

EXPLANATORY MEMORANDUM TO

THE SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015 (CONSEQUENTIAL AMENDMENTS) (INSOLVENCY AND COMPANY DIRECTORS DISQUALIFICATION) REGULATIONS 2015

2015 No. 1651

1. This explanatory memorandum has been prepared by The Department for Business Innovation and Skills and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Small Business, Enterprise and Employment Act 2015 (“the Act”) makes provision about the disqualification of persons appointed in relation to companies and introduces measures to strengthen the legal and regulatory framework for insolvency.

2.2 These provisions will be commenced by separate Regulations.

2.3 The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Insolvency and Company Directors Disqualification) Regulations 2015 (“the amending Regulations”) make amendments to certain secondary and Northern Ireland legislation in consequence of amendments made by the Act to the Company Directors Disqualification Act 1986, the Company Directors Disqualification (Northern Ireland) Order 2002 and the Insolvency Act 1986. The relevant parts will commence on 1st October 2015.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 To avoid making numerous regulations commencing several provisions of the Act on 1st October 2015, a set of Regulations for commencement (the “Commencement Regulations”), including the provisions to which these Regulations relate, are being co-ordinated centrally. The Commencement Regulations will not be subject to any parliamentary procedure (see sections 161 and 164 of the Act).

3.2 The amending Regulations will be subject to the Negative procedure (see section 159(4) of the Act). They will be made and laid before the Commencement Regulations are made.

3.3 Section 17 of the Deregulation Act 2015 will substitute section 391 of the Insolvency Act 1986. It will be brought into force on 1st October 2015 in an Order co-ordinated by the Cabinet Office (again to avoid numerous instruments). Thereafter, section 137 (1) of this Act will substitute section 391 and insert section 391A in to the Insolvency Act 1986. Amendments to secondary legislation in consequence of the coming into force of the Deregulation Act 2015 are to be made by Order. It is necessary for regulation 6 of these amending Regulations to come into force immediately after the coming into force of that Order.

4. Legislative Context

4.1 These Regulations are made in exercise of the power conferred by section 159(1) of the Act which confers on a Minister of the Crown the power to make consequential amendments.

4.2 Regulations 2 to 5 and Schedules 1 and 2 make amendments to secondary legislation (in both Great Britain and Northern Ireland) relating to the disqualification of people under the Company Directors Disqualification Act 1986. It provides for updating the register of disqualified directors, including references to the new grounds for disqualification in forms to be used by certain court officers.

4.3 Regulation 6 of this instrument makes one amendment to secondary legislation in consequence of the commencement of sections 137 to 143 of the Act.

5. Territorial Extent and Application

5.1 Regulations 2 and 4 of this instrument applies to England, Scotland and Wales only.

5.2 Regulations 3 and 5 and Schedule 2 apply to Northern Ireland.

5.3 Regulation 6 applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Regulations 2 to 5

7.1 In July 2013 the Department for Business, Innovation and Skills (BIS) sought feedback to a discussion paper, , on measures to strengthen the director disqualification regime and for tackling misconduct by directors.

7.2 The Government response to the consultation was published in April 2014.. It included proposals for introducing a new ground for disqualifying a director convicted abroad of a company-related offence and to increase the reach of legal accountability to cover those who are not directors themselves but who exercise control over a single director.

7.3 Part 9 of the Act deals with strengthening the disqualification regime and sections 104 to 106 and 108 to 116 contain measures that seek to put these proposals into legislation.

Regulation 6

7.4 IPs act as office-holders in insolvency procedures. To be qualified to act as an IP, the Insolvency Act 1986 requires an individual to be authorised to act by virtue of membership of a professional body which has been recognised for this purpose by the Secretary of State (acting through the Insolvency Service - an executive agency of BIS).

There are currently 7 Recognised Professional Bodies (RPBs). Once authorised, IPs are regulated through a system of self-regulation by the RPBs.

7.5 As oversight regulator the Secretary of State currently has only one sanction against an RPB which is not regulating effectively, and that is to revoke its recognition as an RPB. This would be disproportionate in all but the most serious circumstances, and the power has never been used.

7.6 An Office of Fair Trading (OFT) study into the market for corporate insolvency in 2010 and a review into IP fees by Professor Elaine Kempson in 2013 both found that the Secretary of State (as oversight regulator) lacks proportionate powers to monitor the RPBs and the IPs they authorise. The OFT also found that the regulatory system suffers from a lack of clear regulatory objectives against which the Secretary of State can hold the RPBs to account.

7.7 Following two consultations, measures were brought forward in the Act to address the need for reform. The aim of the measures is to strengthen the regulatory framework for IPs to enable it to deal effectively and efficiently with poor performance and abuse and provide greater confidence in the insolvency profession. Sections 137-142 of the Act achieve this by amending Part 13 of the Insolvency Act 1986 to:

- introduce regulatory objectives for the insolvency regime
- introduce a range of sanctions so that proportionate action can be taken where the Secretary of State is satisfied that an RPB is not adequately fulfilling its role as a regulator,
- allow the Secretary of State to apply to court to directly sanction an IP where it is in the public interest, and
- clarify that the fee the Secretary of State can charge RPBs for the maintenance of their recognition can include, but is not limited to, the costs incurred by issuing a direction and publishing a reprimand to an RPB, the procedure for doing so and revocation of an RPB's recognition at the request of the RPB.

8. Consultation outcome

8.1 Targeted consultations were undertaken on these provisions in 2011 and 2013/2014.

9. Guidance

9.1 The Insolvency Service has been working with interested parties to prepare for commencement of these measures and in terms of the regulatory changes, is working on guidance with the RPBs. Other people with an interest in the commencement date will be notified by publication of articles in established Insolvency Service newsletters.

10. Impact

10.1 A separate full regulatory impact assessment has not been prepared for this consequential instrument because no impact on the private, public or voluntary sectors is foreseen separate to that already covered by the substantive provisions in the Act. Those that have been prepared and published in relation to the substantive provisions in the Act

are available from the Insolvency Service, 4 Abbey Orchard Street, London SW1P 2HT or can be viewed at:

<https://www.gov.uk/government/consultations/insolvency-practitioner-regulation-and-fee-structure>

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324713/bis-14-908b-impact-assessments-part-b-director-disqualification-regime-transparency-and-trust.pdf

11. Regulating small business

11.1 This consequential instrument does not place any additional burdens on small business.

12. Monitoring and review

12.1 No specific monitoring is required for these amendments. The instrument makes consequential amendments only. The legislation amended by this instrument will be monitored and reviewed as appropriate within the relevant wider legislative schemes.

13. Contact

13.1 For insolvency measure queries regarding the instrument contact Alison Ireland at the Insolvency Service Tel: 020 7291 6740 or email: policy.unit@insolvency.gsi.gov.uk.