

EXPLANATORY MEMORANDUM TO
THE SMALL BUSINESS COMMISSIONER (SCOPE AND SCHEME)
REGULATIONS 2017

2017 No. 1273

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations set out which small businesses will be eligible to use the Small Business Commissioner's services. They also set out the framework for the Commissioner to operate the Small Business Commissioner's complaints scheme ("SBC complaints scheme").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and includes Northern Ireland.
- 3.3 This instrument is subject to affirmative resolution.

4. Legislative Context

- 4.1 The Enterprise Act 2016 ("the Act") establishes a Small Business Commissioner ("the Commissioner"). The Commissioner has two principal functions: to provide general advice and information to small businesses within scope and to consider complaints from small businesses suppliers within scope relating to payment matters with their larger business clients (through the SBC complaints scheme).
- 4.2 The Regulations use for the first time the powers in sections 2 and 7 of the Act which allow the Secretary of State to make provision about which small businesses are eligible to use the Commissioner's services and require the Secretary of State to make provision about matters relating to the SBC complaint scheme.
- 4.3 The Regulations set out:
- that a business must have a headcount of less than 50 staff on one of the assessment dates or during one of the assessment periods to qualify to use the Commissioner's services; the requirements before presenting a complaint; the requirements as to the form and content of the complaint; the time limit for presenting a complaint and the power for the Commissioner to fix and extend time limits and to dismiss complaints.

- matters that the Commissioner must take into consideration when determining whether an act or omission complained of was fair and reasonable; and
- factors to be taken into account when deciding whether to identify a respondent in any report of any complaint.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is to England and Wales, Scotland and Northern Ireland and does not apply only to England and Wales.
- 5.2 The territorial application of this instrument is to England and Wales, Scotland and Northern Ireland and does not apply only to England and Wales.

6. European Convention on Human Rights

- 6.1 The Minister for Small Business, Consumers and Corporate Responsibility, Margot James, has made the following statement regarding Human Rights:
- “In my view the provisions of the Small Business Commissioner (Scope and Scheme) Regulations 2017 are compatible with the Convention Rights”

7. Policy background

What is being done and why

- 7.1 Late payment is a major issue for UK businesses, particularly small businesses. As of July 2017, the overall level of late payment debt owed to small and medium sized businesses is reported as standing at £14.2 billion¹. Late payment causes problems for businesses that are not paid on time as it hampers their ability to invest and grow. Small businesses are not always sure where to turn to help them resolve disputes with other businesses including late payment.
- 7.2 The Small Business Commissioner was established by the Enterprise Act 2016 to assist small businesses in payment disputes with larger businesses. The Small Business Commissioner’s role is intended to enable small businesses to resolve disputes and avoid future issues by encouraging a culture change in how businesses deal with each other. The Commissioner will provide general information and advice, direct small businesses to existing dispute resolution services and handle complaints about payment issues.

8. Consultation outcome

- 8.1 A consultation on the policy underpinning the Small Business Commissioner’s complaint handling function, and the definition of a small business for the purposes of the Commissioner’s services was carried out between 13 October and 7 December 2016 – see <https://www.gov.uk/government/consultations/small-business-commissioner-process-for-handling-complaints>
- 8.2 The consultation sought views from businesses of all sizes on how the Small Business Commissioner should handle complaints. This included proposals on the following areas:

¹ BACS payment data - <https://www.bacs.co.uk/NewsCentre/PressReleases/Pages/LatePaymentsCostingSmallerUKBusinessesMoreThan%C2%A32bnAYear.aspx>

- Small businesses in scope of the Commissioner’s services.
 - Parameters for making complaints under the Commissioner’s complaints scheme.
 - How the Commissioner will consider and determine complaints and make recommendations – specifically, matters for the Commissioner to take into account in determining whether an act or omission complained of was fair and reasonable.
 - How the Commissioner will publish reports and recommendations on complaints – specifically, factors for the Commissioner to take into account when deciding whether to name the respondent in a published report.
- 8.3 We emailed 144 individuals and organisations, and published the consultation online. A total of 23 responses to the consultation were received. These included 39% from business representative bodies, 22% from professional bodies, 30% from small businesses and one from an individual.
- 8.4 The responses to the consultation helped the Government draft the Regulations. We made a small number of changes to the policy and these have been integrated into the Regulations.
- 8.5 The Government response and draft Regulations were published with an opportunity for final comments on the drafting to be provided between 24 February 2017 and 9 March 2017 – see <https://www.gov.uk/government/consultations/small-business-commissioner-process-for-handling-complaints>
- 8.6 The Government response details broad agreement for these Regulations.

9. Guidance

- 9.1 We do not intend to issue guidance. The Small Business Commissioner is an independent body and will determine whether guidance is needed in due course.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 There are no specific plans to review the Regulations as such. However, there are provisions in the Act to review the Small Business Commissioner’s performance for each review period. The first review period will come to an end two years after 31 March 2018.

13. Contact

- 13.1 Hannah Robins-Frank at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 4273 or email: Hannah.Robins-Frank@beis.gov.uk can answer any queries regarding the instrument.