - (a) the enforcing authority fails to notify the primary authority under subsection (2)(a) of the proposed enforcement action, but
  - (b) the primary authority is notified of it by the regulated person or the member or the co-ordinator of the regulated group,the primary authority must notify the enforcing authority in writing that the enforcing authority is prohibited by subsection (2)(b) from taking the action during the relevant period.
- (4) If the primary authority determines, within the relevant period, that the proposed enforcement action is inconsistent with advice or guidance

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previously given by it (generally or specifically), it may direct the enforcing authority in writing not to take the action.

- (5) Any such direction must be given as soon as is reasonably practicable, and in any event within the relevant period.
- (6) If the enforcing authority is not directed under subsection (4) not to take the proposed enforcement action, and continues to propose to take the action—
  - (a) it must inform the regulated person or the member, and
  - (b) it may not take the action during the referral period mentioned in paragraph 5(4) of Schedule 4A (period in which the regulated person or the member may refer the action to the Secretary of State) unless notified in writing by the regulated person or the member that no such reference is to be made.
- (7) Parts 2 and 3 of Schedule 4A contain provision for questions arising under this section to be referred to the Secretary of State.
- (8) Where another enactment limits the period within which the enforcing authority may take the proposed enforcement action, any time during which it is prohibited under this section or paragraph 5(7) of Schedule 4A from taking the action is to be disregarded in calculating the period.
- (9) For the purposes of this section, the “relevant period” means the period which—
  - (a) begins when the primary authority is notified under subsection (2) (a) of the proposed enforcement action or the enforcing authority is notified under subsection (3) that it is prohibited from taking the action during the relevant period, and
  - (b) ends—
    - (i) at the end of the fifth working day after the day on which the period begins, or at such later time as the Secretary of State may direct, or
    - (ii) if earlier, when the enforcing authority is notified in writing by the primary authority that no direction is to be given under subsection (4) (unless the notification states that the primary authority has referred the action to the Secretary of State under paragraph 4(1) of Schedule 4A or that it intends to do so).

## 25D Enforcement action: exceptions

- (1) The Secretary of State must by regulations, with the consent of the Welsh Ministers, prescribe—
  - (a) circumstances in which section 25B, and Schedule 4A so far as relating to cases within section 25B, do not apply, and
  - (b) circumstances in which section 25C, and Schedule 4A so far as relating to cases within section 25C, do not apply.
- (2) In particular, the Secretary of State must exercise the power under subsection (1) to secure that those provisions do not apply—
  - (a) where the enforcement action is required urgently to avoid a significant risk of serious harm to—

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

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- (i) human health,
    - (ii) the environment (including the health of animals or plants),  
or
    - (iii) the financial interests of consumers;
  - (b) where the application of those provisions would be wholly disproportionate.
- (3) Where a qualifying regulator other than the primary authority takes enforcement action against the regulated person or a member of the regulated group in circumstances prescribed under subsection (1)(b), the qualifying regulator must inform the primary authority of the action as soon as it reasonably can.

### *Inspection plans*

#### **26A Inspection plans**

- (1) Where a partnership function consists of or includes a function of inspection (an “inspection function”), the primary authority may make an inspection plan in accordance with this section.
- (2) An “inspection plan” is a plan containing recommendations as to how the inspection function should be exercised by an inspecting regulator in relation to the regulated person or a member of the regulated group.
- (3) A person is an “inspecting regulator” if—
  - (a) the person is a qualifying regulator, and
  - (b) the inspection function is a relevant function of the person.
- (4) An inspection plan may, in particular—
  - (a) set out what an inspection should consist of;
  - (b) set out the frequency with which inspections should be carried out;
  - (c) set out the circumstances in which they should be carried out;
  - (d) require the inspecting regulator to provide the primary authority with a report on the inspecting regulator's exercise of the inspection function.
- (5) Before making an inspection plan the primary authority must consult the regulated person or the co-ordinator of the regulated group.
- (6) When making an inspection plan the primary authority must take into account any relevant recommendations relating to inspections which are published pursuant to a regulatory function by a person other than an inspecting regulator.
- (7) When it has made an inspection plan, the primary authority may apply to the Secretary of State for consent to the plan.
- (8) If the Secretary of State consents to a plan under subsection (7), the primary authority must notify the plan to—
  - (a) the regulated person or the co-ordinator of the regulated group, and
  - (b) inspecting regulators.

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- (9) If, in the case of a regulated group, an inspection plan is notified to the co-ordinator under subsection (8)(a), the co-ordinator must—
- (a) notify the plan to those members of the group to whom the co-ordinator considers it may be relevant,
  - (b) prepare a list of the names and addresses of those members,
  - (c) secure, as far as is reasonably practicable, that the list is accurate and kept up-to-date,
  - (d) provide the primary authority with the list, including any updates to it, and
  - (e) notify any member whose name is included in the list or removed from it of the inclusion or removal.
- (10) If a list or update is provided to the primary authority under subsection (9)(d), the primary authority must notify the list or update to inspecting regulators.

## 26B Effect of inspection plans

- (1) If the Secretary of State consents under section 26A(7) to an inspection plan in respect of an inspection function, the primary authority must have regard to the plan when it exercises the inspection function in relation to—
- (a) the regulated person, or
  - (b) a member of the regulated group whose name is included in the list provided to the primary authority (and, where applicable, updated) under section 26A(9)(d).
- (2) If an inspection plan of the primary authority is notified to an inspecting regulator under section 26A(8)(b), the inspecting regulator may not exercise the inspection function in relation to the regulated person or a member of the regulated group otherwise than in accordance with the plan, unless—
- (a) the inspecting regulator has notified the primary authority in writing of the way in which it proposes to exercise the function, and the primary authority has notified the regulator in writing that the primary authority consents to that proposed exercise, or
  - (b) in the case of a regulated group, the member's name is not included in the list notified to the inspecting regulator (and, where applicable, updated) under section 26A(10).
- (3) A notification by an inspecting regulator under subsection (2)(a) must include reasons for exercising the function otherwise than in accordance with the plan.
- (4) A primary authority is to be treated as having given the notification of consent described in subsection (2)(a) if—
- (a) it is notified by the inspecting regulator as described in that subsection, and
  - (b) it fails to notify the inspecting regulator in writing, before the end of the fifth working day after the day on which it received the notification, whether it consents as described in that subsection.

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## 26C Revocation and revision of inspection plans

- (1) A primary authority may, with the consent of the Secretary of State, revoke an inspection plan made by it under section 26A.
- (2) If a primary authority revokes an inspection plan, it must notify the following that the plan is no longer in effect—
  - (a) the regulated person or the co-ordinator of the regulated group;
  - (b) inspecting regulators.
- (3) Where the revocation of an inspection plan is notified to the co-ordinator of a regulated group under subsection (2)(a), the co-ordinator must notify the revocation to those members of the group to whom the co-ordinator considers it may be relevant.
- (4) A primary authority may from time to time revise an inspection plan made by it under section 26A.
- (5) Sections 26A and 26B and this section apply to a revised plan as they apply to a plan made under section 26A; and references in this Part to an inspection plan include the revised plan.

### *Primary authority's costs*

## 27A Power to charge

- (1) The primary authority—
  - (a) may, in the case of a regulated person, charge the person such fees as the authority considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the person;
  - (b) may, in the case of a regulated group, charge the co-ordinator such fees as the authority considers to represent the costs reasonably incurred by it in the exercise of its functions under this Part in relation to the regulated group.
- (2) The reference in subsection (1)(b) to functions in relation to the regulated group includes functions in relation to the co-ordinator or a member of the group.

### *Other regulators*

## 28A Support of primary authority by other regulators

- (1) This section applies to a person who has regulatory functions and who—
  - (a) is specified as a “supporting regulator” by the Secretary of State by regulations, and
  - (b) has a function which is not a relevant function of the person but which—
    - (i) is a designated function of the person, and
    - (ii) is, or is relevant to the exercise of, a partnership function.

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- (2) The supporting regulator may do anything which it considers appropriate for the purpose of supporting the primary authority in the preparation of—
  - (a) advice or guidance under section 24A in relation to the partnership function, or
  - (b) an inspection plan in relation to the partnership function.
- (3) If the supporting regulator provides support under subsection (2), it must, in the exercise of the designated function in relation to the regulated person or a member of the regulated group, act consistently with any advice or guidance under section 24A, or any inspection plan—
  - (a) which is subsequently given or made in relation to the partnership function, and
  - (b) to which the supporting regulator has consented.
- (4) But, in the case of a regulated group, the duty under subsection (3) applies to the exercise of the designated function in relation to a member of the group only if the supporting regulator is aware that the member belongs to the group.
- (5) The duty under subsection (3) is a duty to act consistently so far as it is possible for the supporting regulator to do so in accordance with its other functions.
- (6) If—
  - (a) the supporting regulator provides support under subsection (2), and
  - (b) the regulated person or the co-ordinator of the regulated group has agreed in writing to the provision of that support,
 the supporting regulator may charge the regulated person or the co-ordinator such fees as it considers to represent the costs reasonably incurred by it in providing that support.
- (7) In the case of a regulated group, the co-ordinator of the group must make the following available free of charge, on request, to the supporting regulator—
  - (a) a copy of the group membership list maintained under section 23D(2);
  - (b) a copy of a list under section 26A(9) of group members to whom an inspection plan may be relevant.
- (8) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (9) Regulations under subsection (1)(a) require the consent of the Welsh Ministers to specify a person whose functions relate only to devolved Welsh matters.
- (10) In this section, “designated function”, in relation to a supporting regulator, means a regulatory function exercised by that regulator and specified by the Secretary of State by regulations.
- (11) Regulations under subsection (10)—
  - (a) may not specify a regulatory function so far as exercisable in Scotland, if or to the extent that the function relates to matters which are not reserved matters;
  - (b) may not specify a regulatory function so far as exercisable in Northern Ireland, if or to the extent that the function relates to matters which are transferred matters;

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- (c) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (12) Regulations under subsection (10) may make different provision for—
- (a) different purposes;
  - (b) different areas.
- (13) A supporting regulator who, apart from subsection (2), has power to provide the support described in that subsection, is not prevented by that power from exercising the power conferred by subsection (2).

## **28B Other regulators to act consistently with primary authority advice etc**

- (1) This section applies to a person who has regulatory functions and who—
- (a) is specified as a “complementary regulator” by the Secretary of State by regulations, and
  - (b) has a function which is not a relevant function of the person, but which—
    - (i) is a designated function of the person,
    - (ii) is, or is equivalent to, a partnership function, and
    - (iii) is exercisable by the person in relation to the regulated person or a member of the regulated group.
- (2) The complementary regulator must act consistently with primary authority advice and guidance in the exercise of the designated function in relation to the regulated person or a member of the regulated group.
- (3) But, in the case of a regulated group, the duty under subsection (2) applies to the exercise of the designated function in relation to a member of the group only if the complementary regulator is aware that the member belongs to the group.
- (4) The duty under subsection (2) is a duty to act consistently so far as it is possible for the complementary regulator to do so in accordance with its other functions.
- (5) In subsection (2), “primary authority advice and guidance” means—
- (a) advice and guidance given by the primary authority under section 24A to the regulated person or the co-ordinator of the regulated group in relation to the partnership function,
  - (b) advice and guidance given by the primary authority under that section to qualifying regulators as to how they should exercise the partnership function in relation to the regulated person or a member of the regulated group, and
  - (c) an inspection plan made by the primary authority in respect of the exercise of the partnership function in relation to the regulated person or a member of the regulated group.
- (6) In the case of a regulated group, the co-ordinator of the group must make the following available free of charge, on request, to the complementary regulator—
- (a) a copy of the group membership list maintained under section 23D(2);

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- (b) a copy of a list under section 26A(9) of group members to whom an inspection plan may be relevant.
- (7) The copy must be made available as soon as is reasonably practicable and in any event not later than the end of the third working day after the day on which the request is received by the co-ordinator.
- (8) Regulations under subsection (1)(a) require the consent of the Welsh Ministers to specify a person whose functions relate only to devolved Welsh matters.
- (9) In this section, “designated function”, in relation to a complementary regulator, means a regulatory function exercised by that regulator and specified for the purposes of this section by the Secretary of State by regulations.
- (10) Regulations under subsection (9) specifying a function other than a partnership function must identify the partnership function to which the designated function is equivalent.
- (11) Regulations under subsection (9)—
  - (a) may not specify a regulatory function so far as exercisable in Scotland, if or to the extent that the function relates to matters which are not reserved matters;
  - (b) may not specify a regulatory function so far as exercisable in Northern Ireland, if or to the extent that the function relates to matters which are transferred matters;
  - (c) require the consent of the Welsh Ministers to specify a regulatory function, so far as exercisable in relation to Wales, which relates to a devolved Welsh matter.
- (12) Regulations under subsection (9) may make different provision for—
  - (a) different purposes;
  - (b) different areas.

*Cases with more than one primary authority*

**29A Primary authority enforcement action inconsistent with another authority's advice etc**

- (1) This section applies if—
  - (a) a qualifying regulator nominated as a direct primary authority or a co-ordinated primary authority for the exercise of a function in relation to a person notifies the person, under section 25B(2)(a), of enforcement action that it proposes to take against the person pursuant to the function, and
  - (b) within the referral period, the person notifies the primary authority that the person considers the action to be inconsistent with advice or guidance previously given (generally or specifically) by another qualifying regulator nominated as the primary authority for the exercise of the function in relation to the person.
- (2) Section 25C (but not section 29C) applies in relation to the proposed enforcement action as if the primary authority which gave the notification



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under section 25B(2)(a) were an enforcing authority under section 25C; and section 25B no longer applies in relation to the action.

- (3) “Referral period” in this section means the referral period mentioned in paragraph 5(2) of Schedule 4A (period in which the regulated person or the member may refer the proposed enforcement action to the Secretary of State).

#### **29B Concurrent duties to notify primary authorities of enforcement action**

- (1) This section applies if—
- (a) a qualifying regulator is nominated as a co-ordinated primary authority for the exercise of a function in relation to a person,
  - (b) an enforcing authority proposes to take enforcement action against the person pursuant to the function, and
  - (c) because of the nomination mentioned in paragraph (a), the enforcing authority is (ignoring this section) required under section 25C(2) (a) to notify the co-ordinated primary authority of the proposed enforcement action.
- (2) That requirement to notify the co-ordinated primary authority does not apply if condition A or B is met.
- (3) Condition A is that under section 25C(2)(a) the enforcing authority is required to notify another qualifying regulator of the proposed enforcement action because of that other qualifying regulator's nomination as a direct primary authority for the exercise of the function in relation to the person.
- (4) Condition B is that—
- (a) condition A is not met,
  - (b) the enforcing authority is (ignoring this section) required under section 25C(2)(a) to notify at least one other qualifying regulator of the proposed enforcement action because of that other regulator's nomination as a co-ordinated primary authority for the exercise of the function in relation to the person, and
  - (c) the enforcing authority has so notified that other regulator or (if there is more than one) it has so notified at least one of them.

#### **29C Enforcement action notified to a primary authority inconsistent with another authority's advice etc**

- (1) This section applies if—
- (a) a qualifying regulator is nominated as a direct primary authority or a co-ordinated primary authority for the exercise of a function in relation to a person,
  - (b) that primary authority (“PA1”) is notified under section 25C(2)(a) of enforcement action that an enforcing authority proposes to take against the person pursuant to the function, and
  - (c) PA1 decides not to give a direction under section 25C(4) directing the enforcing authority not to take the enforcement action, and does not refer the action to the Secretary of State under paragraph 4(1) of Schedule 4A.
- (2) PA1 must, within the relevant period, take reasonable steps to find out if—

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- (a) another qualifying regulator nominated as the primary authority (“PA2”) for the exercise of the function in relation to the person has previously given advice or guidance (generally or specifically), and
  - (b) the person considers the proposed enforcement action to be inconsistent with that advice or guidance.
- (3) If PA1 is of the view that such advice or guidance has previously been given and that the person considers the proposed enforcement action to be inconsistent with it, PA1 must—
- (a) refer the action to PA2, and
  - (b) notify the enforcing authority and the person that it has done so.
- (4) If subsection (3) applies—
- (a) the reference of the proposed enforcement action by PA1 to PA2 under subsection (3)(a) is to be treated as a notification given by the enforcing authority to PA2 under section 25C(2)(a), and
  - (b) accordingly, section 25C (but not this section) applies in relation to PA2 as the primary authority and ceases to apply in relation to PA1 as the primary authority.
- (5) “Relevant period” in this section has the same meaning as in section 25C (see subsection (9) of that section).

#### 29D **Overlapping inspection plans**

- (1) This section applies if, in relation to an inspecting regulator, there is more than one relevant inspection plan in respect of the exercise of the same inspection function in relation to the same person.
- (2) An inspection plan is “relevant” in relation to an inspecting regulator if—
- (a) it is a plan made by it (as a primary authority) to which the Secretary of State has consented under section 26A(7), or
  - (b) it is a plan notified to it (as an inspecting regulator) under section 26A(8)(b).
- (3) If—
- (a) the inspecting regulator is a direct primary authority for the exercise of the inspection function in relation to the person, and
  - (b) there is a relevant inspection plan made by the regulator in relation to the exercise of the function in relation to the person,
- section 26B(2) (duty of inspecting regulator to act in accordance with plans notified by the primary authority) does not apply in relation to the inspecting regulator by reason of it being notified of any other relevant inspection plan under section 26A(8)(b) in relation to the exercise of the function in relation to the person.
- (4) Subsection (5) applies if—
- (a) the inspecting regulator is a co-ordinated primary authority for the exercise of the inspection function in relation to the person, and
  - (b) there is a relevant inspection plan which is made by a direct primary authority for the exercise of the function in relation to the person and notified to the inspecting regulator under section 26A(8)(b).

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- (5) Where this subsection applies—
- (a) section 26B(1) (duty of primary authority to have regard to its own inspection plan) does not apply to the inspecting regulator (as primary authority) in relation to any relevant inspection plan made by it in respect of the exercise of the function in relation to the person;
  - (b) in the application of section 26B(2) to the exercise of the function in relation to the person by the inspecting regulator, the reference to the inspection plan in that provision is to the plan mentioned in subsection (4)(b) only.
- (6) If—
- (a) the inspecting regulator is a co-ordinated primary authority for the exercise of the inspection function in relation to the person,
  - (b) there is a relevant inspection plan made by the regulator in respect of the exercise of the function in relation to the person, and
  - (c) subsection (5) does not apply,
- section 26B(2) does not apply in relation to the exercise of the function by the inspecting regulator in relation to the person.
- (7) If none of subsections (3) to (6) apply, but more than one relevant inspection plan is notified to the inspecting regulator under section 26A(8)(b) in relation to the exercise of the inspection function in relation to the person, in section 26B(2) the reference to the plan is to be read—
- (a) if one of those plans is made by a direct primary authority for the exercise of the function in relation to the person, as a reference to that plan, and
  - (b) otherwise, as a reference to any one of the plans notified to the regulator.

### *General*

#### **30A Guidance and directions**

- (1) The Secretary of State may give guidance to any one or more qualifying regulators, supporting regulators, complementary regulators or co-ordinators about the operation of this Part.
- (2) The guidance may include, in particular, guidance to qualifying regulators about—
  - (a) arrangements under section 24A(3) for the giving of advice or guidance by primary authorities;
  - (b) enforcement action referred to the Secretary of State under paragraph 1(1), 2(1), 3(1) or 4(1) of Schedule 4A;
  - (c) the notification of inspection plans under section 26A(8);
  - (d) the charging of fees under section 27A.
- (3) The guidance may include, in particular, guidance to supporting regulators about—
  - (a) the circumstances in which a function is relevant to the exercise of a partnership function for the purposes of section 28A;

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(b) the charging of fees under section 28A(6).

- (4) A qualifying regulator, supporting regulator, complementary regulator or co-ordinator must have regard to any guidance given to it under this section.
- (5) Before giving guidance under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (6) The Secretary of State may not give guidance under subsection (2)(d) or (3) without consulting the Welsh Ministers.
- (7) The Secretary of State may at any time vary or revoke guidance given under this section.
- (8) The Secretary of State must publish guidance given under this section and any variation or revocation of the guidance.
- (9) A qualifying regulator must comply with a direction given to it under this Part.

### 30B Periods of time under Part 2

The Secretary of State may by regulations amend any provision of this Part which specifies a period within which, or a time before which, anything must, must not or may be done.

### 30C Regulations under Part 2

- (1) Regulations under this Part must be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 22B, 28B(1)(a) or 30B (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

### 30D Interpretation of Part 2

- (1) In this Part—
  - “complementary regulator” means a complementary regulator under section 28B;
  - “co-ordinated primary authority” has the meaning given in section 23A(1)(b);
  - “co-ordinator” has the meaning given in section 23C(1);
  - “direct primary authority” has the meaning given in section 23A(1)(a);
  - “enforcement action” has the meaning given in section 25A;
  - “enforcing authority” has the meaning given in section 25C(2);
  - “inspecting regulator” has the meaning given in section 26A(3);
  - “inspection function” has the meaning given in section 26A(1);

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“inspection plan” has the meaning given in sections 26A(2) and 26C(5);

“local authority” has the meaning given in section 22B(2) and (3);

“Northern Ireland” has the same meaning as in the Northern Ireland Act 1998;

“partnership function” has the meaning given in section 23A(2) and (7);

“primary authority” means a qualifying regulator nominated as a primary authority under section 23A(1);

“qualifying regulator” has the meaning given in section 22B(1);

“regulated group” has the meaning given in section 22A(2);

“regulated person” has the meaning given in section 22A(1);

“relevant function” has the meaning given in section 22C(1);

“reserved matter” has the same meaning as in the Scotland Act 1998;

“Scotland” has the same meaning as in the Scotland Act 1998;

“specified regulator” has the meaning given in section 22B(4);

“supporting regulator” means a supporting regulator under section 28A;

“transferred matter” has the same meaning as in the Northern Ireland Act 1998;

“Wales” has the same meaning as in the Government of Wales Act 2006;

“working day” has the meaning given in subsection (2).

- (2) In this Part, “working day” means a day other than—
- (a) a Saturday or Sunday,
  - (b) Christmas Day or Good Friday, or
  - (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the relevant part of the United Kingdom.
- (3) For the purposes of subsection (2)(c), the “relevant part” of the United Kingdom is—
- (a) in relation to section 23D(5), 28A(8) or 28B(7) (period in which co-ordinator must make available a list of group members or of group members to whom an inspection plan may be relevant), the part where the co-ordinator of the group is;
  - (b) in any other case, the part where the primary authority is.”
- (2) For Schedule 4 to the Regulatory Enforcement and Sanctions Act 2008 (enforcement action: references to the Secretary of State) substitute Schedule 4A set out in Schedule 3 to this Act.

#### **Commencement Information**

**I15** S. 20 in force at Royal Assent for specified purposes, see s. 44(1)(c)

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VALID FROM 01/10/2016

## 21 Devolved Welsh matters

- (1) The Regulatory Enforcement and Sanctions Act 2008 is amended as follows.
- (2) In each of the following provisions, for “Welsh ministerial” substitute “ devolved Welsh ”
  - (a) in section 4 (meaning of “relevant function”), subsections (6) and (8)(b);
  - (b) in section 6 (guidance to local authorities), subsections (1) and (1A);
  - (c) in section 10 (advice to Welsh Ministers), subsection (1)(a);
  - (d) in section 12 (relationship between Secretary of State and other regulators), subsection (3);
  - (e) in section 16 (guidance or directions by Welsh Ministers), subsection (1);
  - (f) in section 36 (power to make orders providing for civil sanctions), subsection (2);
  - (g) in section 59 (consultation and consent for civil sanctions orders: Wales), subsection (2);
  - (h) in section 73 (functions to which duty not to impose or maintain unnecessary regulatory burdens applies), subsections (3)(c), (4)(c) and (5).
- (3) In section 73 (functions to which section 72 applies), in subsections (3)(c) and (4)(c), for “in Wales” substitute “ in relation to Wales ”.
- (4) In section 74 (general interpretation)—
  - (a) omit the definition of “Welsh ministerial matter”;
  - (b) before the definition of “Minister of the Crown” insert—
 

““devolved Welsh matter” means —

    - (a) a matter within the legislative competence of the National Assembly for Wales (see section 108 of the Government of Wales Act 2006), or
    - (b) a matter in relation to Wales in respect of which functions are exercisable by the Welsh Ministers,

and in this definition “Wales” has the same meaning as in the Government of Wales Act 2006;”.

## PART 4

### APPRENTICESHIPS

VALID FROM 01/04/2017

## 22 The Institute for Apprenticeships

Schedule 4 establishes the Institute for Apprenticeships and makes provision about its functions.

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VALID FROM 01/04/2017

## **23 The Institute for Apprenticeships: transitional provision**

- (1) Subsection (2) applies to—
  - (a) any standard approved and published by the Secretary of State under section A2 of the 2009 Act before the appointed day;
  - (b) any plan which—
    - (i) relates to the assessment of a person's attainment of outcomes set out in a standard mentioned in paragraph (a), and
    - (ii) was approved and published by the Secretary of State for the purposes of that assessment before the appointed day.
- (2) Such a standard or plan is to be treated on and after the appointed day as having been approved by the Institute for Apprenticeships under section A2A of the 2009 Act and published by it under section A2 of that Act (as amended by Schedule 4).
- (3) A standard or plan within subsection (1) is to be treated for the purposes of section A2I of the 2009 Act (as inserted by Schedule 4) as having been approved by the Institute for Apprenticeships at the beginning of the appointed day.
- (4) This section does not limit the provision that may be made under clause 43.
- (5) In this section—

“the appointed day” means the day on which section A2A of the 2009 Act (inserted by Schedule 4) comes into force;

“the 2009 Act” means the Apprenticeships, Skills, Children and Learning Act 2009.

## **24 Public sector apprenticeship targets**

- (1) In Chapter A1 of Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (apprenticeships: England), after section A8 insert—

### **“A9 Public sector apprenticeship targets**

- (1) The Secretary of State may by regulations set apprenticeship targets for prescribed public bodies.
- (2) An “apprenticeship target”, in relation to a public body, is a target relating to the number of persons (“apprentices”) who work for the body under an apprenticeship agreement.
- (3) Public bodies for which apprenticeship targets are set under this section must have regard to—
  - (a) the targets, and
  - (b) any applicable guidance issued by the Secretary of State in relation to the targets.
- (4) The Secretary of State may require a public body to provide any information that the Secretary of State needs for the purpose of exercising functions under this section.

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- (5) Regulations under this section may set apprenticeship targets for—
- (a) a prescribed public body,
  - (b) a prescribed part of a public body,
  - (c) a prescribed group of public bodies, or
  - (d) public bodies of a prescribed description.

A reference in this section to a public body includes a reference to a prescribed part of a public body or a prescribed group of public bodies.

- (6) The regulations must specify the period to which each apprenticeship target relates.
- (7) In this section—

“apprenticeship agreement” means—

- (a) an approved English apprenticeship agreement;
- (b) an apprenticeship agreement within the meaning given in section 32 as it applies in relation to England by virtue of provision made under section 115(9) of the Deregulation Act 2015;

“public body” means—

- (a) a public authority, or
- (b) a body or other person that is not a public authority but has functions of a public nature and is funded wholly or partly from public funds.

#### **A10 Further provision about apprenticeship targets**

- (1) A public body for which an apprenticeship target is set must—
- (a) publish and send to the Secretary of State the information specified in subsection (2), and
  - (b) send to the Secretary of State any other prescribed information, within six months after the end of each reporting period of the body in the target period.
- (2) The information referred to in subsection (1)(a) is—
- (a) the number of employees whose employment in England by the body began in the reporting period in question (“figure A”);
  - (b) the number of apprentices who began to work for the body in that period and whose apprenticeship agreements also began in that period (“figure B”);
  - (c) figure B expressed as a percentage of figure A;
  - (d) the number of employees employed in England that the body has at the end of that period (“figure C”);
  - (e) the number of apprentices who work for the body at the end of that period (“figure D”);
  - (f) figure D expressed as a percentage of figure C;
  - (g) if that reporting period is the first reporting period in the target period, the number of apprentices who worked for the body immediately before that period.



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- (3) The information that may be prescribed under subsection (1)(b) includes—
- (a) information about action that the body has taken to meet an apprenticeship target set for it;
  - (b) if the public body has failed to meet an apprenticeship target set for it, an explanation of why the target has not been met;
  - (c) information about action that the body proposes to take to meet an apprenticeship target set for the body for a period that has not yet expired (“a future target”);
  - (d) if the body considers that a future target is not likely to be met, an explanation of why that is so.
- (4) Regulations may specify how the information is to be published or sent.
- (5) A body's “reporting periods” in the target period are—
- (a) so much of the first financial year of the body to end in the target period as falls within that period,
  - (b) each subsequent financial year of the body which falls wholly within the target period, and
  - (c) if the target period ends during a financial year of the body, so much of that financial year as falls within that period.
- (6) But, where the target period in relation to a body does not exceed 12 months, the Secretary of State may direct in writing that for the purposes of this section the body is to be treated as having one reporting period which coincides with the target period.
- (7) Where, by virtue of section A9(5)(c) or (d) a target is set for more than one public body, regulations may specify which body's financial year is to be used to determine the reporting periods under subsection (5).
- (8) In this section—
- “apprenticeship agreement” has the meaning given by section A9(7);
  - “apprenticeship target” has the meaning given by section A9(2);
  - “public body” has the meaning given by section A9(7);
  - “target period”, in relation to an apprenticeship target, means the period specified under section A9(6) as the period to which the target relates.”
- (2) In section 262(6) of that Act (regulations etc subject to affirmative resolution procedure), before paragraph (aa) insert—
- “(za) the first regulations under section A9;
  - “(zb) the first regulations under section A10;”.

VALID FROM 01/04/2017

## **25 Only statutory apprenticeships to be described as apprenticeships**

- (1) In Chapter A1 of Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (apprenticeships: England), after section A10 (inserted by section 24) insert—

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**“A11 Only statutory apprenticeships to be described as apprenticeships**

- (1) A person (“P”) providing or offering any course or training that is, or is to be, undertaken (wholly or partly) in England commits an offence if—
  - (a) in the course of business P describes the course or training as an apprenticeship, and
  - (b) the course or training is not a statutory apprenticeship.
- (2) No offence is committed under subsection (1) where the course or training is, or is to be, provided to an individual under or in pursuance of a contract of employment between the individual and P.
- (3) In subsection (1) “statutory apprenticeship” means any course or training that is, or is to be, provided under—
  - (a) an approved English apprenticeship;
  - (b) an apprenticeship agreement within the meaning given in section 32;
  - (c) an arrangement to undertake any other kind of working—
    - (i) in relation to which alternative English completion conditions apply under section 1(5), and
    - (ii) in connection with which training is to be provided in accordance with an apprenticeship framework within the meaning given in section 12; or
  - (d) arrangements made under—
    - (i) section 2 of the Employment and Training Act 1973,
    - (ii) section 17B(1)(a) of the Jobseekers Act 1995,
    - (iii) section 2(3) of the Enterprise and New Towns (Scotland) Act 1990, or
    - (iv) section 1 of the Employment and Training Act (Northern Ireland) 1950,
 that are identified by the person making the arrangements as arrangements for the provision of apprenticeships.
- (4) The reference to section 32 in subsection (3)(b) includes a reference to that section as it applies in relation to England by virtue of provision made under section 115(9) of the Deregulation Act 2015; and a reference to a section in subsection (3)(c) is a reference to the section as it so applies.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine.
- (6) Where an offence under this section committed by a body corporate—
  - (a) is committed with the consent or connivance of an officer of the body corporate, or
  - (b) is attributable to neglect on the part of an officer of the body corporate,
 the officer also commits the offence and is liable to be proceeded against and punished accordingly.
- (7) Every local weights and measures authority in England—
  - (a) has a duty to enforce the provisions of this section within their area;

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- (b) must make to the Secretary of State, whenever he or she so directs, a report on the exercise of the authority's functions under this section.

A report under paragraph (b) must be in such form, and contain such particulars, as the Secretary of State may direct.

- (8) Proceedings for an offence under this section may be instituted only—

- (a) by or on behalf of a local weights and measures authority in England,  
(b) by or on behalf of the Secretary of State, or  
(c) with the consent of the Director of Public Prosecutions.

- (9) In this section—

“contract of employment” has the same meaning as in the Employment Rights Act 1996 (see section 230(2) of that Act);

“offering”, in relation to any course or training, includes offering or marketing it to the public generally or to any section of the public;

“officer”, in relation to a body corporate, means—

- (a) a director, manager, secretary or similar officer of the body, or a person purporting to act in such capacity;  
(b) a governor of an educational institution conducted by the body.

- (10) The reference in subsection (1) to describing any course or training as an apprenticeship includes a reference to describing an individual who undertakes it as an apprentice.”

- (2) In Schedule 5 to the Consumer Rights Act 2015 (investigatory powers etc), in paragraph 10, at the appropriate place insert— “ section A11(7)(a) of the Apprenticeships, Skills, Children and Learning Act 2009; ”.

## 26 Apprenticeships: information sharing

- (1) After Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (apprenticeships, study and training) insert—

### “PART 1A

#### APPRENTICESHIPS: INFORMATION SHARING

##### *England*

#### 40A Sharing of information by HMRC and the Secretary of State

- (1) HMRC may disclose information held by them to the Secretary of State for the purpose of the Secretary of State's functions in relation to English statutory apprenticeships.
- (2) The Secretary of State may disclose information to HMRC—
- (a) for the purpose of requesting HMRC to disclose information under subsection (1), or
- (b) for another purpose connected with the Secretary of State's functions in relation to English statutory apprenticeships.

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- (3) In this section “English statutory apprenticeships” means—
- (a) approved English apprenticeships within the meaning given in section A1;
  - (b) apprenticeships undertaken under apprenticeship agreements within the meaning given in section 32 that were entered into in connection with recognised English frameworks;
  - (c) apprenticeships in relation to which alternative English completion arrangements apply under section 1(5);
  - (d) apprenticeships undertaken under arrangements made in relation to England under section 2 of the Employment and Training Act 1973 that are identified by the person making them as arrangements for the provision of apprenticeships.

*Wales, Scotland and Northern Ireland*

#### 40B Sharing of information by HMRC and devolved authorities

- (1) HMRC may disclose information held by them—
- (a) to a Welsh authority for the purpose of the authority's functions in relation to Welsh apprenticeships;
  - (b) to a Scottish authority for the purpose of the authority's functions in relation to Scottish apprenticeships;
  - (c) to a Northern Irish authority for the purpose of the authority's functions in relation to Northern Irish apprenticeships.
- (2) An authority mentioned in paragraph (a), (b) or (c) of subsection (1) may disclose information to HMRC—
- (a) for the purpose of requesting HMRC to disclose information to the authority under subsection (1), or
  - (b) for another purpose connected with the authority's functions mentioned in subsection (1).
- (3) In this section—
- “Northern Irish apprenticeships” means apprenticeships undertaken under arrangements made under section 1 of the Employment and Training Act (Northern Ireland) 1950 that are identified by the person making them as arrangements for the provision of apprenticeships;
- “Northern Irish authority” means—
- (a) a Northern Ireland department, and
  - (b) any body or other person that is prescribed, or of a prescribed description;
- “Scottish apprenticeships” means apprenticeships undertaken under arrangements made—
- (a) in relation to Scotland, under section 2 of the Employment and Training Act 1973, or
  - (b) under section 2(3) of the Enterprise and New Towns (Scotland) Act 1990,

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that are identified by the person making them as arrangements for the provision of apprenticeships;

“Scottish authority” means—

- (a) the Scottish Ministers, and
- (b) any body or other person that is prescribed, or of a prescribed description;

“Welsh apprenticeships” means—

- (a) apprenticeships undertaken under apprenticeship agreements within the meaning given in section 32 that were entered into in connection with recognised Welsh frameworks;
- (b) apprenticeships in relation to which alternative Welsh completion arrangements apply under section 2(5);
- (c) apprenticeships undertaken under arrangements made in relation to Wales under—
  - (i) section 2 of the Employment and Training Act 1973, or
  - (ii) section 17B of the Jobseekers Act 1995,

that are identified by the person making them as arrangements for the provision of apprenticeships;

“Welsh authority” means—

- (a) the Welsh Ministers, and
- (b) any body or other person that is prescribed, or of a prescribed description.

(4) In subsection (3)—

- (a) the reference to a Northern Ireland department includes a reference to a person providing services to a Northern Ireland department;
- (b) the reference to the Scottish Ministers includes a reference to a person providing services to the Scottish Ministers;
- (c) the reference to the Welsh Ministers includes a reference to a person providing services to the Welsh Ministers.

(5) Regulations under this section may amend the definition in subsection (3) of—

- (a) “Northern Irish apprenticeships”,
- (b) “Scottish apprenticeships”, or
- (c) “Welsh apprenticeships”.

### *General*

#### **40C Wrongful disclosure**

- (1) Information disclosed by HMRC under section 40A(1) or 40B(1) may not be disclosed by the recipient of the information to any other person without the consent of HMRC (except so far as permitted by section 40A(2) or 40B(2)).
- (2) If a person discloses, in contravention of subsection (1), any revenue and customs information relating to a person whose identity—
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it,

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section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.

#### 40D Interpretation

(1) In this Part—

“HMRC” means the Commissioners for Her Majesty's Revenue and Customs;

“revenue and customs information relating to a person” has the same meaning as in section 19 of the Commissioners for Revenue and Customs Act 2005 (see section 19(2) of that Act).

(2) In this Part—

(a) references to HMRC include references to a person providing services to HMRC;

(b) references to the Secretary of State include references to a person providing services to the Secretary of State.

(3) Nothing in this Part affects any power to disclose information that exists apart from this Part.”

(2) In section 262(6) of that Act (orders and regulations subject to affirmative procedure) after paragraph (aa) insert—

“(aaa) regulations under section 40B;”.

(3) In section 268 of that Act (extent)—

(a) in subsection (2) (provisions extending to Scotland) for “Sections 40,” substitute “ Section 40, Part 1A, sections ”, and

(b) in subsection (3) (provisions extending to Northern Ireland) for “Sections”, in the first place, substitute “ Part 1A, sections ”.

#### Commencement Information

**I16** S. 26 in force at 4.7.2016 by S.I. 2016/695, art. 2(a)

#### 27 Apprenticeship funding

In section 100(1A) of the Apprenticeships, Skills, Children and Learning Act 2009 (provision of financial resources in connection with approved English apprenticeships)—

(a) for “approved English apprenticeships”, in both places, substitute “ English statutory apprenticeships ”, and

(b) after subsection (4) insert—

“(5) In this section “English statutory apprenticeship” has the same meaning as in section 40A (see subsection (3) of that section).”

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### Commencement Information

**117** S. 27 in force at 4.7.2016 by S.I. 2016/695, art. 2(b)

## PART 5

### LATE PAYMENT OF INSURANCE CLAIMS

#### **28 Insurance contracts: implied term about payment of claims**

- (1) After section 13 of the Insurance Act 2015 (remedies for fraudulent claims: group insurance) insert—

#### “PART 4A

### LATE PAYMENT OF CLAIMS

#### **13A Implied term about payment of claims**

- (1) It is an implied term of every contract of insurance that if the insured makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time.
- (2) A reasonable time includes a reasonable time to investigate and assess the claim.
- (3) What is reasonable will depend on all the relevant circumstances, but the following are examples of things which may need to be taken into account—
- (a) the type of insurance,
  - (b) the size and complexity of the claim,
  - (c) compliance with any relevant statutory or regulatory rules or guidance,
  - (d) factors outside the insurer's control.
- (4) If the insurer shows that there were reasonable grounds for disputing the claim (whether as to the amount of any sum payable, or as to whether anything at all is payable)—
- (a) the insurer does not breach the term implied by subsection (1) merely by failing to pay the claim (or the affected part of it) while the dispute is continuing, but
  - (b) the conduct of the insurer in handling the claim may be a relevant factor in deciding whether that term was breached and, if so, when.
- (5) Remedies (for example, damages) available for breach of the term implied by subsection (1) are in addition to and distinct from—
- (a) any right to enforce payment of the sums due, and
  - (b) any right to interest on those sums (whether under the contract, under another enactment, at the court's discretion or otherwise).”
- (2) In section 22 of that Act (application etc of Parts 2 to 5), after subsection (3) insert—

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“(3A) Part 4A applies only in relation to contracts of insurance entered into after that Part has come into force, and variations to such contracts.”

## **29 Contracting out of the implied term about payment of claims**

- (1) After section 16 of the Insurance Act 2015 (contracting out: non-consumer contracts) insert—

### **“16A Contracting out of the implied term about payment of claims: consumer and non-consumer insurance contracts**

- (1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects any of the matters provided for in section 13A than the consumer would be in by virtue of the provisions of that section (so far as relating to consumer insurance contracts) is to that extent of no effect.
- (2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects deliberate or reckless breaches of the term implied by section 13A than the insured would be in by virtue of that section is to that extent of no effect.
- (3) For the purposes of subsection (2) a breach is deliberate or reckless if the insurer—
- (a) knew that it was in breach, or
  - (b) did not care whether or not it was in breach.
- (4) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in section 13A than the insured would be in by virtue of the provisions of that section (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.
- (5) In this section references to a contract include a variation.
- (6) This section does not apply in relation to a contract for the settlement of a claim arising under an insurance contract.”
- (2) In section 17(1) of that Act (the transparency requirements), after “16(2)” insert “ or 16A(4)”.

## **30 Additional time limit for actions for damages for late payment of insurance claims**

After section 5 of the Limitation Act 1980 insert—

### **“5A Additional time limit for actions for damages for late payment of insurance claims**

- (1) An action in respect of breach of the term implied into a contract of insurance by section 13A of the Insurance Act 2015 (late payment of claims) may not be



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brought after the expiration of one year from the date on which the insurer has paid all the sums referred to in subsection (1) of that section.

- (2) Any payment which extinguishes an insurer's liability to pay a sum referred to in section 13A of the Insurance Act 2015 is to be treated for the purposes of this section as payment of that sum.”

## PART 6

### NON-DOMESTIC RATING

#### 31 Disclosure of HMRC information in connection with non-domestic rating

- (1) The Local Government Finance Act 1988 is amended as follows.
- (2) In Part 3 (non-domestic rating), after section 63 insert—

##### “63A Disclosure of Revenue and Customs information

- (1) An officer of the Valuation Office of Her Majesty's Revenue and Customs may disclose Revenue and Customs information to a qualifying person for a qualifying purpose.
- (2) Information disclosed to a qualifying person under this section may be retained and used for any qualifying purpose.
- (3) Each of the following is a “qualifying person”—
- (a) a billing authority;
  - (b) a major precepting authority;
  - (c) a person authorised to exercise any function of an authority within paragraph (a) or (b) relating to non-domestic rating;
  - (d) a person providing services to an authority within paragraph (a) or (b) relating to non-domestic rating;
  - (e) the Secretary of State;
  - (f) the Welsh Ministers;
  - (g) a prescribed person.
- (4) Each of the following is a “qualifying purpose”—
- (a) enabling or assisting the qualifying person to whom the disclosure is made, or any other qualifying person, to carry out any functions conferred by or under this Part which are not functions of the Secretary of State or the Welsh Ministers;
  - (b) enabling or assisting the Secretary of State or the Welsh Ministers to carry out functions conferred by or under section 53 or 54 (central non-domestic rating), or by or under Schedule 9 so far as relating to central non-domestic rating lists;
  - (c) any other prescribed purpose relating to non-domestic rating.
- (5) In this section—
- “prescribed” means—

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- (a) in relation to England, prescribed by regulations made by the Secretary of State, and
- (b) in relation to Wales, prescribed by regulations made by the Welsh Ministers;

“Revenue and Customs information” means information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005.

- (6) Regulations under this section may only be made with the consent of the Commissioners for Her Majesty's Revenue and Customs.

### **63B Restrictions on onward disclosure of Revenue and Customs information**

- (1) Information disclosed under section 63A or this section may not be further disclosed unless that further disclosure is—
  - (a) to a qualifying person for a qualifying purpose,
  - (b) for the purposes of the initiation or conduct of any proceedings relating to the enforcement of any obligation imposed by or under this Part of this Act,
  - (c) in pursuance of a court order,
  - (d) with the consent of each person to whom the information relates, or
  - (e) required or permitted under any other enactment.
- (2) Information may not be disclosed under subsection (1)(a) to a qualifying person within section 63A(3)(c), (d), (e), (f) or (g) except with the consent of the Commissioners for Her Majesty's Revenue and Customs (which may be general or specific).
- (3) Information disclosed to a qualifying person under this section may be retained and used for any qualifying purpose.
- (4) A person commits an offence if the person contravenes subsection (1) or (2) by disclosing information relating to a person whose identity—
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it.
- (5) It is a defence for a person charged with an offence under this section of disclosing information to prove that the person reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already lawfully been made available to the public.
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both.
- (7) A prosecution for an offence under this section may be instituted only by or with the consent of the Director of Public Prosecutions.

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- (8) In relation to an offence under this section committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (increase in maximum term that may be imposed on summary conviction of offence triable either way) the reference in subsection (6)(a) to 12 months is to be taken as a reference to 6 months.
- (9) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of subsection (1) or (2) (whether or not subsection (4) applies to the contravention).
- (10) In this section—  
“qualifying person” has the same meaning as in section 63A;  
“qualifying purpose” has the same meaning as in that section.

### **63C Freedom of information**

- (1) Revenue and customs information relating to a person which has been disclosed under section 63A or 63B is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (prohibition on disclosure) if its further disclosure—  
(a) would specify the identity of the person to whom the information relates, or  
(b) would enable the identity of such a person to be deduced.
- (2) In this section “revenue and customs information relating to a person” has the same meaning as in section 19(2) of the Commissioners for Revenue and Customs Act 2005.”
- (3) In section 143 (orders and regulations), in subsection (4ZA) after “section” insert “63A or”.

## **32 Alteration of non-domestic rating lists**

- (1) Section 55 of the Local Government Finance Act 1988 (non-domestic rating: alteration of lists) is amended as follows.
- (2) After subsection (4) insert—  
“(4A) In relation to an English list or a Welsh list, the provision that may be included in the regulations by virtue of subsection (4) includes—  
(a) provision about the steps that must be taken before a person may make a proposal for an alteration of the list (which may include steps designed to ensure the person checks the accuracy and completeness of any information on which any decision by the valuation officer has been based and gives the valuation officer an opportunity to consider the results of those checks and alter the list);  
(b) provision restricting the circumstances in which any of those steps may be taken and provision about the timing of any step;  
(c) provision for valuation officers to impose financial penalties on persons who, in, or in connection with, proposals for the alteration of the list, knowingly, recklessly or carelessly provide information which is false in a material particular.

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- (4B) If provision is made by virtue of subsection (4A)(c)—
- (a) the maximum amount of any penalty that may be specified in, or determined in accordance with, the regulations is £500;
  - (b) the regulations must require any sum received by a valuation officer by way of penalty to be paid into the appropriate fund;
  - (c) the regulations may include provision for any penalty to be recovered by the valuation officer concerned as a civil debt due to the officer;
  - (d) the regulations must include provision enabling a person on whom a financial penalty is imposed to appeal against the imposition of the penalty or its amount to the valuation tribunal.”

- (3) After subsection (5) insert—

“(5A) In relation to a proposal made by a person to alter an English list or a Welsh list, the provision that may be included in regulations by virtue of subsection (5) includes provision—

- (a) about the grounds on which an appeal may be made;
- (b) about the matters which are not to be taken into account by the valuation tribunal as part of an appeal;
- (c) about the circumstances in which new evidence may be admitted on an appeal, and about the conduct of an appeal in relation to such evidence;
- (d) about the payment of fees by ratepayers in relation to appeals, the payment of those fees into the appropriate fund and the circumstances in which those fees are to be refunded.

This subsection is without prejudice to the powers to make regulations conferred by Part 3 of Schedule 11 (tribunals: procedure, orders, etc).”

- (4) After subsection (7A) insert—

“(7B) For the purposes of subsections (4B)(b) and (5A)(d) “the appropriate fund” means—

- (a) where the provision made by virtue of subsection (4A)(c) or (5) is in relation to a proposal to alter an English list, the Consolidated Fund, and
- (b) where the provision made by virtue of subsection (4A)(c) or (5) is in relation to a proposal to alter a Welsh list, the Welsh Consolidated Fund.”

- (5) For subsection (8) substitute—

“(8) In this section—

“English list” means—

- (a) a local non-domestic rating list that has to be compiled for a billing authority in England, or
- (b) the central non-domestic rating list that has to be compiled for England;

“valuation tribunal” means—

- (a) in relation to England, the Valuation Tribunal for England;
- (b) in relation to Wales, a valuation tribunal established under paragraph 1 of Schedule 11;

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“Welsh list” means—

- (a) a local non-domestic rating list that has to be compiled for a billing authority in Wales, or
- (b) the central non-domestic rating list that has to be compiled for Wales.”

(6) In section 143 of that Act (orders and regulations), after subsection (3C) insert—

“(3D) Any power to make regulations conferred by section 55 (alteration of non-domestic rating lists) is exercisable by statutory instrument.

(3E) A statutory instrument which contains (whether alone or with other provision) regulations made by virtue of section 55(4A)(c) or (4B) (alteration of non-domestic rating lists: financial penalties) may not be made unless—

- (a) where those regulations relate to a proposal to alter an English list, a draft of the instrument has been laid before and approved by a resolution of each House of Parliament;
- (b) where those regulations relate to a proposal to alter a Welsh list, a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.

(3F) Any other statutory instrument containing regulations under section 55 is—

- (a) in the case of regulations relating to England, subject to annulment in pursuance of a resolution of either House of Parliament;
- (b) in the case of regulations relating to Wales, subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(3G) In subsection (3E), “English list” and “Welsh list” have the same meaning as in section 55.”

## PART 7

### SUNDAY WORKING

#### 33 Sunday working

Schedule 5, which contains amendments of employment legislation relating to the rights of shop workers to opt out of working on Sunday, has effect.

#### Commencement Information

**I18** S. 33 in force at Royal Assent for specified purposes, see s. 44(1)(d)

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*Status:* Point in time view as at 21/07/2016. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

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## PART 8

### OTHER ENTERPRISE-RELATED PROVISIONS

#### *Industrial development*

#### **34 Allowable assistance under Industrial Development Act 1982**

In section 8(8) of the Industrial Development Act 1982 (allowable assistance per project)—

- (a) for “the Secretary of State pays or undertakes to pay” substitute “ are paid, or undertaken to be paid, ”;
- (b) after “shall not exceed £10 million” insert “ in the case of payments made, or undertakings given by, the Scottish Ministers, or £30 million in any other case ”;
- (c) after “the said sum of £10 million” insert “ or £30 million ”.

#### **35 Grants etc towards electronic communications services and networks**

- (1) The Industrial Development Act 1982 is amended as follows.
- (2) In section 13 (improvement of basic services), in the heading, at the end insert “ in development areas and intermediate areas ”.
- (3) After that section insert—

##### **“13A Improvement of electronic communications networks and services etc**

- (1) This section applies if it appears to the Secretary of State that adequate provision has not been made for an area in respect of electronic communications facilities.
- (2) The Secretary of State may, with the consent of the Treasury, make a grant or loan towards the cost of improving an electronic communications facility if—
  - (a) the Secretary of State considers that doing so is likely to contribute to the development of industry in the area, or
  - (b) the Secretary of State considers that doing so is likely to benefit the area in any other way (for example, by improving social or economic inclusion), and the grant or loan is made to an undertaking that is, or is to be, carried on in the area.
- (3) In this section—
  - (a) “area” means the United Kingdom or a part or area of the United Kingdom;
  - (b) “electronic communications facility” means an electronic communications network, electronic communications service or associated facility, as defined by section 32 of the Communications Act 2003.
- (4) The power conferred by this section is in addition to any other powers of the Secretary of State to make grants or loans.”

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**Changes to legislation:** There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

- (4) In section 16(1)(a) (Secretary of State's accounts), for “13 and 14” substitute “ 13 to 14 ”.
- (5) In section 20(3) (extent)—
- (a) for “and 12” substitute “ , 12 and 13A ”;
  - (b) after “sections 15” insert “ , 16 ”.

VALID FROM 01/02/2017

*UK Government Investments Limited*

**36 UK Government Investments Limited**

- (1) The Treasury or the Secretary of State may—
- (a) provide grants, loans, guarantees or indemnities, or any other kind of financial assistance (actual or contingent) to UK Government Investments Limited, or
  - (b) make other payments to UK Government Investments Limited.
- (2) “UK Government Investments Limited” means the private company limited by shares incorporated on 11 September 2015 with the company number 09774296.

*UK Green Investment Bank*

VALID FROM 18/08/2017

**37 Disposal of Crown's shares in UK Green Investment Bank company**

- (1) Part 1 of the Enterprise and Regulatory Reform Act 2013 (UK Green Investment Bank) is amended as follows.
- (2) Omit the following provisions—
- (a) section 1 (the green purposes);
  - (b) section 3 (alteration of Bank's objects where it is designated by Secretary of State);
  - (c) section 5 (accounts, reports etc where Bank is designated by Secretary of State).
- (3) In section 2 (designation of Bank)—
- (a) for the heading substitute “ Interpretation ”,
  - (b) omit subsections (1) to (8) (Secretary of State's power to designate), and
  - (c) after subsection (9) insert—
- “(10) In this Part “UK Green Investment Bank company” means—
- (a) the UK Green Investment Bank, or
  - (b) a company that is or at any time has been in the same group as the Bank.

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- (11) For the purposes of subsection (10) a company is to be regarded as being in the same “group” as the UK Green Investment Bank, if, for the purposes of section 1161(5) of the Companies Act 2006, the company is a group undertaking in relation to the UK Green Investment Bank.”
- (4) In section 4 (financial assistance from the Secretary of State)—
- (a) in subsection (1)—
    - (i) omit “Where an order has been made under section 2,”,
    - (ii) for “the UK Green Investment Bank” substitute “ a UK Green Investment Bank company ”, and
    - (iii) for “Crown's shareholding in it is more than half of its issued share capital” substitute “ Crown holds shares in it or another UK Green Investment Bank company ”,
  - (b) in subsection (3), in paragraphs (d) and (e), for “the Bank” substitute “ the company ”,
  - (c) omit subsection (5), and
  - (d) in subsection (6) (no effect on other powers to give financial assistance to the Bank)—
    - (i) for “the Bank”, in the first place, substitute “ a UK Green Investment Bank company ”, and
    - (ii) for “Crown's shareholding in the Bank is not more than half of its issued share capital” substitute “ Crown does not hold shares in it or another UK Green Investment Bank company ”.
- (5) In section 6 (documents to be laid before Parliament)—
- (a) in subsection (1)(a) omit “after an order has been made under section 2,”,
  - (b) in subsection (1)(b) for “the Bank” substitute “ a UK Green Investment Bank company ”, and
  - (c) omit subsections (3) and (4).
- (6) After section 6 insert—

**“6A Report on disposal of Crown's shares in UK Green Investment Bank company**

- (1) As soon as reasonably practicable after a disposal of shares held by the Crown in a UK Green Investment Bank company the Secretary of State must lay before Parliament a report on the disposal.
- (2) The report—
  - (a) must state—
    - (i) the kind of disposal, and
    - (ii) the proportion of the company's share capital retained by the Crown (or that none has been retained); and
  - (b) must include—
    - (i) an assessment of how the Secretary of State's objectives for the disposal have been achieved, and
    - (ii) where the Crown still holds one or more shares in a UK Green Investment Bank company, details of the Secretary of



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State's intentions as to the Crown's future role and interest in such companies.

- (3) The Secretary of State must give a copy of the report to—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) the Office of the First Minister and deputy First Minister in Northern Ireland.
- (4) Subsection (3) applies to a report as described in section 38 of the Enterprise Act 2016 as well as to a report under this section.”

### 38 UK Green Investment Bank: transitional provision

- (1) The Secretary of State may not make regulations under section 44 appointing the day on which section 37 comes into force unless the Secretary of State has—
- (a) decided to make a disposal of shares held by the Crown in a UK Green Investment Bank company, and
  - (b) laid before Parliament a report on the proposed disposal (or, if more than one, on each of them) which states—
    - (i) the kind of disposal intended,
    - (ii) the expected time-scale for the disposal, and
    - (iii) the Secretary of State's objectives for the disposal.
- (2) In this section “UK Green Investment Bank company” means—
- (a) the public company limited by shares incorporated on 15 May 2012 with the company number SC424067 and with the name UK Green Investment Bank plc, or
  - (b) a company that is or at any time has been in the same group as that company.
- (3) For the purposes of subsection (2) a company is to be regarded as being in the same “group” as another company, if, for the purposes of section 1161(5) of the Companies Act 2006, the company is a group undertaking in relation to that other company.

*The Pubs Code Adjudicator and the Pubs Code*

### 39 Market rent only option: rent assessments etc

In section 43 of the Small Business, Enterprise and Employment Act 2015 (pubs code: market rent only option), in subsection (6)(b), after “in lieu of rent” insert “ (whether or not it results in a proposal that the rent, or amount of money payable, should increase) ”.

#### Commencement Information

**I19** S. 39 in force at 21.7.2016 by S.I. 2016/695, art. 4(a)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)*

## 40 Reports on avoidance

In Part 4 of the Small Business, Enterprise and Employment Act 2015 (the Pubs Code Adjudicator and the Pubs Code), after section 71 insert—

### “71A Reports on avoidance

- (1) The Adjudicator must report to the Secretary of State on cases of pub-owning businesses engaging in business practices which are, in the Adjudicator's opinion, unfair business practices.
- (2) A report under subsection (1) must include recommendations as to—
  - (a) actions to be taken to prevent pub-owning businesses from engaging in the business practices reported on, and
  - (b) how to provide redress for tied pub tenants affected by those practices.
- (3) The Secretary of State must issue a statement within three months of receiving a report under subsection (1) setting out—
  - (a) action which the Secretary of State intends to take to protect tied pub tenants affected by the business practices reported on, or
  - (b) if the Secretary of State does not intend to take such action, the reasoning for that decision.
- (4) In this section “unfair business practice” means a business practice which—
  - (a) is engaged in by a pub-owning business at any time after the passing of this Act in order to avoid, to the detriment of tied pub tenants, the operation of provision made by or under this Part, and
  - (b) is unfair.”

#### Commencement Information

**I20** S. 40 in force at 21.7.2016 by [S.I. 2016/695](#), [art. 4\(b\)](#)

VALID FROM 01/02/2017

## PART 9

### PUBLIC SECTOR EMPLOYMENT: RESTRICTIONS ON EXIT PAYMENTS

#### 41 Restriction on public sector exit payments

- (1) Before section 154 of the Small Business, Enterprise and Employment Act 2015 (but after the italic heading preceding that section) insert—

##### “153A Regulations to restrict public sector exit payments

- (1) Regulations may make provision to secure that the total amount of exit payments made to a person in respect of a relevant public sector exit does not exceed £95,000.

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- (2) Where provision is made under subsection (1) it must also secure that if, in any period of 28 consecutive days, two or more relevant public sector exits occur in respect of the same person, the total amount of exit payments made to the person in respect of those exits does not exceed the amount provided for in subsection (1).
- (3) An exit payment is in respect of a relevant public sector exit if it is made—
  - (a) to an employee of a prescribed public sector authority in consequence of the employee leaving employment, or
  - (b) to a holder of a prescribed public sector office in consequence of the office-holder leaving office.
- (4) An exit payment is a payment of a prescribed description.
- (5) The descriptions of payment which may be prescribed include—
  - (a) any payment on account of dismissal by reason of redundancy (read in accordance with section 139 of the Employment Rights Act 1996);
  - (b) any payment on voluntary exit;
  - (c) any payment to reduce or eliminate an actuarial reduction to a pension on early retirement or in respect of the cost to a pension scheme of such a reduction not being made;
  - (d) any severance payment or other ex gratia payment;
  - (e) any payment in respect of an outstanding entitlement;
  - (f) any payment of compensation under the terms of a contract;
  - (g) any payment in lieu of notice;
  - (h) any payment in the form of shares or share options.
- (6) In this section a reference to a payment made to a person includes a reference to a payment made in respect of that person to another person.
- (7) For the purposes of subsection (2), a public sector exit occurs when the person leaves the employment or office in question (regardless of when any exit payment is made).
- (8) Regulations may include—
  - (a) provision which exempts from any provision made under subsection (1) exit payments, or exit payments of a prescribed description, made in prescribed circumstances;
  - (b) provision which, in consequence of provision made under subsection (1), amends a relevant public sector scheme so as to make any duty or power under the scheme to make exit payments subject to any restriction imposed by regulations under subsection (1) (taking account of any relaxation of such a restriction which may be made under section 153C);
  - (c) provision which makes an amendment of any provision made by or under an enactment (whenever passed or made) which is necessary or expedient in consequence of any provision made by or under this section.
- (9) Regulations may substitute a different amount for the amount for the time being specified in subsection (1).

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- (10) Nothing in this section applies in relation to payments made by authorities who wholly or mainly exercise functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).
- (11) In this section—
- “enactment” includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation;
- “prescribed” means prescribed by regulations under this section;
- “relevant public sector scheme” means—
- (a) a scheme under section 1 of the Superannuation Act 1972 (civil servants);
  - (b) a scheme under section 7 of that Act (local government workers);
  - (c) a scheme under section 9 of that Act (teachers);
  - (d) a scheme under section 10 of that Act (health service workers);
  - (e) a scheme under section 1 of the Public Service Pensions Act 2013 (schemes for persons in public service);
  - (f) a scheme under section 26 of the Fire Services Act 1947 or section 34 of the Fire and Rescue Services Act 2004 (fire and rescue workers);
  - (g) a scheme under section 1 of the Police Pensions Act 1976 or section 48 of the Police and Fire Reform (Scotland) Act 2012 (members of police forces);
  - (h) any other prescribed scheme (whether established by or under an enactment or otherwise).

### **153B Supplementary provision about regulations under section 153A**

- (1) Subject to subsection (2), the power to make regulations under section 153A is exercisable—
  - (a) by the Scottish Ministers, in relation to payments made by a relevant Scottish authority;
  - (b) by the Welsh Ministers, in relation to relevant Welsh exit payments;
  - (c) by the Treasury, in relation to any other payments.
- (2) Where the relevant Scottish authority is the Scottish Administration (or a part of it) the power to make regulations under section 153A is exercisable by the Treasury (instead of the Scottish Ministers)—
  - (a) in relation to payments made to the holders of offices in the Scottish Administration which are not ministerial offices (read in accordance with section 126(8) of the Scotland Act 1998), and
  - (b) in relation to payments made to members of the staff of the Scottish Administration (read in accordance with section 126(7)(b) of that Act).
- (3) The power to make provision of the kind mentioned in section 153A(8) (b) (power to amend public sector schemes), so far as exercisable by the

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Treasury, is also exercisable concurrently by any other Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) with the consent of the Treasury.

- (4) Regulations under section 153A—
- (a) if made by the Treasury, are subject to the affirmative resolution procedure;
  - (b) if made by the Scottish Ministers, are subject to the affirmative procedure;
  - (c) if made by the Welsh Ministers, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (5) In this section “relevant Scottish authority” means—
- (a) the Scottish Parliamentary Corporate Body, or
  - (b) any authority which wholly or mainly exercises functions within devolved competence (within the meaning of section 54 of the Scotland Act 1998).
- (6) In this section “relevant Welsh exit payments” means exit payments made to holders of the following offices—
- (a) member of the National Assembly for Wales;
  - (b) the First Minister for Wales;
  - (c) Welsh Minister appointed under section 48 of the Government of Wales Act 2006;
  - (d) Counsel General to the Welsh Government;
  - (e) Deputy Welsh Minister;
  - (f) member of a county council or a county borough council in Wales;
  - (g) member of a National Park Authority in Wales;
  - (h) member of a Fire and Rescue Authority in Wales.

#### **153C Power to relax restriction on public sector exit payments**

- (1) A Minister of the Crown may relax any restriction imposed by regulations made by the Treasury under section 153A.
- (2) The Scottish Ministers may relax any restriction imposed by regulations made by the Scottish Ministers under section 153A.
- (3) The Welsh Ministers may relax any restriction imposed by regulations made by the Welsh Ministers under section 153A.
- (4) A requirement may be relaxed—
  - (a) in respect of a particular employee or office-holder or a description of employees or office-holders;
  - (b) in relation to the whole or any part of an exit payment, or a description of exit payments.
- (5) Regulations under section 153A made by the Treasury may—
  - (a) make provision for the power under subsection (1) to be exercisable on behalf of a Minister of the Crown by a person specified in the regulations;

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- (b) except in relation to exit payments made by a relevant Welsh authority, make provision for a requirement to be relaxed only—
    - (i) with the consent of the Treasury, or
    - (ii) following compliance with any directions given by the Treasury;
  - (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (6) Regulations under section 153A made by the Scottish Ministers may—
- (a) make provision for the power under subsection (2) to be exercisable on behalf of the Scottish Ministers by a person specified in the regulations;
  - (b) where provision is made by virtue of paragraph (a), make provision for a requirement to be relaxed only—
    - (i) with the consent of the Scottish Ministers, or
    - (ii) following compliance with any directions given by the Scottish Ministers;
  - (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (7) Regulations under section 153A made by the Welsh Ministers may—
- (a) make provision for the power under subsection (3) to be exercisable on behalf of the Welsh Ministers by a person specified in the regulations;
  - (b) where provision is made by virtue of paragraph (a), make provision for a requirement to be relaxed only—
    - (i) with the consent of the Welsh Ministers, or
    - (ii) following compliance with any directions given by the Welsh Ministers;
  - (c) make provision as to the publication of information about any relaxation of a requirement granted.
- (8) Regulations made by the Treasury under section 153A(1)—
- (a) must, if they make provision in relation to exit payments made by a relevant Welsh authority, provide for the power conferred on a Minister of the Crown by subsection (1) to be exercised instead by the Welsh Ministers in relation to those exit payments;
  - (b) may provide for the power conferred on a Minister of the Crown by subsection (1) to be exercised instead by the Welsh Ministers in relation to exit payments made by any other authority who is not a relevant Welsh authority but who wholly or mainly exercises functions in relation to Wales (but this does not limit the provision that may be made under subsection (5)(a)).
- (9) In this section—
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
  - “relevant Welsh authority” means an authority who wholly or mainly exercises functions which could be conferred by provision falling within the legislative competence of the National Assembly

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for Wales (as defined in section 108 of the Government of Wales Act 2006).”

- (2) Schedule 6 makes amendments consequential on subsection (1), and related provision.

## PART 10

### GENERAL PROVISIONS

#### 42 Consequential amendments, repeals and revocations

- (1) The Secretary of State or the Treasury may by regulations make such provision as appears to the Secretary of State or the Treasury to be appropriate in consequence of this Act.
- (2) The power conferred by subsection (1) 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 passed or made in the same Session as this Act).
- (3) Regulations under this section are to be made by statutory instrument.
- (4) An instrument containing regulations under this section which amend, repeal or revoke any provision of primary legislation may not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament.
- (5) Subject to that, an instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section—
- “enactment” includes any provision of primary legislation;
  - “primary legislation” means—
- (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, and
  - (d) Northern Ireland legislation.

#### 43 Transitional, transitory or saving provision

The Secretary of State or the Treasury may by regulations made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State or the Treasury considers appropriate in connection with the coming into force of any provision of this Act.

#### 44 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed—



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- (a) any power to make regulations under Part 1 (Small Business Commissioner);
  - (b) section 14 (extension of business impact target to provisions made by regulators) for the purpose of enabling the exercise of the power to make regulations under subsection (9) of section 22 of the Small Business, Enterprise and Employment Act 2015 (as inserted by section 14);
  - (c) section 20 and Schedule 3 (extension of primary authority scheme) for the purpose of enabling the exercise of any power to make regulations under any provision of the Regulatory Enforcement and Sanctions Act 2008 inserted by that section or Schedule;
  - (d) section 33 and Schedule 5 (Sunday working) for the purpose of enabling the exercise of any power to make regulations under any provision of the Employment Rights Act 1996 inserted by that Schedule;
  - (e) section 38 (UK Green Investment Bank: transitional provision);
  - (f) paragraph 2 of Schedule 2 (things to be included in Secretary of State's report in respect of the business impact target), and section 14 (which introduces Schedule 2) so far as relating to that paragraph;
  - (g) this Part.
- (2) The following provisions of this Act come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) section 14 (extension of business impact target to provisions made by regulators) (so far as not already in force under subsection (1));
  - (b) section 18 (application of regulators' principles and code: removal of restrictions);
  - (c) section 24 (public sector apprenticeship targets);
  - (d) section 31 (disclosure of HMRC information in connection with non-domestic rating);
  - (e) section 32 (alteration of non-domestic rating lists);
  - (f) sections 34 and 35 (industrial development);
  - (g) Schedule 2 (business impact target: consequential and related amendments) (so far as not already in force under subsection (1)).
- (3) Sections 28 to 30 (late payment of insurance claims) come into force at the end of the period of one year beginning with the day on which this Act is passed (and section 23(2) of the Insurance Act 2015 (which provides for the coming into force of provisions of that Act) does not apply to the provisions inserted into that Act by those sections).
- (4) The following provisions of this Act come into force on such day as the Treasury may by regulations appoint—
- (a) section 36 (UK Government Investments Limited);
  - (b) section 41 and Schedule 6 (restriction on public sector exit payments).
- (5) Subject to subsections (1) to (4), the provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.
- (6) Regulations under this section are to be made by statutory instrument.
- (7) Regulations under this section may appoint different days—
- (a) for different purposes;
  - (b) for different areas.



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## 45 Extent

- (1) The following provisions of this Act extend to England and Wales, Scotland and Northern Ireland—
  - (a) Part 1 (Small Business Commissioner) (except paragraphs 1, 15 and 18 to 21 of Schedule 1);
  - (b) subsections (5) to (9) of section 14 (application of changes relating to the business impact target in relation to the relevant period in which they come into force);
  - (c) section 26 (apprenticeships: information sharing);
  - (d) sections 28 and 29 (late payment of insurance claims);
  - (e) section 35 (grants etc towards electronic communications services and networks), except subsection (2);
  - (f) section 36 (UK Government Investments Limited);
  - (g) section 38 (UK Green Investment Bank: transitional provision);
  - (h) paragraphs 4 and 5(2) and (3) of Schedule 6 (public sector exit payments: amendments of public sector schemes);
  - (i) this Part.
- (2) Paragraphs 1 and 15 of Schedule 1 (establishment of Small Business Commissioner as corporation sole and provisions about the application of the seal etc) extend to England and Wales and Northern Ireland.
- (3) Section 23 (the Institute for Apprenticeships: transitional provision) extends to England and Wales.
- (4) Subject to subsection (1), any amendment, repeal or revocation made by this Act has the same extent as the enactment amended, repealed or revoked.

## 46 Short title

This Act may be cited as the Enterprise Act 2016.

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2016.