Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 1

ACCESS TO FINANCE

Assignment of receivables

1 Power to invalidate certain restrictive terms of business contracts

(1) The appropriate authority may by regulations make provision for the purpose of securing that any non-assignment of receivables term of a relevant contract—

(a) has no effect;

(b) has no effect in relation to persons of a prescribed description;

(c) has effect in relation to persons of a prescribed description only for such purposes as may be prescribed.

(2) A "non-assignment of receivables term" of a contract is a term which prohibits or imposes a condition, or other restriction, on the assignment (or, in Scotland, assignation) by a party to the contract of the right to be paid any amount under the contract or any other contract between the parties.

(3) A contract is a relevant contract if—

(a) it is a contract for goods, services or intangible assets (including intellectual property) which is not an excluded financial services contract, and

(b) at least one of the parties has entered into it in connection with the carrying on of a business.

(4) An "excluded financial services contract" is a contract which—

(a) is for financial services (see section 2) or is a regulated agreement within the meaning of the Consumer Credit Act 1974 (see section 189 of that Act); and

(b) is of a prescribed description.

(5) "Prescribed" means prescribed by the regulations.

(6) The "appropriate authority" means—

(a) in relation to contracts to which the law of Scotland applies, the Scottish Ministers, and

(b) in relation to other contracts, the Secretary of State.

(7) The power of the Scottish Ministers to make regulations under this section includes power to make such provision as the Scottish Ministers consider appropriate in consequence of the regulations.

(8) The power conferred by subsection (7) includes power—

(a) to make transitional, transitory or saving provision;

(b) to amend, repeal, revoke or otherwise modify any provision made by or under an enactment (including an enactment contained in this Act and any enactment passed or made in the same Session as this Act).

(9) In subsection (8) "enactment" includes an Act of the Scottish Parliament.

(10) Regulations under this section—

(a) if made by the Scottish Ministers, are subject to the affirmative procedure;

(b) if made by the Secretary of State, are subject to affirmative resolution procedure.

2 Section 1(4)(a): meaning of "financial services"

(1) In section 1(4)(a) "financial services" means any service of a financial nature, including (but not limited to)—

(a) insurance-related services consisting of—

(i) direct life assurance;

(ii) direct insurance other than life assurance;

(iii) reinsurance and retrocession;

(iv) insurance intermediation, such as brokerage and agency;

(v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

(b) banking and other financial services consisting of—

(i) accepting deposits and other repayable funds;

(ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);

(iii) financial leasing;

(iv) payment and money transmission services (including credit, charge and debit cards, travellers' cheques and bankers' drafts);

(v) providing guarantees or commitments;

(vi) financial trading (as defined in subsection (2));

(vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;

(viii) money brokering;

(ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);

(xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);

(xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).

(2) In subsection (1)(b)(vi) "financial trading" means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in—

(a) money market instruments (including cheques, bills and certificates of deposit);

(b) foreign exchange;

(c) derivative products (including futures and options);

(d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);

(e) transferable securities;

(f) other negotiable instruments and financial assets (including bullion).

Business payment practices

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

(1) The Secretary of State may by regulations impose a requirement, on such descriptions of companies as may be prescribed, to publish, at such intervals and in such manner as may be prescribed, prescribed information about—

(a) the company's payment practices and policies relating to relevant contracts of a prescribed description, and

(b) the company's performance by reference to those practices and policies.

(2) For the purposes of this section—

"company" has the meaning given by section 1(1) of the Companies Act 2006 (but see subsection (3));

a contract is a "relevant contract" if—

(a) it is a contract for goods, services or intangible assets (including intellectual property), and

(b) the parties to the contract have entered into it in connection with the carrying on of a business;

"prescribed" means prescribed by the regulations.

(3) The regulations may not impose a requirement on a company in relation to any time during which—

(a) it qualifies as a micro-entity for the purposes of section 384A of the Companies Act 2006,

(b) the small companies regime under that Act applies to it (see section 381 of that Act), or

(c) it qualifies as medium-sized for the purposes of section 465 or 466 of that Act.

(4) "The company's payment practices and policies" has such meaning as may be prescribed and the information which may be prescribed may, in particular, include information—

(a) about the standard payment terms of the company and whether these are part of any code of conduct or code of ethics of the company,

(b) about payment terms of the company which are not standard,

(c) about the processing and payment of invoices,

(d) by reference to such codes of conduct or standards as may be prescribed and as are applicable to companies generally or to companies of a prescribed description,

(e) about disputes relating to the payment of invoices, including any dispute resolution mechanism that the company uses,

(f) about payments owed or paid by the company due to late payment of invoices, whether in respect of interest or otherwise.

(5) The regulations may require that information published in accordance with the regulations must be approved or signed by such description of person as may be prescribed.

(6) The regulations may require such of the information required to be published as may be prescribed to be given, in such form as may be prescribed, to prescribed persons.

(7) The regulations may make provision for a prescribed breach by a prescribed description of person of a requirement imposed by the regulations to be an offence punishable on summary conviction—

(a) in England and Wales, by a fine;

(b) in Scotland or Northern Ireland, by a fine not exceeding level 5 on the standard scale.

(8) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(9) Regulations under this section are subject to affirmative resolution procedure.

Financial information about businesses

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

(1) The Treasury may make regulations that impose—

(a) a duty on designated banks to provide information about their small and medium sized business customers to designated credit reference agencies, and

(b) a duty on designated credit reference agencies to provide information about small and medium sized businesses to finance providers.

(2) The regulations must provide that the duty in subsection (1)(a) only applies where—

(a) a credit reference agency makes a request to a bank, and

(b) the business customer to whom the information relates has agreed to the information being provided to a credit reference agency.

(3) The regulations must provide that the duty in subsection (1)(b) only applies where—

(a) a finance provider makes a request to a credit reference agency, and

(b) the business to whom the information relates has agreed to the information being provided to the finance provider.

(4) The regulations may provide that the duty in subsection (1)(b) only applies where other conditions are met, such as the finance provider—

(a) complying with the credit reference agency's terms and conditions, and

(b) providing information on its small and medium sized business customers to the credit reference agency (subject to the agreement of those customers).

(5) The regulations must describe the information—

(a) to which the duty in subsection (1)(a) applies;

(b) to which the duty in subsection (1)(b) applies;

(c) which may be required as mentioned in subsection (4)(b).

(6) The regulations may make provision about—

(a) how a request for information must be made by a credit reference agency or finance provider;

(b) the time period within which information must be provided following a request;

(c) the form in which information must be provided;

(d) how a business may indicate agreement for the purposes of subsection (2)(b), (3)(b) or (4)(b) (and for the purposes of subsection (2)(b) this may include imposing an obligation on a designated bank to include an appropriate term in its standard terms and conditions or to otherwise seek agreement).

(7) The regulations must make provision for the designation of banks and credit reference agencies by the Treasury, and the regulations may in particular provide for—

(a) conditions that must be met for a bank or credit reference agency to be designated;

(b) considerations that the Treasury may take into account before deciding whether to designate a bank or credit reference agency;

(c) the Treasury to consider the advice of another person before making a designation;

(d) the procedure for designating a bank or credit reference agency;

(e) how the list of designated banks and credit reference agencies must be published;

(f) the revocation of a designation.

5 Small and medium sized businesses: information to finance platforms

(1) Where—

(a) a small or medium sized business has applied to a designated bank for a loan or other credit facility, and

(b) the application has been unsuccessful,

the Treasury may by regulations impose a duty on the bank to provide specified information about the business to designated finance platforms.

(2) The regulations—

(a) must provide that the duty only applies where the business to which the information relates agrees to its information being provided to the designated finance platforms;

(b) may require a bank—

(i) to seek the agreement of a business for the purposes of paragraph (a);

(ii) to ask the business for any of the specified information that the bank does not already have;

(iii) to provide the information to the finance platforms within a specified time period.

(3) The regulations may make further provision about the duty in subsection (1), which may in particular include provision about—

(a) the types of loans and credit facilities that trigger the duty,

(b) the circumstances in which an application is to be considered unsuccessful, and

(c) the finance platforms to which information must be provided.

(4) Where a finance platform has received information by virtue of subsection (1), the Treasury may by regulations—

(a) impose a duty on the finance platform to provide specified information to all finance providers requesting access to the information, and

(b) impose a duty on the finance platform to provide specified information about a particular business to a finance provider where—

(i) the finance provider has requested information about the business, and

(ii) the business has agreed to its information being provided to the finance provider.

(5) Information specified for the purposes of subsection (4)(a) must be in such a form that no individual business, and no person associated with the business, can be identified.

(6) The regulations may provide that the duty in subsection (4)(a) or (b) does not apply unless—

(a) the finance provider or business agrees to the finance platform's terms and conditions;

(b) the finance provider complies with specified requirements about the use and disclosure of the information.

(7) The regulations may make further provision about the duties in subsection (4)(a) and (b), including in particular provision—

(a) requiring the finance platform to provide the information within a specified time period;

(b) setting out how a request by a finance provider must be made to a finance platform;

(c) setting out how a business may indicate agreement for the purposes of subsection (4)(b)(ii);

(d) about the time period for which information must be kept by the finance platform;

(e) about the removal of information from the finance platform.

(8) The regulations may make provision—

(a) prohibiting finance platforms from charging fees to small and medium sized businesses, or

(b) permitting finance platforms to charge fees to small and medium sized businesses.

(9) The regulations must make provision for the designation of banks and finance platforms by the Treasury, and the regulations may in particular provide for—

(a) conditions that must be met for a bank or finance platform to be designated;

(b) considerations that the Treasury may take into account before deciding whether to designate a bank or finance platform;

(c) the Treasury to consider the advice of another person before making a designation;

(d) the procedure for designating a bank or finance platform;

(e) how the list of designated banks and finance platforms must be published;

(f) the revocation of a designation.

(10) In this section "specified" means specified or described in the regulations.

6 Sections 4 and 5: supplementary

(1) Regulations under sections 4 and 5 may make provision enabling the Financial Conduct Authority to take action for monitoring and enforcing compliance with the regulations.

(2) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 or subordinate legislation made under that Act, with or without modification.

(3) Those provisions include in particular—

(a) provisions about investigations, including powers of entry and search and criminal offences;

(b) provisions for the grant of an injunction (or, in Scotland, an interdict) in relation to a contravention or anticipated contravention;

(c) provisions giving the Financial Conduct Authority powers to impose disciplinary measures (including financial penalties) or to give directions;

(d) provisions giving a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) or the Financial Conduct Authority powers to make subordinate legislation;

(e) provisions for the Financial Conduct Authority to charge fees.

(4) Regulations under sections 4 and 5 may make provision that enables complaints about the activities of designated credit reference agencies or designated finance platforms to be dealt with under the scheme established by Part 16 of the Financial Services and Markets Act 2000 (financial ombudsman scheme), and for that purpose the regulations may—

(a) apply, or make provision corresponding to, any of the provisions of that Part or rules made under that Part (with or without modifications);

(b) impose obligations on—

(i) the Financial Conduct Authority;

(ii) the scheme operator (within the meaning of that Part);

(iii) an ombudsman (within the meaning of that Part).

(5) Regulations under section 4 may impose a duty on designated credit reference agencies to provide information received by virtue of section 4(1)(a) or (4)(b) to the Bank of England, and may allow or require the Bank of England to share that information with persons or for purposes specified or described in the regulations; but the regulations must include provision protecting the confidentiality of information so provided.

(6) Regulations under section 4 may provide that a failure to comply with a duty imposed by virtue of section 4(1) may be actionable at the suit of a person who has suffered loss as a result of it (subject to the defences and other incidents applying to actions for breach of statutory duty).

(7) Regulations under section 4 may provide that the following provisions apply to designated credit reference agencies in the same way as they apply to credit reference agencies within the meaning of those provisions—

(a) sections 157 to 160 of the Consumer Credit Act 1974 (duties to disclose and correct information) and regulations made under those sections;

(b) section 7 of the Data Protection Act 1998 (right of access to personal data) and regulations made under that section;

(c) section 9 of the Data Protection Act 1998 (right of access to personal data where data controller is credit reference agency) and regulations made under that section.

(8) Regulations under section 4 may provide a small or medium sized business with the right to apply to a court for an order to rectify, block, erase or destroy data held about the business by a designated credit reference agency.

(9) Regulations under section 5 may impose a duty on designated finance platforms to provide statistical information to the Treasury.

(10) Regulations under section 4 or 5 are subject to affirmative resolution procedure.

7 Sections 4 to 6: interpretation

(1) For the purposes of sections 4 to 6, a business is a small or medium sized business if—

(a) it has an annual turnover of less than £25 million,

(b) it carries out commercial activities,

(c) it does not carry out regulated activities as its principal activity, and

(d) it is not owned or controlled by a public authority.

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

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

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

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

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

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

"finance provider" means a body corporate that—

(a) lends money or provides credit in the course of a business,

(b) arranges or facilitates the provision of debt or equity finance in the course of a business, or

(c) provides, arranges or facilitates invoice discounting or factoring in the course of a business,

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

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

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

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

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

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

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

8 Disclosure of VAT registration information

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

(a) V's creditworthiness,

(b) V's compliance with regulatory requirements relating to financial matters, or

(c) the risk of fraud by V.

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

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

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

(5) A person does not contravene subsection (3) or (4) by disclosing a financial assessment made wholly or partly in reliance on the VAT registration information, if the financial assessment itself does not include any VAT registration information.

(6) If VAT registration information is disclosed to a person in accordance with subsection (1), (3) or (4), that person must not use that information except for the purposes of making a financial assessment.

(7) A person does not contravene subsection (6) by using, for any purpose, a financial assessment made wholly or partly in reliance on the VAT registration information.

(8) The Commissioners for Her Majesty's Revenue and Customs may make arrangements with any person about disclosures of information to that person (the "recipient") under subsection (1).

(9) The arrangements may (in particular) provide for—

(a) a fee to be payable by the recipient for the disclosure of information;

(b) conditions to apply to the recipient in relation to information disclosed (including conditions relating to the transfer, holding and processing of the information);

(c) financial penalties to be payable by the recipient for a failure to meet conditions which apply to the recipient under the arrangements.

(10) The Treasury may, by regulations, amend this section so that it authorises the Commissioners to disclose VAT registration information included in a person's VAT registration for additional purposes.

(11) In this section—

"financial assessment" means an assessment of a kind mentioned in subsection (1)(a), (b) or (c);

"VAT registration" means registration under the Value Added Tax Act 1994;

"VAT registration information" means information of the kind that the Commissioners are authorised to disclose under subsection (1) (as read with subsection (2)).

(12) Regulations under this section are subject to affirmative resolution procedure.

9 Offences for the purposes of section 8

(1) A person commits an offence if the person discloses information in contravention of section 8(3) or (4).

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person reasonably believed that the disclosure of the information was lawful.

(3) A person commits an offence if the person uses information in contravention of section 8(6).

(4) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed that the use of the information was lawful.

(5) Section 19(4) to (7) of the Commissioners for Revenue and Customs Act 2005 apply to an offence under this section as they apply to an offence under section 19 of that Act.

(6) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of section 8(1), (3), (4) or (6) (whether or not this section applies to the contravention).

Exports

10 Disclosure of exporter information

(1) The Commissioners for Her Majesty's Revenue and Customs may, by regulations, make provision authorising officers of Revenue and Customs to disclose prescribed information about the export of goods from the United Kingdom.

(2) In subsection (1) "prescribed information" means information of a kind that is prescribed in the regulations.

(3) But the regulations may only prescribe the following kinds of information—

(a) the commodity code of goods that have been exported from the United Kingdom (a "prescribed code");

(b) a description of the category of goods covered by a prescribed code;

(c) the names and addresses of persons who have exported goods covered by a prescribed code;

(d) the years and months in which a particular person has exported goods covered by a prescribed code.

(4) Regulations under this section may make such provision as the Commissioners think appropriate in connection with the provision authorising officers of Revenue and Customs to disclose prescribed information (including provision about the manner in which information may be disclosed).

(5) In this section "commodity code" means a code or other identifier applied to a category of goods in connection with the preparation of statistics on exports from the United Kingdom (whether or not it is also applied for other purposes).

(6) Regulations under this section are subject to affirmative resolution procedure.

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

(1) Section 1 of the Export and Investment Guarantees Act 1991 (assistance in connection with exports of goods and services) is amended as follows.

(2) For subsections (1) and (1A) substitute—

"(1) The Secretary of State may make arrangements under this section which the Secretary of State considers are conducive to supporting or developing (whether directly or indirectly) supplies or potential supplies by persons carrying on business in the United Kingdom of goods, services or intangible assets (including intellectual property) to persons carrying on business outside the United Kingdom."

(3) After subsection (4) insert—

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

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

12 EIGA 1991: further amendments

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

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

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

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

(a) in paragraph (a)—

(i) for "either of the limits" substitute "the limit";

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

(b) in paragraph (b)—

(i) for "either of the limits" substitute "the limit";

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

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

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

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

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

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

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

(b) in paragraph (e) omit "in foreign currency".

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

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

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

Presentment of cheques etc

13 Electronic paying in of cheques etc

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

(2) After section 89 insert—

"PART 4A

PRESENTMENT OF CHEQUES AND OTHER INSTRUMENTS BY ELECTRONIC MEANS

89A Presentment of instruments by electronic means

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

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

(2) The Treasury may by regulations prescribe circumstances in which subsection (1) does not apply.

(3) Regulations under subsection (2) may in particular prescribe circumstances by reference to—

(a) descriptions of instrument;

(b) arrangements under which presentment is made;

(c) descriptions of persons by or to whom presentment is made;

(d) descriptions of persons receiving payment or on whose behalf payment is received.

(4) Where presentment for payment is made under subsection (1)—

(a) any requirement—

(i) that the physical instrument must be exhibited, presented or delivered on or in connection with presentment or payment (including after presentment or payment or in connection with dishonour for non-payment), or

(ii) as to the day, time or place on or at which presentment of the physical instrument may be or is to be made, and

(b) any other requirement which is inconsistent with subsection (1),

does not apply.

(5) Subsection (4) does not affect any requirement as to the latest time for presentment.

(6) References in subsections (4) and (5) to a requirement are to a requirement or prohibition, whether imposed by or under any enactment, by a rule of law or by the instrument in question.

(7) Where an instrument is presented for payment under this section—

(a) any banker providing the electronic image,

(b) any banker to whom it is provided, and

(c) any banker making payment of the instrument as a result of provision of the electronic image,

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

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

89B Instruments to which section 89A applies

(1) Subject to subsection (2), section 89A applies to—

(a) a cheque, or

(b) any other bill of exchange or any promissory note or other instrument—

(i) which appears to be intended by the person creating it to enable a person to obtain payment from a banker indicated in it of the sum so mentioned,

(ii) payment of which requires the instrument to be presented, and

(iii) which, but for section 89A, could not be presented otherwise than by presenting the physical instrument.

(2) Section 89A does not apply to any banknote (within the meaning given in section 208 of the Banking Act 2009).

(3) The reference in subsection (1) to the person creating an instrument is—

(a) in the case of a bill of exchange, a reference to the drawer;

(b) in the case of a promissory note, a reference to the maker.

(4) For the purposes of subsection (1)(b)(i) an indication may be by code or number and need not indicate that payment is intended to be obtained from the banker.

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

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

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

(b) that customer,

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

89D Copies of instruments and evidence of payment

(1) The Treasury may by regulations make provision for—

(a) requiring a copy of an instrument paid as a result of presentment under section 89A to be provided, on request, to the creator of the instrument by the banker who paid the instrument;

(b) a copy of an instrument provided in accordance with the regulations to be evidence of receipt by a person identified in accordance with the regulations of the sum payable by the instrument.

(2) Regulations under subsection (1)(a) may in particular—

(a) prescribe the manner and form in which a copy is to be provided;

(b) require the copy to be certified to be a true copy of the electronic image provided to the banker making the payment on presentment under section 89A;

(c) provide for the copy to be accompanied by prescribed information;

(d) require any copy to be provided free of charge or permit charges to be made for the provision of copies in prescribed circumstances.

(3) The reference in subsection (1)(a) to the creator of the instrument is—

(a) in the case of a bill of exchange, a reference to the drawer;

(b) in the case of a promissory note, a reference to the maker.

89E Compensation in cases of presentment by electronic means

(1) The Treasury may by regulations make provision for the responsible banker to compensate any person for any loss of a kind specified by the regulations which that person incurs in connection with electronic presentment or purported electronic presentment of an instrument.

(2) In this section "electronic presentment or purported electronic presentment of an instrument" includes—

(a) presentment of an instrument to which section 89A applies under that section;

(b) presentment of any other instrument by any means involving provision of an electronic image by which it may be presented for payment;

(c) purported presentment for payment by any means involving provision of an electronic image of an instrument that may not be presented for payment in that way;

(d) provision, in purported presentment for payment, of—

(i) an electronic image that purports to be, but is not, an image of a physical instrument (including an image that has been altered electronically), or

(ii) an electronic image of an instrument which has no legal effect; or

(e) provision, in presentment or purported presentment for payment, of an electronic image which has been stolen.

(3) In this section, the "responsible banker", in relation to electronic presentment or purported electronic presentment of an instrument, means—

(a) the banker who is authorised to collect payment of the instrument on a customer's behalf, or

(b) if the holder of the instrument is a banker, that banker.

(4) In this section—

(a) references to an instrument include references to an instrument which has no legal effect (whether because it has been fraudulently altered or created, or because it has been discharged, or otherwise);

(b) in relation to an electronic image which is not an image of a physical instrument, references to the instrument are to a purported instrument (of which it purports to be an image); and

(c) in relation to an instrument which is not a bill of exchange or promissory note, references to the holder are to the payee or indorsee of the instrument who is in possession of it or, if it is payable to bearer, the person in possession of it.

(5) Regulations under this section may in particular make provision for—

(a) the responsible banker to be required to pay compensation irrespective of fault;

(b) the amount of compensation to be reduced by virtue of anything done, or any failure to act, by the person to whom compensation is payable.

(6) Nothing in this section or regulations under it is to be taken to—

(a) prevent the responsible banker claiming a contribution from any other person, or

(b) affect any remedy available to the responsible banker in contract or otherwise.

(7) Except so far as regulations under this section provide expressly, nothing in this section or regulations under it is to be taken to affect any liability of the responsible banker which exists apart from this section or any such regulations.

89F Supplementary

(1) Regulations under this Part may—

(a) include incidental, supplementary and consequential provision;

(b) make transitory or transitional provision or savings;

(c) make different provision for different cases or circumstances or for different purposes;

(d) make provision subject to exceptions.

(2) The power to make regulations under this Part is exercisable by statutory instrument.

(3) An instrument containing—

(a) regulations under section 89A or 89D, or

(b) the first regulations to be made under section 89E,

may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.

(4) An instrument containing any other regulations under section 89E is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) For the purposes of this Part, a banker collects payment of an instrument on behalf of a customer by—

(a) receiving payment of the instrument for the customer, or

(b) receiving payment of the instrument for the banker (but not as holder), having—

(i) credited the customer's account with the amount of the instrument, or

(ii) otherwise given value to the customer in respect of the instrument.

(6) Section 89E(4) applies for the purposes of subsection (5) in its application to section 89E."

(3) In section 52(4) (bills of exchange: duties of holder on presentment and payment), at the beginning insert "Subject to Part 4A (presentment by electronic means),".

(4) Omit sections 74B and 74C (which provide for alternative means of presentment of cheque for payment by banker).

(5) In section 87 (promissory notes: presentment for payment), at the end insert—

"(4) This section is subject to Part 4A (presentment by electronic means)."

(6) The amendments made by this section have effect in relation to presentment of instruments after it comes into force, including instruments created before that time.

Payment systems

14 Powers of the Payment Systems Regulator

(1) Part 5 of the Financial Services (Banking Reform) Act 2013 (regulation of payment systems) is amended as follows.

(2) Section 58 (power to require disposal of interest in payment system) is amended as provided in subsections (3) and (4).

(3) In subsection (1), for the words following "interest in" substitute "—

(a) the operator of a regulated payment system, or

(b) an infrastructure provider in relation to such a system,

to dispose of all or part of that interest."

(4) After subsection (2) insert—

"(2A) The reference in subsection (2) to a restriction or distortion of competition includes, in particular, a restriction or distortion of competition—

(a) between different operators of payment systems,

(b) between different payment services providers, or

(c) between different infrastructure providers."

(5) In section 108 (relationship with Part 8 of the Payment Services Regulations 2009), in subsection (1)—

(a) for "this Part" substitute "sections 54 to 58",

(b) for "obtain access to, or otherwise participate in," substitute "obtain direct access to", and

(c) for "does not apply" substitute "applies".

PART 2

REGULATORY REFORM

Streamlined company registration

15 Target for streamlined company registration

(1) The Secretary of State must secure that, by no later than 31 May 2017, a system for streamlined company registration is in place.

(2) For the purposes of this section and section 16, a system for streamlined company registration is a system which enables all of the registration information to be delivered by or on behalf of a person who wishes to form a company after 31 May 2017—

(a) on a single occasion to a single recipient, and

(b) by electronic means.

(3) "Registration information" means—

(a) the documents which must be delivered to the registrar under section 9 of the Companies Act 2006 (registration documents) in respect of the formation of a company;

(b) the documents or other information which must or may be delivered to Her Majesty's Revenue and Customs in respect of registration of a company for purposes connected with VAT, corporation tax and PAYE.

(4) In this section—

"company", "electronic means" and "the registrar" have the same meanings as in the Companies Acts (see sections 1(1), 1168(4) and 1060 of the Companies Act 2006 respectively);

"VAT" means value added tax charged in accordance with the Value Added Tax Act 1994.

16 Streamlined company registration: duty to report on progress

(1) The Secretary of State must prepare a report before the end of each reporting period about the progress that has been made during that period towards putting in place a system for streamlined company registration.

(2) The following are reporting periods—

(a) the period beginning with the day on which this section comes into force and ending on 31 March 2016;

(b) the subsequent period of 12 months ending on 31 March 2017.

(3) The first report must set out the steps which the Secretary of State expects will be taken during the next reporting period towards putting the system in place.

(4) Both reports must include the Secretary of State's assessment as to when the system for streamlined company registration will be in place.

(5) The second report must include an assessment of what steps, if any, the Secretary of State expects to take to put in place a system for the streamlining of other information delivery processes relating to businesses.

(6) The Secretary of State must—

(a) publish each report, and

(b) lay each report before Parliament.

Review of business appeals procedures

17 Review of regulators' complaints and appeals procedures

(1) A Minister of the Crown must appoint a person for the purposes of this section in respect of each regulatory function to which this section applies (see section 18).

(2) A person so appointed (a "reviewer") must, in relation to each regulatory function in respect of which the appointment is made—

(a) review the effectiveness during each reporting period of the procedures (both formal and informal) of the relevant regulator for handling and resolving complaints and appeals made by businesses to the regulator in connection with the exercise by the regulator of the function, and

(b) prepare a report about the findings of the review.

(3) In this section "relevant regulator", in relation to a regulatory function, means the person who exercises the function.

(4) The report may include in particular—

(a) an assessment of the extent to which the relevant regulator's procedures of the kind mentioned in subsection (2)(a) are accessible and fair to businesses;

(b) recommendations to the relevant regulator about how the procedures, or the way in which they are operated, could be improved;

(c) recommendations to the Minister of the Crown who appointed the reviewer for any change in the law which the reviewer considers would lead to improvements in the procedures or their operation.

(5) The report must not address, and the reviewer must not make any recommendation in relation to, the outcome of any particular case.

(6) For the purposes of this section, each of the following is a reporting period—

(a) the period of 12 months beginning with the day on which the reviewer is appointed;

(b) each subsequent period of 12 months.

(7) The reviewer must send the report to the relevant regulator and (if different) the Minister of the Crown who appointed the reviewer as soon as reasonably practicable after the end of the reporting period.

(8) Before the end of the period of 3 months beginning with the day on which the relevant regulator receives the report, the regulator must—

(a) prepare a response and send it to the reviewer, and

(b) if the relevant regulator is not the Minister of the Crown who appointed the reviewer, send it to the Minister.

(9) The Minister of the Crown must—

(a) publish the report and the response, and

(b) lay them before Parliament.

(10) The reviewer may by notice require the relevant regulator to provide such documents or other information, in such form or manner as the reviewer may direct, as the reviewer may require for the purpose of exercising functions under this section.

(11) Subsection (10) 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 "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.

18 Power to specify regulatory functions

(1) The Secretary of State may by regulations specify regulatory functions as functions to which section 17 applies.

(2) "Regulatory function" has the same meaning in this section and section 17 as in the Legislative and Regulatory Reform Act 2006 (see section 32(2) to (4) of that Act).

(3) Regulations under this section may, in particular, specify a regulatory function by reference to—

(a) the person who exercises the function;

(b) the enactment under or by virtue of which it was conferred.

(4) Regulations under this section must not specify a regulatory function of the Commission for Equality and Human Rights.

(5) Regulations under this section must not specify a regulatory function which is—

(a) a Scottish devolved function, that is to say a function the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998),

(b) a Northern Ireland devolved function, that is to say a function 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), or

(c) a Welsh devolved function, that is to say a function which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (see section 108 of the Government of Wales Act 2006).

(6) Regulations under this section are subject to affirmative resolution procedure.

19 Guidance by the Secretary of State

(1) The Secretary of State may issue guidance to reviewers as to the exercise of functions under section 17.

(2) A reviewer must, in exercising any of those functions, have regard to any guidance for the time being in force under this section.

(3) The Secretary of State must—

(a) publish any guidance or revised guidance issued under this section, and

(b) lay any such guidance or revised guidance before Parliament.

(4) In this section "reviewer" has the same meaning as in section 17.

Report on investigations under financial regulators' complaints scheme

20 Independent Complaints Commissioner: reporting duty

In section 87 of the Financial Services Act 2012 (investigation of complaints against regulators), after subsection (9) insert—

"(9A) The complaints scheme must provide—

(a) for the investigator to prepare an annual report on its investigations under the scheme, to publish it and send a copy of it to each regulator and to the Treasury;

(b) for each regulator to respond to any recommendations or criticisms relating to it in the report, to publish the response and send a copy of it to the investigator and the Treasury;

(c) for the Treasury to lay the annual report and any response before Parliament.

(9B) The complaints scheme may make provision about the period to which each annual report must relate ("the reporting period") and the contents of the report and must in particular provide for it to include—

(a) information concerning any general trends emerging from the investigations undertaken during the reporting period;

(b) any recommendations which the investigator considers appropriate as to the steps a regulator should take in response to such trends;

(c) a review of the effectiveness during the reporting period of the procedures (both formal and informal) of each regulator for handling and resolving complaints which have been investigated by the investigator during the reporting period;

(d) an assessment of the extent to which those procedures were accessible and fair, including where appropriate an assessment in relation to different categories of complainant;

(e) any recommendations about how those procedures, or the way in which they are operated, could be improved."

Business impact target

21 Duty on Secretary of State to publish business impact target etc

(1) Before the end of the period of 12 months beginning with the commencement of a Parliament, the Secretary of State must publish—

(a) a target for the Government in respect of the economic impact on business activities of qualifying regulatory provisions which come into force or cease to be in force during the relevant period, and

(b) an interim target applying at the end of the period of three years beginning with the commencement of the Parliament.

(2) In this section and sections 24 to 26 the target mentioned in subsection (1)(a) is referred to as the "business impact target".

(3) At the same time as publishing a business impact target and an interim target, the Secretary of State must publish—

(a) a determination under section 22(2), and
(b) a methodology to be used for assessing the economic impact mentioned in subsection (1)(a).

(4) The Secretary of State must lay each thing published under subsection (1) or (3) before Parliament.

(5) Subsection (6) applies when the Secretary of State is—
(a) determining a business impact target for publication under subsection (1)(a), or
(b) making a determination under section 22(2).

(6) The Secretary of State must, in particular, have regard to—
(a) the effect of regulation on economic growth and competitiveness,
(b) the need to minimise any disproportionate impact of regulation on activities carried on by smaller scale businesses or voluntary or community bodies,
(c) the aim of delivering efficiency in regulating business activities while keeping the costs to businesses or voluntary or community bodies to a minimum.

(7) In this section and sections 23 to 26—

the "relevant day" means the day after a polling day for a parliamentary general election; and

the "relevant period" is the period beginning with the relevant day and ending with the polling day for the next parliamentary general election.

(8) Subsection (7) is to be read in accordance with the Fixed-term Parliaments Act 2011.

(9) This section and sections 22 to 27 (the "target provisions") apply only where the commencement of a Parliament mentioned in subsection (1) above occurs—
(a) not more than 12 months before the target provisions come into force, or
(b) after the target provisions have come into force.

(10) Subsection (11) applies if an early parliamentary election is to take place in accordance with section 2 of the Fixed-term Parliaments Act 2011 before the end of the period of 12 months beginning with the commencement of a Parliament.

(11) Any duty imposed by the target provisions which would apply at any time before the commencement of the next Parliament is to be disregarded.

22 Sections 21 and 23 to 25: "qualifying regulatory provisions" etc

(1) This section applies for the purposes of sections 21 and 23 to 25.

(2) "Qualifying regulatory provisions" means regulatory provisions which the Secretary of State determines are to be qualifying regulatory provisions for the purposes of section 21(1)(a).

(3) A "regulatory provision", in relation to a business activity, means a statutory provision which—
(a) imposes or amends requirements, restrictions or conditions, or sets or amends standards or gives or amends guidance, in relation to the activity, or
(b) relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which relate to the activity.

(4) But a "regulatory provision" does not include a statutory provision if or to the extent that—

(a) it makes or amends—

(i) provision imposing, abolishing or varying any tax, duty, levy or other charge, or

(ii) provision in connection with provision falling within sub-paragraph (i);

(b) it makes or amends provision in connection with procurement;

(c) it makes or amends provision in connection with the giving of grants or other financial assistance by or on behalf of a public authority;

(d) it makes or amends provision which is to have effect for a period of less than 12 months.

(5) Where a statutory provision comes into force or ceases to be in force for some but not all purposes, references to regulatory provisions or qualifying regulatory provisions coming into force or ceasing to be in force are to be read as referring to those provisions in so far as they have come into force or ceased to be in force for those purposes.

(6) Subject to subsection (7) a "statutory provision" is—

(a) a provision of an Act,

(b) a provision of subordinate legislation made by a Minister of the Crown, or

(c) any other provision which has effect by virtue of the exercise of a function conferred on a Minister of the Crown by an Act.

(7) A "statutory provision" does not include—

(a) a provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament (see section 29 of the Scotland Act 1998),

(b) a provision which could be 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), or

(c) a provision falling within the legislative competence of the National Assembly for Wales (see section 108 of the Government of Wales Act 2006).

(8) In this section—

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

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

"subordinate legislation" has the same meaning as in the Interpretation Act 1978.

23 Duty on Secretary of State to publish reports

(1) The Secretary of State must publish a report in respect of each reporting period during the relevant period.

(2) The report must assess the economic impact on business activities of the qualifying regulatory provisions which have come into force or ceased to be in force during the reporting period.

(3) The report must include—

(a) a list of all the qualifying regulatory provisions which have come into force or ceased to be in force during the reporting period,

(b) an assessment of the economic impact on business activities of each of the qualifying regulatory provisions falling within paragraph (a) made by reference to the methodology published under section 21(3)(b) (but see section 24(2)),

(c) an assessment of the aggregate economic impact on business activities of all of the qualifying regulatory provisions falling within paragraph (a),

(d) if there have been preceding reporting periods during the relevant period, an assessment of the aggregate economic impact on business activities of all of the qualifying regulatory provisions which have come into force or ceased to be in force during the reporting period in question and all of the preceding reporting periods,

(e) an assessment of the contribution of the actions taken by each Government department to the aggregate economic impact mentioned in paragraphs (c) and (d), and

(f) a list of all the regulatory provisions (as defined in section 22(3)) which have come into force or ceased to be in force during the reporting period which do not fall within paragraph (a).

(4) The report must describe the actions taken by Government departments to mitigate any disproportionate economic impact on activities carried on by smaller scale businesses or voluntary or community bodies of regulatory provisions (as defined in section 22(3)) which have come into force during the reporting period.

(5) Subsection (6) applies in respect of regulatory provisions (as defined in section 22(3)) which—

(a) have come into force during the reporting period, and

(b) implement an EU obligation or any other international obligation of the United Kingdom.

(6) The report must include—

(a) a description of any provision made in the provisions in question which goes beyond the minimum provision necessary for implementing the obligation, and

(b) the reasons for that provision.

(7) Each of the following is a reporting period—

(a) the period beginning with the relevant day and ending at the end of the period of 12 months beginning with the commencement of the Parliament,

(b) the next successive period of 12 months,

(c) the next successive period of 12 months,

(d) the next successive period of 12 months, and

(e) the period which begins at the end of the period mentioned in paragraph (d) and ends at the end of the relevant period.

(8) But subsection (9) applies if an early parliamentary general election is to take place in accordance with section 2 of the Fixed-term Parliaments Act 2011 during a reporting period mentioned in any of subsection (7)(b) to (d) (the "election reporting period").

(9) Subsection (7) has effect as if—

(a) any provision relating to the election reporting period and any subsequent reporting periods mentioned in paragraph (c) or (d) were omitted, and

(b) paragraph (e) referred to the period which begins at the beginning of the election reporting period and ends at the end of the relevant period.

(10) A report must be published—

(a) no later than one month after the end of the reporting period, if the report is in respect of a reporting period mentioned in any of subsection (7)(a) to (d);

(b) before the dissolution of Parliament, if the report is in respect of a reporting period mentioned in subsection (7)(e).

(11) Where a report is in respect of a reporting period mentioned in subsection (7)(e), the references to qualifying regulatory provisions or regulatory provisions which have come into force or ceased to be in force during the reporting period include qualifying regulatory provisions or regulatory provisions which are expected to come into force or to cease to be in force during that reporting period.

(12) The Secretary of State must lay any report before Parliament.

24 Additional matters to be included in reports

(1) This section makes provision supplementary to section 23.

(2) An assessment in respect of a qualifying regulatory provision may be included in a report by virtue of section 23(3)(b) only if the assessment is verified by the body appointed under section 25.

(3) Subsection (4) applies if an assessment in respect of a qualifying regulatory provision is not included in a report in respect of a reporting period mentioned in any of section 23(7)(a) to (d) because of subsection (2) above.

(4) The report in respect of the immediately following reporting period must include an assessment of the economic impact on business activities of that qualifying regulatory provision.

(5) Subsection (6) applies to any report in respect of the reporting period mentioned in section 23(7)(c).

(6) The report must include an assessment of the extent to which the interim target has been met.

(7) Subsection (8) applies to any report in respect of the reporting period mentioned in section 23(7)(e).

(8) The report must include an assessment of the extent to which the business impact target has been met.

25 Appointment of body to verify assessments and lists in reports

(1) The Secretary of State must appoint an independent body to verify—

(a) the assessment to be included in a report by virtue of section 23(3)(b), and

(b) that all of the regulatory provisions in a list included in a report by virtue of section 23(3)(f) are regulatory provisions (as defined in section 22(3)) which—

(i) have come into force or ceased to be in force during the reporting period in respect of which the report is made, and

(ii) do not fall within section 23(3)(a).

(2) The body appointed under this section must publish a statement recording any verification made by virtue of subsection (1)(b).

(3) The appointment of the body must be made before the date on which a business impact target is published in relation to the relevant period.

(4) The appointment of the body must be for the duration of the relevant period.

(5) "Independent body" means a body which, in the opinion of the Secretary of State, is independent of the Secretary of State.

(6) The body appointed under this section must have expertise in assessing the likely economic impact of regulation on business activities (including activities carried on by smaller scale businesses or voluntary or community bodies).

(7) Subsection (1)(b) is to be read in accordance with section 23(11).

26 Amending the business impact target etc

(1) Before the end of the relevant period the Secretary of State may amend one or more of—

(a) the business impact target;

(b) the interim target;

(c) the determination under section 22(2);

(d) the methodology to be used for assessing the economic impact mentioned in section 21(1)(a).

(2) Section 21(6) applies when amending the thing mentioned in subsection (1)(a) or (c).

(3) If the Secretary of State amends any of the things mentioned in subsection (1) the Secretary of State must—

(a) publish the thing as amended,

(b) amend any report already published so that it takes account of any amendments, and

(c) lay the thing as amended and any amended report before Parliament.

(4) The requirements in sections 23(2) and (3), 24 and 25(2) apply in relation to an amended report.

27 Sections 21 to 25 etc: interpretation

(1) This section applies for the purposes of sections 21 to 25 and this section.

(2) "Business activities" means any activities carried on—

(a) by a business for the purposes of the business, or

(b) by a voluntary or community body for the purposes of the body.

(3) References to a business or a voluntary or community body do not include a business or a voluntary or community body which—

(a) is controlled by a public authority, or

(b) is acting on behalf of a public authority in carrying out the activities.

(4) The Secretary of State must publish a statement as to how it is to be determined whether a business or a voluntary or community body is controlled by a public authority.

(5) Each of the following is a "voluntary or community body"—

(a) a trade union;

(b) an unincorporated body which does not distribute any surplus it makes to its members;

(c) a charity;

(d) a company limited by guarantee which does not distribute any surplus it makes to its members;

(e) a registered society within the meaning given by section 1 of the Co-operative and Community Benefit Societies Act 2014;

(f) a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.));

(g) a community interest company;

(h) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011 or within the meaning of the Charities Act (Northern Ireland) 2008 (c. 12 (N.I.));

(i) a Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

(6) In this section—

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

"trade union" has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 or Article 3 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)).

Secondary legislation: duty to review

28 Duty to review regulatory provisions in secondary legislation

(1) This section applies where—

(a) an Act confers a power or duty on a Minister of the Crown to make secondary legislation, and

(b) the Minister exercises the power or duty so as to—

(i) make regulatory provision in relation to any qualifying activity (see sections 29 and 32), or

(ii) amend regulatory provision made in relation to any qualifying activity.

(2) The Minister must—

(a) make provision for review in the secondary legislation in which the regulatory provision is made (see section 30), or

(b) publish a statement that it is not appropriate in the circumstances to make provision for review in that legislation (see section 31).

(3) This section does not apply if or to the extent that the power or duty is to be exercised so as to—

(a) make or amend—

(i) provision imposing, abolishing or varying any tax, duty, levy or other charge, or

(ii) provision in connection with provision falling within sub-paragraph (i);

(b) make or amend provision in connection with procurement;

(c) make or amend provision in connection with the giving of grants or other financial assistance by or on behalf of a public authority;

(d) make or amend provision which is to cease to have effect before the end of the period of 5 years beginning with the commencement date; or

(e) make or amend provision which is subject to review by virtue of existing provision in the secondary legislation.

(4) In this section and section 29 "public authority" has the same meaning as in the Freedom of Information Act 2000 (see section 3 of that Act).

29 Section 28(1)(b): interpretation

(1) This section applies for the purposes of section 28(1)(b).

(2) "Qualifying activity" means any activity carried on—

(a) by a business for the purposes of the business, or

(b) by a voluntary or community body for the purposes of the body.

(3) For the purposes of subsection (2) the references to a business or a voluntary or community body do not include a business or a voluntary or community body which—

(a) is controlled by a public authority, or

(b) is acting on behalf of a public authority in carrying out the activity.

(4) The Secretary of State must publish a statement as to how it is to be determined whether a business or a voluntary or community body is controlled by a public authority.

(5) "Voluntary or community body" has the meaning given in section 27.

30 Section 28(2)(a): "provision for review"

(1) This section applies for the purposes of section 28(2)(a).

(2) "Provision for review", in relation to any regulatory provision, is provision requiring the Minister to—

(a) carry out a review of the regulatory provision, and

(b) publish a report setting out the conclusions of the review.

(3) A review of any regulatory provision which implements an EU obligation or any other international obligation of the United Kingdom must have regard to how the obligation is implemented in the other Member States or countries which are subject to the obligation.

(4) A report must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision,
(b) assess the extent to which those objectives are achieved,
(c) assess whether those objectives remain appropriate, and
(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) The first report must be published before the end of the period of 5 years beginning with the commencement date.

(6) Subsequent reports must be published at intervals not exceeding 5 years.

31 Section 28(2)(b): appropriateness of making provision for review

(1) This section applies for the purposes of section 28(2)(b).

(2) The circumstances in which the Minister may determine that it is not appropriate to make provision for review include those in which—
(a) a review would be disproportionate taking into account the economic impact of the regulatory provision on the qualifying activity, and
(b) a review would be undesirable for particular policy reasons (such as there being an exceptionally high need for certainty in the longer term).

(3) The Secretary of State may publish guidance about the factors to be taken into account in determining whether it is appropriate to make provision for review.

(4) The Minister must have regard to any guidance.

32 Sections 28 to 31 etc: supplementary

(1) This section applies for the purposes of sections 28 to 31 and this section.

(2) "Commencement date" means the date on which the secondary legislation making or amending the regulatory provision comes into force for any purpose.

(3) "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975.

(4) "Regulatory provision", in relation to any qualifying activity, means—
(a) provision imposing requirements, restrictions or conditions, or setting standards, in relation to the activity, or
(b) provision which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions or standards which relate to the activity.

(5) But where any of section 30(2), (3), (4)(a) or 31(2) applies by virtue of section 28(1)(b)(ii), the references to regulatory provision are to the regulatory provision as amended by the secondary legislation made by the Minister.

(6) "Secondary legislation" means orders, regulations or rules made under any Act.

(7) The validity of any secondary legislation is not to be affected by any question as to whether a Minister of the Crown complied with section 28(2).

Definitions of small and micro business

33 Definitions of small and micro business

(1) This section applies where any subordinate legislation made by a Minister of the Crown (the "underlying provision")—

(a) uses the term "small business" or "micro business", and

(b) defines that term by reference to this section.

(2) In the underlying provision "small business" means an undertaking other than a micro business (see subsection (3)) which meets the following conditions ("the small business size conditions")—

(a) it has a headcount of staff of less than 50, and

(b) it has—

(i) a turnover, or

(ii) a balance sheet total,

of an amount less than or equal to the small business threshold.

(3) In the underlying provision "micro business" means an undertaking which meets the following conditions ("the micro business size conditions")—

(a) it has a headcount of staff of less than 10, and

(b) it has—

(i) a turnover, or

(ii) a balance sheet total,

of an amount less than or equal to the micro business threshold.

(4) The Secretary of State may by regulations (referred to as "the small and micro business regulations") make further provision about the meanings of "small business" and "micro business".

(5) This section and the small and micro business regulations are to be read subject to any modifications made by the underlying provision in any particular case.

(6) In this section—

"balance sheet total", "headcount of staff", "micro business threshold", "small business threshold" and "turnover" have such meanings as may be prescribed by the small and micro business regulations;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act);

"undertaking" means—

(a) a person carrying on one or more businesses;

(b) a voluntary or community body within the meaning given by section 27;

(c) a body which is formed or recognised under the law of a country or territory outside the United Kingdom and which is equivalent in nature to a body falling within the definition of voluntary or community body.

(7) The small and micro business regulations are subject to negative resolution procedure.

34 Small and micro business regulations: further provision

(1) The small and micro business regulations may make provision—

(a) about the calculation of the headcount of staff, turnover and balance sheet total of an undertaking, including provision about the period ("assessment period") in respect of which they are to be calculated;

(b) for the headcount of staff, turnover and balance sheet total, or a proportion of such, of any undertaking which satisfies such conditions as may be prescribed in relation to another undertaking (the "principal undertaking") to be treated as part of the principal undertaking's headcount of staff, turnover and balance sheet total.

(2) Conditions which may be prescribed under subsection (1)(b) include, in particular, conditions relating to—

(a) the extent of ownership (whether direct or indirect) of one undertaking by one or more other undertakings;

(b) the degree of control exercised (whether directly or indirectly) by one or more undertakings over another.

(3) The small and micro business regulations may make provision about—

(a) the assessment period or periods in respect of which an undertaking must meet the small business size conditions or the micro business size conditions in order to be a small business or (as the case may be) micro business;

(b) the circumstances in which an undertaking which has been established for less than a complete assessment period is to be regarded as meeting the small business size conditions or the micro business size conditions.

(4) Provision made by virtue of subsection (3) may, in particular, provide that—

(a) an undertaking is a small business or a micro business if it meets the relevant size conditions in respect of each of its two most recent assessment periods;

(b) where there has been only one complete assessment period since an undertaking was established, the undertaking is a small business or a micro business if it meets the relevant size conditions in respect of that period;

(c) an undertaking which is a small business or a micro business does not cease to be such unless it fails to meet the relevant size conditions in respect of two consecutive assessment periods.

(5) The small and micro business regulations may make provision for one undertaking ("undertaking A") which satisfies such conditions as may be prescribed in relation to another undertaking ("undertaking B"), to be treated as being undertaking B (whether or not undertaking B is still in existence) for such purposes as may be prescribed.

(6) Conditions which may be prescribed under subsection (5) include, in particular, conditions relating to—

(a) the transfer of a business from undertaking B to undertaking A;

(b) the carrying on by undertaking A of a business on undertaking B ceasing to carry on the activities, or most of the activities, of which the business consists in consequence of arrangements involving both undertakings;

(c) the existence of some other connection between undertaking A and undertaking B.

(7) The purposes which may be prescribed under subsection (5) include, in particular—

(a) determining the date on which undertaking A was established (and so the number of assessment periods there have been since it was established);

(b) determining which periods are assessment periods in respect of undertaking A;

(c) calculating the headcount of staff, turnover and balance sheet total of undertaking A.

(8) The small and micro business regulations may provide that an undertaking of such description as may be prescribed is not a small business or a micro business even if it falls within the relevant definition.

(9) In this section—

"micro business size conditions", "small business size conditions" and "undertaking" have the same meanings as in section 33;

"prescribed" means prescribed in the small and micro business regulations.

Home businesses

35 Exclusion of home businesses from Part 2 of the Landlord and Tenant Act 1954

(1) Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business, professional and other tenants) is amended as follows.

(2) In section 23(4) (tenancies to which Part 2 applies) at the beginning insert "Subject to subsection (5),".

(3) After section 23(4) insert—

"(5) Where the tenant's breach of a prohibition (however expressed) of use for business purposes which subsists under the terms of the tenancy and extends to the whole of that property consists solely of carrying on a home business, this Part of this Act does not apply to the tenancy, even if the immediate landlord or the immediate landlord's predecessor in title has consented to the breach or the immediate landlord has acquiesced in the breach.

(6) In subsection (5) "home business" has the same meaning as in section 43ZA."

(4) After section 43 (tenancies excluded from Part 2), insert—

"**43ZA Further exclusion of home business tenancies from Part 2**

(1) This Part of this Act does not apply to a home business tenancy.

(2) A home business tenancy is a tenancy under which—

(a) a dwelling-house is let as a separate dwelling,

(b) the tenant or, where there are joint tenants, each of them, is an individual, and

(c) the terms of the tenancy—

(i) require the tenant or, where there are joint tenants, at least one of them, to occupy the dwelling-house as a home (whether or not as that individual's only or principal home),

(ii) permit a home business to be carried on in the dwelling-house, or permit the immediate landlord to give consent for a home business to be carried on in the dwelling-house, and

(iii) do not permit a business other than a home business to be carried on in the dwelling-house.

(3) The terms of a tenancy permit the carrying on of a home business if they permit the carrying on of a particular home business, a particular description of home business or any home business.

(4) A "home business" is a business of a kind which might reasonably be carried on at home.

(5) A business is not to be treated as a home business if it involves the supply of alcohol for consumption on licensed premises which form all or part of the dwelling-house.

(6) The appropriate national authority may by regulations prescribe cases in which businesses are, or are not, to be treated as home businesses.

(7) Regulations under this section—

(a) may include transitional or saving provision,

(b) may make different provision for different purposes,

(c) are to be made by statutory instrument,

(d) may not be made unless—

(i) in the case of regulations made by the Secretary of State, a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of each House of Parliament,

(ii) in the case of regulations made by the Welsh Ministers, a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the National Assembly for Wales.

(8) For the purposes of this section, a dwelling-house which is let for mixed residential and business use is capable of being let as a dwelling.

(9) If, under a tenancy, a dwelling-house is let together with other land, then, for the purposes of this section—

(a) if the main purpose of the letting is the provision of a home for the tenant, the other land is to be treated as part of the dwelling-house, and

(b) if the main purpose of the letting is not as mentioned in paragraph (a), the tenancy is to be treated as not being one under which a dwelling-house is let as a separate dwelling.

(10) In this section—

"the appropriate national authority" means—

(a) in relation to England, the Secretary of State, and

(b) in relation to Wales, the Welsh Ministers;

"dwelling-house" may be a house or part of a house;

"let" includes sub-let;

"licensed premises" has the same meaning as in the Licensing Act 2003 (see section 193 of that Act);

"supply of alcohol" has the same meaning as in the Licensing Act 2003 (see section 14 of that Act)."

(5) Subsections (1) to (4) do not apply to—

(a) a tenancy which is entered into before the day on which this section comes into force;

(b) a tenancy which is entered into on or after the day on which this section comes into force, pursuant to a contract made before that day;

(c) a tenancy which arises by operation of any enactment or other law when a tenancy mentioned in paragraph (a) or (b) comes to an end.

36 Section 35: supplementary and consequential provision

(1) In section 41 of the Landlord and Tenant Act 1954 (trusts), after subsection (2) insert—

"(3) Where a tenancy is held on trust, section 43ZA(2) has effect as if—

(a) paragraph (b) were omitted, and

(b) the condition in paragraph (c)(i) were a condition that the terms of the tenancy require at least one individual who is a trustee or a beneficiary under the trust to occupy the dwelling-house as a home (whether or not as that individual's only or principal home)."

(2) A dwelling-house which is let under a home business tenancy is to be regarded as being "let as a separate dwelling" for the purposes of—

(a) section 1 of the Rent Act 1977 (protected tenancies),

(b) section 79 of the Housing Act 1985 (secure tenancies),

(c) section 1 of the Housing Act 1988 (assured tenancies), and

(d) any other England and Wales enactment relating to protected, secure or assured tenancies.

(3) Subsections (1) and (2) do not apply to the tenancies mentioned in section 35(3)(5).

(4) Subsections (2) and (3) do not limit the circumstances in which a dwelling-house which is let under a home business tenancy is to be regarded as "let as a separate dwelling".

(5) In this section—

"enactment" includes provision made—

(a) under an Act, or

(b) by or under a Measure or Act of the National Assembly for Wales,

"England and Wales enactment" means any enactment so far as it forms part of the law of England and Wales,

"home business tenancy" has the same meaning as in section 43ZA of the Landlord and Tenant Act 1954.

CMA recommendations

37 CMA to publish recommendations on proposals for Westminster legislation

(1) Section 7 of the Enterprise Act 2002 (provision by CMA of information and advice to Ministers etc) is amended as follows.

(2) After subsection (1) insert—

"(1A) The CMA may, in particular, carry out the function under subsection (1)(a) by making a proposal in the form of a recommendation to a Minister of the Crown about the potential effect of a proposal for Westminster legislation on competition within any market or markets in the United Kingdom for goods or services.

(1B) The CMA must publish such a recommendation in such manner as the CMA considers appropriate for bringing the subject matter of the recommendation to the attention of those likely to be affected by it."

(3) After subsection (2) insert—

"(3) In this section—

"market in the United Kingdom" includes—

(a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory; and

(b) any market which operates only in a part of the United Kingdom;

and the reference to a market for goods or services includes a reference to a market for goods and services; and

"Westminster legislation" means—

(a) an Act of Parliament, or

(b) subordinate legislation (within the meaning given by section 21 of the Interpretation Act 1978)."

Liability of bodies concerned with accounting standards

38 Exemption from liability for bodies concerned with accounting standards etc

(1) After section 18 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 insert—

"**18A Power to confer exemption from liability**

(1) The Secretary of State may by order or regulations provide for the exemption from liability in subsections (3) and (4) to apply to specified bodies or persons (referred to in this section as "exempt persons").

(2) The order or regulations may provide for the exemption to apply subject to specified conditions or for a specified period.

(3) Neither the exempt person, nor any person who is (or is acting as) a member, officer or member of staff of the exempt person, is to be liable in damages for anything done, or omitted to be done, for the purposes of or in connection with—

(a) the carrying on of those section 16(2) activities of the exempt person that are specified in relation to that person, or

(b) the purported carrying on of any such activities.

(4) Subsection (3) does not apply—

(a) if the act or omission is shown to have been in bad faith, or

(b) so as to prevent an award of damages in respect of the act or omission on the grounds that it was unlawful as a result of section 6(1) of the Human Rights Act 1998 (acts of public authorities incompatible with Convention rights).

(5) In this section—

"section 16(2) activities" means activities concerned with any of the matters within section 16(2);

"specified" means specified in an order or regulations under this section.

(6) Orders and regulations under this section—

(a) are to be made by statutory instrument;

(b) may make different provision for different cases;

(c) may make transitional provision and savings.

(7) A statutory instrument containing an order or regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (8).

(8) An order or regulations under this section may be included in a statutory instrument which may not be made unless a draft of the instrument is laid before, and approved by a resolution of, each House of Parliament."

(2) Omit section 18 of that Act (exemption from liability for bodies to whom grants are paid).

(3) In section 66(2) of that Act (provisions extending to Northern Ireland) for "18" substitute "18A".

PART 3

PUBLIC SECTOR PROCUREMENT

39 Regulations about procurement

(1) The Minister for the Cabinet Office or the Secretary of State may by regulations impose on a contracting authority duties in respect of the exercise of its functions relating to procurement.

(2) For the purposes of this section "the exercise of functions relating to procurement" includes the exercise of functions in preparation for entering into contracts and in the management of contracts.

(3) Subject to subsection (4), "contracting authority" has the same meaning as in regulation 2 of the Public Contracts Regulations 2015 (S.I. 2015/102), or any regulation replacing that regulation, as from time to time amended.

(4) But such an authority is not a contracting authority for the purposes of this section if its functions are wholly or mainly devolved functions, namely—

(a) Scottish devolved functions, that is to say functions the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998);

(b) Northern Ireland devolved functions, that is to say 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), or

(c) Welsh devolved functions, that is to say functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006).

(5) Regulations under this section may, in particular, impose—

(a) duties to exercise functions relating to procurement in an efficient and timely manner;

(b) duties relating to the process by which contracts are entered into (including timescales and the extent and manner of engagement with potential parties to a contract);

(c) duties to make available without charge—

(i) information or documents;

(ii) any process required to be completed in order to bid for a contract;

(d) duties relating to the acceptance of invoices by electronic means (including a prohibition on the charging of fees for processing such invoices, the publication of reports relating to the number of such invoices received or the electronic systems that must be used by a contracting authority);

(e) duties to publish reports about compliance with the regulations.

(6) A person making regulations under this section must before making the regulations undertake such consultation as the person considers appropriate.

(7) The Minister for the Cabinet Office or the Secretary of State may issue guidance relating to regulations under this section.

(8) A contracting authority must have regard to any guidance for the time being in force under this section.

(9) Guidance or revised guidance given under this section must be published.

(10) Regulations under this section are subject to affirmative resolution procedure.

40 Investigation of procurement functions

(1) In this section "a Minister" means the Minister for the Cabinet Office or the Secretary of State.

(2) A Minister may investigate the exercise by a contracting authority of relevant functions relating to procurement.

(3) A Minister may by notice require a contracting authority to provide such documents or other information, in such form or manner as the Minister may direct, as the Minister may require for the purposes of an investigation under this section.

(4) A contracting authority must—

(a) give a Minister such assistance with an investigation as is reasonable in all the circumstances of the case;

(b) comply with a notice under subsection (3) before the end of the period of 30 days beginning with the day on which the notice is given.

(5) In this section—

"contracting authority" has the same meaning as in section 39, but does not include a Minister of the Crown or a government department;

"a relevant function relating to procurement" is a function to which—

(a) the Public Contracts Regulations 2006 (S.I. 2006/5) apply, disregarding for this purpose the operation of regulation 8 (thresholds),

(b) the Defence and Security Public Contracts Regulations 2011 (S.I. 2011/1848) apply, disregarding for this purpose the operation of regulation 9 (thresholds),

(c) the Public Contracts (Scotland) Regulations 2012 (S.S.I. 2012/88) apply, disregarding for this purpose the operation of regulation 8 (thresholds), or

(d) the Public Contracts Regulations 2015 (S.I. 2015/102) apply, disregarding for this purpose the operation of any financial threshold provided for by those regulations;

a reference to regulations includes a reference to any regulations replacing those regulations, as from time to time amended.

(6) An investigation under this section may also include an investigation of—

(a) preparations for the exercise of a relevant function relating to procurement, and

(b) the management of a contract entered into in the exercise of such a function.

(7) But the exercise of a function—

(a) by—

(i) the governing body of a maintained school (see section 19 of the of the Education Act 2002), or

(ii) a person who is the proprietor of an Academy (see section 17(4) of the Academies Act 2010 and section 579(1) of the Education Act 1996), or

(b) which is regulated by the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (S.I. 2013/500) (functions relating to the procurement of health care services for the purposes of the NHS),

may not be investigated under this section.

(8) A person conducting an investigation under this section may publish the results of the investigation.

PART 4

THE PUBS CODE ADJUDICATOR AND THE PUBS CODE

The Pubs Code Adjudicator

41 The Adjudicator

(1) A Pubs Code Adjudicator is established.

(2) Part 1 of Schedule 1 makes provision about the Adjudicator.

(3) Part 2 of that Schedule contains the Adjudicator's powers to require information.

(4) Part 3 of that Schedule contains amendments consequential on the establishment of the Adjudicator.

Pubs Code

42 Pubs Code

(1) The Secretary of State must, before the end of the period of one year beginning with the day on which this section comes into force, make regulations about practices and procedures to be followed by pub-owning businesses in their dealings with their tied pub tenants.

(2) In this Part the regulations are referred to as "the Pubs Code".

(3) The Secretary of State must seek to ensure that the Pubs Code is consistent with—

(a) the principle of fair and lawful dealing by pub-owning businesses in relation to their tied pub tenants;

(b) the principle that tied pub tenants should not be worse off than they would be if they were not subject to any product or service tie.

(4) The Pubs Code may, in particular—

(a) contain requirements as to the provision of information by pub-owning businesses to their tied pub tenants;

(b) require pub-owning businesses, in specified circumstances, to provide the following assessments in relation to their tied pub tenants—

(i) rent assessments, or

(ii) assessments of money payable by the tenant in lieu of rent;

(c) make provision about the information that such assessments must contain and how they are to be calculated and presented;

(d) specify that such assessments must be conducted in accordance with provisions of documents specified in the Pubs Code;

(e) where any document is specified for the purposes of paragraph (d), refer to the provisions of the document as amended from time to time;

(f) impose other obligations on pub-owning businesses in relation to their tied pub tenants.

(5) The Pubs Code may require pub-owning businesses to provide parallel rent assessments in relation to their tied pub tenants in specified circumstances, and in connection with such provision may —

(a) confer on the Adjudicator functions in relation to parallel rent assessments,

(b) require the payment of a fee by tied pub tenants to the Adjudicator in connection with the exercise of those functions, and

(c) make provision corresponding to that mentioned in subsection (4)(c), (d) and (e).

43 Pubs Code: market rent only option

(1) The Pubs Code must require pub-owning businesses to offer their tied pub tenants falling within section 70(1)(a) a market rent only option in specified circumstances.

(2) A "market rent only option" means the option for the tied pub tenant—

(a) to occupy the tied pub under a tenancy or licence which is MRO-compliant, and

(b) to pay in respect of that occupation—

(i) such rent as may be agreed between the pub-owning business and the tied pub tenant in accordance with the MRO procedure (see section 44), or

(ii) failing such agreement, the market rent.

(3) The Pubs Code may specify—

(a) circumstances in which a market rent only option must or may be an option to occupy under a tenancy;

(b) circumstances in which a market rent only option must or may be an option to occupy under a licence.

(4) A tenancy or licence is MRO-compliant if—

(a) taken together with any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence it—

(i) contains such terms and conditions as may be required by virtue of subsection (5)(a),

(ii) does not contain any product or service tie other than one in respect of insurance in connection with the tied pub, and

(iii) does not contain any unreasonable terms or conditions, and

(b) it is not a tenancy at will.

(5) The Pubs Code may specify descriptions of terms and conditions—

(a) which are required to be contained in a tenancy or licence for it to be MRO-compliant;

(b) which are to be regarded as reasonable or unreasonable for the purposes of subsection (4).

(6) Provision made under subsection (1) must include provision requiring a pub-owning business to offer a tied pub tenant a market rent only option—

(a) in connection with the renewal of any of the pub arrangements;

(b) in connection with a rent assessment or assessment of money payable by the tenant in lieu of rent;

(c) in connection with a significant increase in the price at which any product or service which is subject to a product or service tie is supplied to the tied pub tenant where the increase was not reasonably foreseeable—

(i) when the tenancy or licence was granted, or

(ii) if there has been an assessment of a kind mentioned in paragraph (b), when the last assessment was concluded;

(d) after a trigger event has occurred.

(7) The Pubs Code may specify what "renewal" means in relation to a tenancy or a licence for the purposes of subsection (6).

(8) In subsection (6) "pub arrangements", in relation to a tied pub, means—

(a) the tenancy or licence under which the tied pub is occupied, and

(b) any other contractual agreement which contains an obligation by virtue of which condition D in section 68 is met in relation to the premises.

(9) In this Part a "trigger event", in relation to a tied pub tenant, means an event which—

(a) is beyond the control of the tied pub tenant,

(b) was not reasonably foreseeable as mentioned in subsection (6)(c),

(c) has a significant impact on the level of trade that could reasonably be expected to be achieved at the tied pub, and

(d) is of a description specified in the Pubs Code.

(10) In this Part "market rent", in relation to the occupation of particular premises under a tenancy or licence which is MRO-compliant, means the estimated rent which it would be reasonable to pay in respect of that occupation on the following assumptions—

(a) that the tenancy or licence concerned is entered into—

(i) on the date on which the determination of the estimated rent is made,

(ii) in an arm's length transaction,

(iii) after proper marketing, and

(iv) between parties each of whom has acted knowledgeably, prudently and willingly, and

(b) that condition B in section 68 continues to be met.

44 Market rent only option: procedure

(1) The Pubs Code may—

(a) make provision about the procedure to be followed in connection with an offer of a market rent only option (referred to in this Part as "the MRO procedure");

(b) confer functions on the Adjudicator in connection with that procedure.

(2) Provision made under subsection (1) may, in particular—

(a) make provision for the tied pub tenant to give notice to the pub-owning business that the tenant—

(i) considers that circumstances are such that the pub-owning business is required to offer the tenant a market rent only option, and

(ii) wishes to receive such an offer;

(b) specify a reasonable period ("the negotiation period") during which the pub-owning business and the tied pub tenant may seek to agree the rent to be payable in respect of the tied pub tenant's occupation of the premises concerned under the proposed MRO-compliant tenancy or licence;

(c) require the appointment of a person (referred to in this Part as an "independent assessor") to determine the market rent of the premises concerned in a case where, at the end of the negotiation period, the pub-owning business and the tied pub tenant have not reached agreement as mentioned in paragraph (b);

(d) require that appointment to be made by the pub-owning business and the tied pub tenant acting jointly or (where they cannot agree on a person to appoint) by the Adjudicator;

(e) require the Adjudicator to set criteria which a person must satisfy in order to be appointed as an independent assessor;

(f) require that the market rent must be determined by the independent assessor within a specified reasonable period;

(g) specify that the determination of the market rent by the independent assessor must be conducted in accordance with provisions of documents specified in the Pubs Code;

(h) where any document is specified for the purposes of paragraph (g), refer to the provisions of the document as amended from time to time.

(3) The Pubs Code may make provision for—

(a) the tenancy or licence under which the tied pub is occupied, and

(b) any other contractual agreement entered into by the tied pub tenant with the pub-owning business in connection with the tenancy or licence,

as they are in force when a notice is given by virtue of subsection (2)(a), to continue to have effect until such time as the MRO procedure has come to an end (regardless of whether any of the agreements would or could otherwise cease to have effect before that time).

(4) The Pubs Code may, for the purposes of subsection (3), specify the circumstances in which the MRO procedure is to be treated as having come to an end.

45 Market rent only option: disputes

(1) The Secretary of State may by regulations confer functions on the Adjudicator in connection with the resolution of disputes relating to the offer of a market rent only option.

(2) The regulations may, in particular, make provision concerning the resolution of disputes about whether—

(a) circumstances are such that a pub-owning business is required to offer a tied pub tenant a market rent only option;

(b) a proposed tenancy or licence is MRO-compliant;

(c) a determination of the market rent of a tenancy or licence made by an independent assessor has been made in accordance with the Pubs Code;

(d) any other requirement of the MRO procedure has been complied with.

(3) The regulations may, in particular, confer on the Adjudicator the function of determining the market rent of a tenancy or licence in such circumstances as may be specified in the regulations.

(4) Nothing in sections 48 to 52 applies in relation to provision made by virtue of section 43 or 44 but the regulations may include provision which is similar to that contained in or made under those sections.

46 Review of Pubs Code

(1) The Secretary of State must review the operation of the Pubs Code for each review period.

(2) The first review period is the period beginning on the date on which the Pubs Code comes into force and ending 2 years after the following 31 March.

(3) Subsequent review periods are each successive period of 3 years after the first review period.

(4) 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.

(5) In particular, the report must set out—

(a) the extent to which, in the Secretary of State's opinion, the Pubs Code is consistent with the principles set out in section 42(3), and

(b) any revisions of the Pubs Code which, in the Secretary of State's opinion, would enable the Pubs Code to reflect more fully those principles.

47 Inconsistency with Pubs Code etc

(1) The Secretary of State may by regulations make provision about terms of a tenancy or other agreement between a pub-owning business and a tied pub tenant—

(a) which are inconsistent with the Pubs Code,

(b) which purport to penalise the tenant for requiring the business to act, or not act, in accordance with any provision of the Pubs Code with which the business is bound to comply,

(c) which purport to provide that a rent assessment or assessment of money payable by the tenant in lieu of rent in relation to the tied pub—

(i) may be initiated only by the business, or

(ii) may only determine that the rent or money payable in lieu of rent is to be increased.

(2) The regulations may include provision about the effect of a term of a tenancy or other agreement being void or unenforceable as a result of the regulations.

(3) Regulations under subsection (1) may make provision about terms of tenancies or other agreements entered into before the date on which the regulations come into force.

(4) A term of any agreement between a pub-owning business and a tied pub tenant is void to the extent that it purports to—

(a) prevent the tenant from referring a dispute to the Adjudicator for arbitration in accordance with regulations under section 45 or in accordance with section 48, or

(b) penalise the tenant for making such a referral.

(5) A term of an arbitration agreement between a pub-owning business and a tied pub tenant is unenforceable to the extent that it is inconsistent with—

(a) regulations under section 45,

(b) section 50,

(c) section 51, or

(d) regulations under section 51(7).

(6) Subsections (4) and (5) apply to agreements entered into before the date on which those subsections come into force, as well as those entered into on or after that date.

(7) The Secretary of State may by regulations make provision about the effect of a term of an agreement being void or unenforceable as a result of subsection (4) or (5).

Arbitration by Adjudicator

48 Referral for arbitration by tied pub tenants

(1) In accordance with the following provisions of this section and section 49, a tied pub tenant may refer a dispute between the tenant and the pub-owning business concerned to the Adjudicator for arbitration.

(2) If the Pubs Code specifies that particular provisions of the Pubs Code are arbitrable, a dispute may be referred to the Adjudicator only to the extent that it relates to an allegation by the tenant that the pub-owning business has failed to comply with an arbitrable provision of the Pubs Code.

(3) If the Pubs Code specifies that particular provisions of the Pubs Code are not arbitrable, a dispute may be referred to the Adjudicator only to the extent that it relates to an allegation by the tenant that the pub-owning business has failed to comply with any other provision of the Pubs Code.

(4) If the Pubs Code does not specify whether any of its provisions are arbitrable or not arbitrable, a dispute may be referred to the Adjudicator only to the extent that it relates to an allegation by the tenant that the pub-owning business has failed to comply with any provision of the Pubs Code.

(5) Where a dispute is referred for arbitration under this section, the Adjudicator must either—

(a) arbitrate the dispute, or

(b) appoint another person to arbitrate the dispute.

49 Timing of referral for arbitration by tied pub tenants

(1) This section makes provision as to the period within which a tied pub tenant may refer a dispute to the Adjudicator in accordance with section 48.

(2) Except in the case mentioned in subsection (3), the dispute may not be referred until after the expiry of the period of 21 days beginning with the date on which the tenant notifies the pub-owning business of the alleged non-compliance.

(3) Where the Pubs Code requires a pub-owning business to provide a parallel rent assessment within a period of time specified by the Adjudicator, a dispute which relates to an allegation that the pub-owning business has failed to comply with that requirement may not be referred until the day after the day on which the specified period ends.

(4) In all cases, a dispute may not be referred after the expiry of the period of 4 months beginning with the first date on which the dispute could have been referred.

50 Arbitration commenced by pub-owning businesses

(1) This section applies where—

(a) there is an arbitration agreement between a tied pub tenant and a pub-owning business, and

(b) the business commences arbitral proceedings about a matter which is, or which includes, a Pubs Code dispute between the business and the tenant.

(2) In this section a "Pubs Code dispute" means a dispute—

(a) which relates to an allegation by the tied pub tenant that the pub-owning business has failed to comply with a provision of the Pubs Code, and

(b) which the tenant would have been able to refer for arbitration by the Adjudicator in accordance with section 48 (were it not for the commencement of arbitral proceedings by the business).

(3) Subsection (4) applies where—

(a) in accordance with the arbitration agreement, the Adjudicator is appointed to arbitrate the Pubs Code dispute, or

(b) the tied pub tenant wishes the Adjudicator to be appointed to arbitrate that dispute, and has given notice to that effect in accordance with subsections (5) to (7).

(4) The Adjudicator must either—

(a) arbitrate the Pubs Code dispute, or

(b) appoint another person to arbitrate that dispute.

(5) Notice under subsection (3)(b) must be given in writing to—

(a) the pub-owning business, and

(b) the Adjudicator.

(6) In a case where the arbitration agreement provides for the arbitrator to be appointed by a person other than the pub-owning business or the tied pub tenant, notice under subsection (3)(b) must be given within 21 days beginning with the date on which that person notifies the tenant of the person proposed to be appointed as arbitrator.

(7) In any other case, notice under subsection (3)(b) must be given within 21 days beginning with the date on which arbitral proceedings commenced.

(8) Section 14 of the Arbitration Act 1996 makes provision about the commencement of arbitral proceedings.

51 Arbitration: supplementary

(1) Subsection (2) applies where a tied pub tenant—

(a) refers a dispute to the Adjudicator under section 48, or

(b) gives notice as mentioned in section 50(3)(b) that the tenant wishes the Adjudicator to be appointed to arbitrate a dispute.

(2) The tenant must pay a fee to the Adjudicator of an amount prescribed in regulations made by the Secretary of State (except in specified cases as mentioned in subsection (3)(b)).

(3) The regulations may make further provision as to the fee, and may in particular—

(a) specify when the fee must be paid,

(b) specify cases in which the tenant is not required to pay the fee,

(c) specify cases in which the fee is to be refunded to the tenant.

(4) The following subsections apply in all cases where the Adjudicator or a person appointed by the Adjudicator arbitrates a dispute.

(5) Except where this Part makes different provision, the arbitration must be conducted in accordance with—

(a) the rules regarding arbitrations issued from time to time by the Chartered Institute of Arbitrators, or

(b) the rules of another dispute resolution body nominated by the arbitrator.

(6) The pub-owning business concerned must pay the reasonable fees and expenses of the arbitrator in respect of the arbitration, except where—

(a) the arbitration follows a referral by the tenant under section 48, and

(b) the arbitrator concludes that the referral was vexatious.

(7) The Secretary of State may by regulations make provision in relation to the costs payable by a tied pub tenant in respect of the arbitration, and the regulations may in particular—

(a) provide that those costs are limited to an amount prescribed in, or to be determined in accordance with, the regulations, and

(b) specify circumstances in which the arbitrator may make an award requiring the tenant to pay costs exceeding that amount.

52 Information about arbitration

(1) If the Adjudicator appoints another person as arbitrator under section 48(5)(b) or 50(4)(b), the Adjudicator may require the arbitrator, or the pub-owning business and tied pub tenant concerned, to provide information to assist the Adjudicator in carrying out functions under this Part.

(2) The Adjudicator may enforce the requirement to provide information by bringing civil proceedings to obtain an injunction.

Investigations by Adjudicator

53 Investigations

(1) The Adjudicator may investigate whether a pub-owning business has failed to comply with the Pubs Code if the Adjudicator has reasonable grounds to suspect that—

(a) the business has failed to comply with the Pubs Code, or

(b) the business has failed to follow a recommendation made under section 56.

(2) The Adjudicator may not carry out an investigation until the guidance required by section 61(1) has been published.

54 Investigation reports

(1) Following an investigation, the Adjudicator must—

(a) publish a report on the outcome of the investigation, and

(b) consider whether to use any of the enforcement powers mentioned in section 55.

(2) An investigation report must, in particular, specify—

(a) any findings that the Adjudicator has made,

(b) any action that the Adjudicator has taken or proposes to take, and

(c) the reasons for the findings and any action taken or proposed.

(3) An investigation report need not identify the pub-owning business concerned.

(4) If a pub-owning business is identified in a report, the business must have been given a reasonable opportunity to comment on a draft of the report before publication.

55 Forms of enforcement

(1) If, as a result of an investigation, the Adjudicator is satisfied that a pub-owning business has failed to comply with the Pubs Code, or has failed to follow a recommendation made under section 56, the Adjudicator may take one or more of the following enforcement measures—

(a) make recommendations;

(b) require information to be published;

(c) impose financial penalties.

(2) Where an investigation concerns two or more pub-owning businesses, the Adjudicator may decide—

(a) to take different enforcement measures against different businesses,

(b) not to take any enforcement measures against one or more of the businesses.

56 Recommendations

(1) If the Adjudicator chooses to enforce through making recommendations, that means recommending what the pub-owning business should do in order to comply with the Pubs Code, and specifying the time by which the business should do it.

(2) The Adjudicator must monitor whether a recommendation has been followed.

57 Requirements to publish information

(1) If the Adjudicator chooses to enforce through requiring information to be published, that means requiring the pub-owning business to publish information relating to the investigation.

(2) The publication requirement is imposed by giving the pub-owning business written notice specifying—

(a) what information is to be published,

(b) how it must be published, and

(c) the time by which it must be published.

(3) The Adjudicator may enforce the requirement to publish information by bringing civil proceedings to obtain an injunction or any other appropriate remedy or relief.

58 Financial penalties

(1) If the Adjudicator chooses to enforce through imposing financial penalties, that means imposing a penalty on the pub-owning business of an amount not exceeding the permitted maximum (see subsection (6)).

(2) The financial penalty is imposed by giving the pub-owning business written notice specifying—

(a) the grounds for imposing the penalty,

(b) the amount of the penalty,

(c) the period within which it must be paid, and

(d) how it must be paid.

(3) The pub-owning business may appeal to the High Court against—

(a) the imposition of a financial penalty, or

(b) its amount.

(4) Financial penalties under this section are recoverable by the Adjudicator as a debt.

(5) Financial penalties received by the Adjudicator must be paid into the Consolidated Fund.

(6) The Secretary of State must make regulations—

(a) specifying the permitted maximum, or

(b) specifying how the permitted maximum is to be determined.

59 Recovery of investigation costs

(1) The Adjudicator may require a pub-owning business to pay some or all of the costs of an investigation (including any costs incurred in exercising the enforcement powers) if satisfied that—

(a) the business has failed to comply with the Pubs Code, or

(b) the business has failed to follow a recommendation made under section 56.

(2) The Adjudicator may require a person to pay some or all of the costs of an investigation if—

(a) the Adjudicator carried out the investigation as a result of a complaint by the person, and

(b) the Adjudicator is satisfied that the complaint was vexatious or wholly without merit.

(3) A requirement to pay costs is imposed by giving written notice specifying—

(a) the grounds for imposing the requirement to pay costs,

(b) how much is to be paid,

(c) by when the costs are to be paid, and

(d) how they are to be paid.

(4) A person required to pay costs under this section may appeal to the High Court against—

(a) the imposition of the requirement, or

(b) the amount to which it relates.

(5) Costs required to be paid under this section are recoverable by the Adjudicator as a debt.

Advice and guidance by Adjudicator

60 Advice

The Adjudicator may give advice on any matter relating to the Pubs Code to—

(a) tied pub tenants,

(b) any organisation representing the interests of tied pub tenants,

(c) pub-owning businesses,

(d) any organisation representing the interests of pub-owning businesses.

61 Guidance

(1) The Adjudicator must publish guidance about—

(a) the criteria that the Adjudicator intends to adopt in deciding whether to carry out investigations,

(b) the practices and procedures that the Adjudicator intends to adopt in carrying out investigations,

(c) the criteria that the Adjudicator intends to adopt in choosing whether to use the enforcement powers and which ones, and

(d) the criteria that the Adjudicator intends to adopt in deciding the amount of any financial penalty under section 58.

(2) In addition, the Adjudicator may publish guidance about the practices and procedures that the Adjudicator intends to adopt in carrying out other functions.

(3) The Adjudicator may publish guidance about—

(a) the application of any provision of the Pubs Code;

(b) steps that pub-owning businesses need to take in order to comply with the Pubs Code;

(c) any other matter relating to the Pubs Code.

(4) Before publishing guidance under this section, the Adjudicator must consult any persons the Adjudicator thinks appropriate.

(5) The Adjudicator must publish the first guidance under subsection (1)(a), (b), (c) and (d) within 6 months beginning with the day on which section 41 comes into force.

(6) Where there is any guidance in force under this section, the Adjudicator must take account of it in carrying out functions.

Adjudicator's reporting requirements

62 Annual report

(1) After the end of each reporting period, the Adjudicator must prepare and publish a report describing what the Adjudicator has done during the period.

(2) The report must include a summary of—

(a) arbitrations conducted by the Adjudicator,
(b) investigations carried out by the Adjudicator,
(c) cases in which the Adjudicator has taken the enforcement measures mentioned in section 55, and
(d) cases in which the Adjudicator has exercised functions in relation to the offer of a market rent only option or the provision of parallel rent assessments.

(3) If the Adjudicator has made recommendations under section 56, the report must include an assessment of whether they have been followed.

(4) As well as publishing the report, the Adjudicator must send a copy to the Secretary of State.

(5) The Secretary of State must lay a copy of the report before Parliament.

(6) In this section "reporting period" means—
(a) the period beginning with the day on which section 41 comes into force and ending with the following 31 March, and
(b) each successive period of 12 months.

Funding of Adjudicator

63 Levy funding

(1) The Adjudicator may require pub-owning businesses to pay in each financial year a levy towards the Adjudicator's expenses.

(2) Before imposing a levy, the Adjudicator must obtain the Secretary of State's consent.

(3) In deciding the amount of a levy, the Adjudicator must take into account any sums received or expected to be received from other sources.

(4) The Adjudicator may take into account estimated as well as actual expenses.

(5) The Adjudicator may require different pub-owning businesses or different descriptions of pub-owning businesses to pay different amounts of levy, but any differences must be based on criteria broadly intended to reflect the expense and time that the Adjudicator expects to spend in dealing with matters relating to different pub-owning businesses.

(6) The Adjudicator must inform each pub-owning business of—
(a) the amount of any levy payable by the business,
(b) when payments are due, and
(c) how the levy is to be paid.

(7) A levy required to be paid under this section is recoverable by the Adjudicator as a debt.

(8) The Adjudicator must publish details of levies and an explanation of how the amounts have been decided (including any criteria under subsection (5)).

(9) If the Adjudicator has a surplus, the Adjudicator may repay some or all of it to pub-owning businesses.

(10) In subsection (9) "surplus" means money held by the Adjudicator at the end of a financial year less liabilities shown in the Adjudicator's statement of accounts for that financial year.

64 Loans by Secretary of State

The Secretary of State may make loans to the Adjudicator.

Supervision of Adjudicator

65 Review of Adjudicator and guidance from Secretary of State

(1) The Secretary of State must review the Adjudicator's performance for each review period.

(2) The first review period is the period beginning on the day on which section 41 comes into force and ending 2 years after the following 31 March.

(3) Subsequent review periods are each successive period of 3 years after the first review period.

(4) A review must, in particular, assess how effective the Adjudicator has been in enforcing the Pubs Code.

(5) A review may consider whether it would be desirable to amend or replace any regulations for the time being in force under section 51(2) or (7) or 58(6).

(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.

(7) As a result of the findings of a review, the Secretary of State may give guidance to the Adjudicator about any matter relating to the Adjudicator's functions.

(8) The Adjudicator must take account of the guidance in carrying out functions.

66 Abolition of Adjudicator

(1) The Secretary of State may by regulations abolish the Adjudicator—
- (a) if, as a result of the findings of a review, the Secretary of State is satisfied that the Adjudicator has not been sufficiently effective in securing compliance with the Pubs Code to justify the continued existence of an Adjudicator,
- (b) if, as a result of the findings of a review, the Secretary of State is satisfied that it is no longer necessary for there to be an Adjudicator to secure compliance with the Pubs Code, or
- (c) if the Pubs Code is revoked and not replaced.

(2) The regulations may include provision transferring the Adjudicator's property, rights and liabilities.

(3) For the purpose of giving effect to the abolition of the Adjudicator, the regulations may amend or repeal this Part or any other enactment, including an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.

67 Information to Secretary of State

The Secretary of State may require the Adjudicator to provide information to assist the Secretary of State in carrying out functions under this Part.

Supplementary

68 "Tied pub"

(1) In this Part a "tied pub" means premises in relation to which conditions A to D are met.

(2) Condition A is that the premises have a premises licence authorising the retail sale of alcohol for consumption on the premises.

(3) Condition B is that the main activity or one of the main activities carried on at the premises is the retail sale of alcohol to members of the public for consumption on the premises.

(4) Condition C is that the premises are occupied under a tenancy or licence.

(5) Condition D is that the tenant or licensee of the premises is subject to a contractual obligation that some or all of the alcohol to be sold at the premises is supplied by—

(a) the landlord or a person who is a group undertaking in relation to the landlord, or

(b) a person nominated by the landlord or by a person who is a group undertaking in relation to the landlord.

(6) But condition D is not met if the contractual obligation is a stocking requirement.

(7) The contractual obligation is a stocking requirement if—

(a) it relates only to beer or cider (or both) produced by the landlord or by a person who is a group undertaking in relation to the landlord,

(b) it does not require the tied pub tenant to procure the beer or cider from any particular supplier, and

(c) it does not prevent the tied pub tenant from selling at the premises beer or cider produced by a person not mentioned in paragraph (a) (whether or not it restricts such sales).

(8) In subsection (7), "beer" and "cider" have the same meanings as in the Alcoholic Liquor Duties Act 1979 (see section 1 of that Act).

(9) In this section—

"alcohol" has the meaning given by section 191 of the Licensing Act 2003;

"premises licence" has the same meaning as in that Act.

69 "Pub-owning business"

(1) A person is a "pub-owning business" for the purposes of this Part—

(a) in the period beginning with the day on which the Pubs Code comes into force and ending with the following 31 March, if immediately before the Pubs Code comes into force the person was the landlord of 500 or more tied pubs;

(b) in any subsequent financial year, if for a period of at least 6 months in the previous financial year the person was the landlord of 500 or more tied pubs.

(2) For the purposes of calculating the number of tied pubs of which a person ("L") is the landlord, any tied pub the landlord of which is a person who is a group undertaking in relation to L is treated as a tied pub of which L is the landlord.

(3) A person not falling within subsection (1) and who is the landlord of a tied pub occupied by a tied pub tenant who has extended protection in relation to that tied pub is also a pub-owning business for the purposes of this Part in relation to that occupation.

(4) A tied pub tenant has "extended protection in relation to a tied pub" if—

(a) the tenant occupies the tied pub under a tenancy or licence at a time when the landlord is a person who is a pub-owning business by virtue of subsection (1), and

(b) before the end of that tenancy or licence the landlord is no longer such a person (whether because of a transfer of title or because the landlord ceases to fall within subsection (1)).

(5) But a tied pub tenant ceases to have "extended protection in relation to a tied pub" on the earlier of—

(a) the end of the tenancy or licence concerned, and

(b) the conclusion of the first rent assessment or assessment of money payable in lieu of rent to be provided after the landlord is no longer a person who is a pub-owning business by virtue of subsection (1).

(6) The Secretary of State may for the purposes of subsections (4) and (5) by regulations specify—

(a) when a tenancy or licence ends;

(b) when a rent assessment or assessment of money payable in lieu of rent is concluded.

(7) Nothing in sections 43 to 45 and sections 53 to 59 has effect in relation to a person who is a pub-owning business by virtue of subsection (3).

(8) The Secretary of State may by regulations specify circumstances in which a person who is a group undertaking in relation to a pub-owning business—

(a) is to be treated, or

(b) may if the Adjudicator so determines be treated,

as a pub-owning business (as well as or instead of any other person) for the purposes of any provision of or made under this Part.

(9) The Secretary of State may by regulations—

(a) amend subsection (1)(a) or (b) so as to substitute a different number of tied pubs, or a different period, from the number or period for the time being specified there,

(b) make provision in relation to the calculation of the number of tied pubs, whether by amending subsection (2) or otherwise.

70 "Tied pub tenant", "landlord", "tenancy" and "licence"

(1) In this Part a "tied pub tenant" means a person—

(a) who is the tenant or licensee of a tied pub, or

(b) who is a party to negotiations relating to the prospective tenancy of or licence to occupy premises which are, or on completion of the negotiations are expected to be, a tied pub.

(2) In this Part—

"landlord" means—

(a) in relation to a tied pub occupied under a tenancy, the immediate landlord, or

(b) in relation to a tied pub occupied under a licence, the licensor;

"licence" means a licence to occupy premises; and "licensee" is to be construed accordingly;

"tenancy" means a tenancy created either immediately or derivatively out of the freehold, whether—

(a) by a lease or sub-lease,

(b) by an agreement for a lease or sub-lease,

(c) by a tenancy agreement or sub-tenancy agreement, or

(d) in pursuance of a provision of, or made under, an Act,

and includes a tenancy at will.

(3) Where two or more persons jointly constitute either the landlord or the tied pub tenant, any reference in this Part to the landlord or to the tied pub tenant is a reference to both or all of the persons who jointly constitute the landlord or the tied pub tenant, as the case may require.

71 Power to grant exemptions from Pubs Code

(1) The Secretary of State may by regulations provide that the Pubs Code does not, or specified provisions of the Pubs Code do not, apply in relation to—

(a) the dealings of pub-owning businesses—

(i) with tied pub tenants of a specified description, or

(ii) in relation to tied pubs of a specified description;

(b) the dealings of a specified pub-owning business or pub-owning businesses of a specified description—

(i) with their tied pub tenants or tied pub tenants of a specified description, or

(ii) in relation to their tied pubs or tied pubs of a specified description.

(2) Regulations under subsection (1) may, in particular, specify a description of pub-owning businesses or tied pub tenants by reference to—

(a) the nature of the tenancy or licence, or

(b) the nature of any other contractual agreement entered (or to be entered) into by the tied pub tenant with the pub-owning business, or a person nominated by that business, in connection with the tenancy or licence.

(3) The regulations may provide for circumstances in which a tied pub of a specified description is to be disregarded for the purposes of determining under section 69 whether a person is a pub-owning business.

(4) In this section "specified" means specified in regulations.

72 Interpretation: other provision

(1) In this Part—

"the Adjudicator" means the Pubs Code Adjudicator;

"arbitration agreement" has the same meaning as in section 6 of the Arbitration Act 1996;

"financial year" means a period of 12 months beginning with 1 April and ending with 31 March;

"group undertaking" has the meaning given by section 1161 of the Companies Act 2006;

"independent assessor" has the meaning given by section 44;

"market rent" and "market rent only option" have the meanings given by section 43;

"MRO procedure" has the meaning given by section 44;

"MRO-compliant", in relation to a tenancy or licence, has the meaning given by section 43;

"parallel rent assessment" has such meaning as may be prescribed in regulations made by the Secretary of State;

"product or service tie" means a product tie or a service tie;

"product tie" means any contractual obligation, other than a stocking requirement, of a tied pub tenant that a product to be sold at the tied pub must be supplied by—

(a) the landlord of the tied pub or a person who is a group undertaking in relation to the landlord, or

(b) a person nominated by the landlord or by a person who is group undertaking in relation to the landlord;

"the Pubs Code" means the regulations under section 42;

"service tie" means any contractual obligation of a tied pub tenant to receive a service supplied by—

(a) the landlord of the tied pub or a person who is a group undertaking in relation to the landlord, or

(b) a person nominated by the landlord or by a person who is a group undertaking in relation to the landlord;

"stocking requirement" has the meaning given by section 68.

(2) In this Part, references to "rent", in relation to a licence to occupy, are to be read as references to the fee payable in respect of the licence.

73 Regulations under this Part

(1) Subject to subsection (2), regulations under this Part are subject to affirmative resolution procedure.

(2) Regulations under section 66(1)(c) are subject to negative resolution procedure.

(3) If a draft of an instrument containing regulations under section 71 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed as if it were not such an instrument.

PART 5

CHILDCARE AND SCHOOLS

74 Funding for free of charge early years provision

(1) In section 13A of the Childcare Act 2006 (supply of information: free of charge early years provision)—

(a) in subsection (3), after "provision" insert "or for funding related to free of charge early years provision";

(b) in subsection (6), after "provision" insert "or for funding related to free of charge early years provision".

(2) In section 13B of that Act (unauthorised disclosure of information received under section 13A), in subsection (2)(b), after "provision" insert "or for funding related to free of charge early years provision".

75 Exemption from requirement to register as early years provider

(1) In section 34(2) of the Childcare Act 2006 (requirement to register: other early years providers) for "three" substitute "two".

(2) In section 40(1)(b) of that Act (duty to implement Early Years Foundation Stage) for "3" substitute "2".

(3) In section 63(3) of that Act (applications for registration on the general register)—

(a) in the words before paragraph (a), for "three" substitute "two";

(b) in paragraph (c) (as it has effect prior to the coming into force of paragraph 35(4) of Schedule 1 to the Education and Skills Act 2008) for "three" substitute "two".

(4) In section 99(1)(b) of that Act (provision of information about young children: England) for "3" substitute "2".

(5) In section 94(5)(b) of the Education and Skills Act 2008 (independent educational institution standards) for "three" substitute "two".

76 Childminding other than on domestic premises

(1) Section 96 of the Childcare Act 2006 (meaning of early years and later years provision etc.) is amended in accordance with subsections (2) to (5).

(2) In subsection (4) (definition of "early years childminding")—

(a) omit "on domestic premises", and

(b) after "reward" insert ", where at least half of the provision is on domestic premises".

(3) In subsection (5) (exception to subsection (4))—

(a) for "on domestic premises for reward" substitute "which would otherwise fall within subsection (4)", and

(b) omit "on the premises".

(4) In subsection (8) (definition of "later years childminding")—

(a) omit "on domestic premises", and
(b) after "reward" insert ", where at least half of the provision is on domestic premises".

(5) In subsection (9) (exception to subsection (8))—
(a) for "on domestic premises for reward" substitute "which would otherwise fall within subsection (8)", and
(b) omit "on the premises".

(6) In section 34 of that Act (requirement to register: other early years providers)—
(a) after subsection (1) insert—

"(1ZA) Subsection (1) does not apply in relation to early years provision—
(a) if it is early years childminding in respect of which the person providing it is required to be registered under section 33(1), or
(b) if it would be early years childminding but for section 96(5) and in respect of which the person providing it is required to be registered under subsection (1A).", and
(b) in subsection (1A) omit "on domestic premises".

(7) In section 53 of that Act (requirement to register: other later years providers)—
(a) after subsection (1) insert—

"(1ZA) Subsection (1) does not apply in relation to later years provision—
(a) if it is later years childminding in respect of which the person providing it is required to be registered under section 52(1), or
(b) if it would be later years childminding but for section 96(9) and in respect of which the person providing it is required to be registered under subsection (1A).", and
(b) in subsection (1A) omit "on domestic premises".

77 Registration of childcare: premises

Schedule 2 makes amendments for the purpose of removing the requirement for certain childcare providers to be registered under the Childcare Act 2006 in respect of each premises from which they operate.

PART 6

EDUCATION EVALUATION

78 Assessments of effectiveness

(1) Part 3 of the Education and Skills Act 2008 is amended as follows.

(2) In section 87 (benefit and training information)—
(a) in each of subsections (2)(a) and (3)(a) omit "who has attained the age of 19";
(b) in subsection (3)(c) omit "(whether before or after the individual attained the age of 19)";

(c) in subsection (4)(a) omit "provided for persons who have attained the age of 19";

(d) in subsection (4)(b) and (c) omit "such", in each place.

(3) Omit section 91(6) (references to training or education do not include references to higher education).

(4) In consequence of the amendments made by subsections (1) to (3)—

(a) for the Part heading substitute "Assessments of effectiveness of education and training etc";

(b) omit the italic heading before section 87.

79 Qualifications

(1) After section 253 of the Apprenticeships, Skills, Children and Learning Act 2009 insert—

"Qualifications

253A Qualifications

(1) A person in England may, in prescribed circumstances, provide student information of a prescribed description to—

(a) the Secretary of State,

(b) an information collator,

(c) a prescribed person, or

(d) a person falling within a prescribed category.

(2) A person in Wales may, in prescribed circumstances, provide student information of a prescribed description to—

(a) the Welsh Ministers,

(b) an information collator,

(c) a prescribed person, or

(d) a person falling within a prescribed category.

(3) In subsection (2) "prescribed" means prescribed in regulations made by the Welsh Ministers.

(4) Subject to subsection (5)(a), information received under or by virtue of this section is not to be published in any form which identifies the individual to whom it relates.

(5) This section—

(a) does not affect any power to provide or publish information which exists apart from this section, and

(b) is subject to any express restriction on the provision of information imposed by another enactment.

(6) In this section—

"information collator" means any body which, for the purposes of or in connection with functions of the Secretary of State or the

Welsh Ministers, is responsible for collating or checking information relating to regulated qualifications or relevant qualifications;

"regulated qualification" has the meaning given by section 130(1);

"relevant qualification" has the meaning given by section 30(5) of the Education Act 1997;

"student information" means information (whether obtained under this section or otherwise) relating to an individual who is seeking or has sought to obtain, or has obtained, a regulated qualification or a relevant qualification".

(2) In section 262 of the Apprenticeships, Skills, Children and Learning Act 2009 (orders and regulations)—

(a) in subsection (1) (orders and regulations to be made by statutory instrument etc) after "Part 3 or 4" insert ", or section 253A", and

(b) in subsection (9) (statutory instruments which are subject to annulment in pursuance of a resolution of the National Assembly for Wales if containing regulations etc made by the Welsh Ministers) for "or 107" substitute ", 107 or 253A".

80 Destinations

Before section 50 of the Further and Higher Education Act 1992 insert—

"**49B Destinations**

(1) The Secretary of State may provide destination information to the governing body of an institution in England within the further education sector.

(2) The Welsh Ministers may provide destination information to the governing body of an institution in Wales within the further education sector.

(3) In this section "destination information", in relation to an institution, means information which—

(a) relates to a former student of the institution, and

(b) includes information as to prescribed activities of the former student after leaving the institution.

(4) Regulations under subsection (3)(b) which prescribe activities as to which the Welsh Ministers may provide information are to be made by the Welsh Ministers.

(5) Subject to subsection (6)(a), information received under this section is not to be published in any form which identifies the individual to whom it relates.

(6) This section—

(a) does not affect any power to provide or publish information which exists apart from this section, and

(b) is subject to any express restriction on the provision of information imposed by another enactment."

PART 7

COMPANIES: TRANSPARENCY

Register of people with significant control

81 Register of people with significant control

Schedule 3 amends the Companies Act 2006 to require companies to keep a register of people who have significant control over the company.

82 Review of provisions about PSC registers

(1) The Secretary of State must before the end of the review period—

(a) carry out a review of Part 21A of the Companies Act 2006 (inserted by Schedule 3 to this Act) and of other provisions of the Companies Act 2006 inserted by this Act that relate to that Part, and

(b) prepare and publish a report setting out the conclusions of the review.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the provisions of the Companies Act 2006 mentioned in subsection (1)(a),

(b) assess the extent to which those objectives have been achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in another way that imposed less regulation.

(3) The Secretary of State must lay the report before Parliament.

(4) The "review period" is the period of 3 years beginning with the day on which section 92 (duty to deliver confirmation statement instead of annual return) comes into force.

Register of interests disclosed

83 Amendment of section 813 of the Companies Act 2006

In section 813 of the Companies Act 2006 (register of interests disclosed: refusal of inspection or default in providing copy), in subsection (1), for the words "an order of the court" substitute "section 812".

Abolition of share warrants to bearer

84 Abolition of share warrants to bearer

(1) In section 779 of the Companies Act 2006 (issue and effect of share warrant to bearer), after subsection (3) insert—

"(4) No share warrant may be issued by a company (irrespective of whether its articles purport to authorise it to do so) on or after the day on which section 84 of the Small Business, Enterprise and Employment Act 2015 comes into force."

(2) For the heading of that section substitute "Prohibition on issue of new share warrants and effect of existing share warrants".

(3) Schedule 4—

(a) makes provision for arrangements by which share warrants issued before this section comes into force are to be converted into registered shares or cancelled, and

(b) makes amendments consequential on that provision.

85 Amendment of company's articles to reflect abolition of share warrants

(1) This section applies in the case of a company limited by shares if, immediately before the day on which section 84 comes into force, the company's articles contain provision authorising the company to issue share warrants ("the offending provision").

(2) The company may amend its articles for the purpose of removing the offending provision—

(a) without having passed a special resolution as required by section 21 of the Companies Act 2006;

(b) without complying with any provision for entrenchment which is relevant to the offending provision (see section 22 of that Act).

(3) Section 26 of the Companies Act 2006 sets out the duty of a company to send the registrar a copy of its articles where they have been amended.

(4) Expressions defined for the purposes of the Companies Act 2006 have the same meaning in this section as in that Act.

86 Review of section 84

(1) The Secretary of State must, as soon as reasonably practicable after the end of the period of 5 years beginning with the day on which section 84 comes into force—

(a) carry out a review of section 84, and

(b) prepare and publish a report setting out the conclusions of the review.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the section, and

(b) assess the extent to which those objectives have been achieved.

(3) The Secretary of State must lay the report before Parliament.

Corporate directors

87 Requirement for all company directors to be natural persons

(1) The Companies Act 2006 is amended as follows.

(2) Omit section 155 (companies required to have at least one director who is a natural person).

(3) In section 156 (direction requiring company to make appointment)—

(a) in subsection (1), for "section 155" substitute "provision by virtue of section 156B(4)";
(b) in subsection (4), for "of section 154 or 155" substitute "as mentioned in subsection (1)".

(4) Before section 157 (and after the preceding cross-heading) insert—

"**156A Each director to be a natural person**

(1) A person may not be appointed a director of a company unless the person is a natural person.

(2) Subsection (1) does not prohibit the holding of the office of director by a natural person as a corporation sole or otherwise by virtue of an office.

(3) An appointment made in contravention of this section is void.

(4) Nothing in this section affects any liability of a person under any provision of the Companies Acts or any other enactment if the person—
(a) purports to act as director, or
(b) acts as shadow director,
although the person could not, by virtue of this section, be validly appointed as a director.

(5) This section has effect subject to section 156B (power to provide for exceptions from requirement that each director be a natural person).

(6) If a purported appointment is made in contravention of this section, an offence is committed by—
(a) the company purporting to make the appointment,
(b) where the purported appointment is of a body corporate or a firm that is a legal person under the law by which it is governed, that body corporate or firm, and
(c) every officer of a person falling within paragraph (a) or (b) who is in default.

For this purpose a shadow director is treated as an officer of a company.

(7) A person guilty of an offence under this section is liable on summary conviction—
(a) in England and Wales, to a fine;
(b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

156B Power to provide for exceptions from requirement that each director be a natural person

(1) The Secretary of State may make provision by regulations for cases in which a person who is not a natural person may be appointed a director of a company.

(2) The regulations must specify the circumstances in which, and any conditions subject to which, the appointment may be made.

(3) Provision made by virtue of subsection (2) may in particular include provision that an appointment may be made only with the approval of a regulatory body specified in the regulations.

(4) The regulations must include provision that a company must have at least one director who is a natural person (and for this purpose the requirement is met if the office of director is held by a natural person as a corporation sole or otherwise by virtue of an office).

(5) Regulations under this section may amend section 164 so as to require particulars relating to exceptions to be contained in a company's register of directors.

(6) The regulations may make different provision for different parts of the United Kingdom.

This is without prejudice to the general power to make different provision for different cases.

(7) Regulations under this section are subject to affirmative resolution procedure.

156C Existing director who is not a natural person

(1) In this section "the relevant day" is the day after the end of the period of 12 months beginning with the day on which section 156A comes into force.

(2) Where—

(a) a person appointed a director of a company before section 156A comes into force is not a natural person, and

(b) the case is not one excepted from that section by regulations under section 156B,

that person ceases to be a director on the relevant day.

(3) The company must—

(a) make the necessary consequential alteration in its register of directors, and

(b) give notice to the registrar of the change in accordance with section 167.

(4) If an election is in force under section 167A in respect of the company, the company must, in place of doing the things required by subsection (3), deliver to the registrar in accordance with section 167D the information of which the company would otherwise have been obliged to give notice under subsection (3).

(5) If it appears to the registrar that—

(a) a notice should have, but has not, been given in accordance with subsection (3)(b), or

(b) information should have, but has not, been delivered in accordance with subsection (4),

the registrar must place a note in the register recording the fact."

88 Review of section 87

(1) The Secretary of State must, before the end of each review period—

(a) carry out a review of section 87, and

(b) prepare and publish a report setting out the conclusions of the review.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the section,

(b) assess the extent to which those objectives have been achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in another way which imposed less regulation.

(3) The Secretary of State must lay the report before Parliament.

(4) Each of the following is a review period for the purposes of this section—

(a) the period of 5 years beginning with the day on which section 87 comes into force (whether wholly or partly), and

(b) each successive period of 5 years.

Shadow directors

89 Application of directors' general duties to shadow directors

(1) In section 170 of the Companies Act 2006 (scope and nature of general duties of directors) for subsection (5) substitute—

"(5) The general duties apply to a shadow director of a company where and to the extent that they are capable of so applying."

(2) The Secretary of State may by regulations make provision about the application of the general duties of directors to shadow directors.

(3) The regulations may, in particular, make provision—

(a) for prescribed general duties of directors to apply to shadow directors with such adaptations as may be prescribed;

(b) for prescribed general duties of directors not to apply to shadow directors.

(4) In this section—

"director" and "shadow director" have the same meanings as in the Companies Act 2006;

"general duties of directors" means the duties specified in sections 171 to 177 of that Act;

"prescribed" means prescribed in regulations.

(5) Regulations under this section are subject to affirmative resolution procedure.

90 Shadow directors: definition

(1) In section 251 of the Insolvency Act 1986 (expressions used generally), in the definition of "shadow director", for the words from "(but" to the end substitute ", but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment (within the meaning given by section 1293 of the Companies Act 2006);

(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)".

(2) In section 22(5) of the Company Directors Disqualification Act 1986 (definition of "shadow director") for the words from "(but" to the end substitute ", but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment;

(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)".

(3) In section 251(2) of the Companies Act 2006 (definition of "shadow director") for the words "on advice given by him in a professional capacity" substitute "—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment;

(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)".

(4) In section 1293 of the Companies Act 2006 (meaning of "enactment") after paragraph (a) insert—

"(aa) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,".

91 Shadow directors: provision for Northern Ireland

(1) In Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (interpretation), in the definition of "shadow director", for the words from "(but" to the end substitute ", but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;

(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)".

(2) In Article 2(2) of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)) (interpretation), in the definition of "shadow director", for the words from "(but" to the end substitute ", but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;

(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)".

PART 8

COMPANY FILING REQUIREMENTS

Annual return reform

92 Duty to deliver confirmation statement instead of annual return

For Part 24 of the Companies Act 2006 (annual return) substitute—

"**PART 24**

ANNUAL CONFIRMATION OF ACCURACY OF INFORMATION ON REGISTER

853A Duty to deliver confirmation statements

(1) Every company must, before the end of the period of 14 days after the end of each review period, deliver to the registrar—

(a) such information as is necessary to ensure that the company is able to make the statement referred to in paragraph (b), and

(b) a statement (a "confirmation statement") confirming that all information required to be delivered by the company to the registrar in relation to the confirmation period concerned under any duty mentioned in subsection (2) either—

(i) has been delivered, or

(ii) is being delivered at the same time as the confirmation statement.

(2) The duties are—

(a) any duty to notify a relevant event (see section 853B);

(b) any duty under sections 853C to 853I.

(3) In this Part "confirmation period"—

(a) in relation to a company's first confirmation statement, means the period beginning with the day of the company's incorporation and ending with the date specified in the statement ("the confirmation date");

(b) in relation to any other confirmation statement of a company, means the period beginning with the day after the confirmation date of the last such statement and ending with the confirmation date of the confirmation statement concerned.

(4) The confirmation date of a confirmation statement must be no later than the last day of the review period concerned.

(5) For the purposes of this Part, each of the following is a review period—

(a) the period of 12 months beginning with the day of the company's incorporation;

(b) each period of 12 months beginning with the day after the end of the previous review period.

(6) But where a company delivers a confirmation statement with a confirmation date which is earlier than the last day of the review period concerned, the next review period is the period of 12 months beginning with the day after the confirmation date.

(7) For the purpose of making a confirmation statement, a company is entitled to assume that any information has been properly delivered to the registrar if it has been delivered within the period of 5 days ending with the date on which the statement is delivered.

(8) But subsection (7) does not apply in a case where the company has received notice from the registrar that such information has not been properly delivered.

853B Duties to notify a relevant event

The following duties are duties to notify a relevant event—

(a) the duty to give notice of a change in the address of the company's registered office (see section 87);

(b) in the case of a company in respect of which an election is in force under section 128B (election to keep membership information on central register), the duty to deliver anything as mentioned in section 128E;

(c) the duty to give notice of a change as mentioned in section 167 (change in directors or in particulars required to be included in register of directors or register of directors' residential addresses);

(d) in the case of a company in respect of which an election is in force under section 167A (election to keep information in register of directors or register of directors' residential addresses on central register), the duty to deliver anything as mentioned in section 167D;

(e) in the case of a private company with a secretary or a public company, the duty to give notice of a change as mentioned in section 276 (change in secretary or joint secretaries or in particulars required to be included in register of secretaries);

(f) in the case of a private company with a secretary in respect of which an election is in force under section 279A (election to keep information in register of secretaries on central register), the duty to deliver anything as mentioned in section 279D;

(g) in the case of a company in respect of which an election is in force under section 790X (election to keep information in PSC register on central register), the duty to deliver anything as mentioned in section 790ZA;

(h) in the case of a company which, in accordance with regulations under section 1136, keeps any company records at a place other than its registered office, any duty under the regulations to give notice of a change in the address of that place.

853C Duty to notify a change in company's principal business activities

(1) This section applies where—

(a) a company makes a confirmation statement, and

(b) there has been a change in the company's principal business activities during the confirmation period concerned.

(2) The company must give notice to the registrar of the change at the same time as it delivers the confirmation statement.

(3) The information as to the company's new principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.

853D Duty to deliver statement of capital

(1) This section applies where a company having a share capital makes a confirmation statement.

(2) The company must deliver a statement of capital to the registrar at the same time as it delivers the confirmation statement.

(3) Subsection (2) does not apply if there has been no change in any of the matters required to be dealt with by the statement of capital since the last such statement was delivered to the registrar.

(4) The statement of capital must state with respect to the company's share capital at the confirmation date—

(a) the total number of shares of the company,

(b) the aggregate nominal value of those shares,

(c) the aggregate amount (if any) unpaid on those shares (whether on account of their nominal value or by way of premium), and

(d) for each class of shares—

(i) prescribed particulars of the rights attached to the shares,

(ii) the total number of shares of that class, and

(iii) the aggregate nominal value of shares of that class.

853E Duty to notify trading status of shares

(1) This section applies where a company having a share capital makes a confirmation statement.

(2) The company must deliver to the registrar a statement dealing with the matters mentioned in subsection (4) at the same time as it delivers the confirmation statement.

(3) Subsection (2) does not apply if and to the extent that the last statement delivered to the registrar under this section applies equally to the confirmation period concerned.

(4) The matters are—

(a) whether any of the company's shares were, at any time during the confirmation period concerned, shares admitted to trading on a relevant market or on any other market which is outside the United Kingdom, and

(b) if so, whether both of the conditions mentioned in subsection (5) were satisfied throughout the confirmation period concerned.

(5) The conditions are that—

(a) there were shares of the company which were shares admitted to trading on a relevant market;

(b) the company was a DTR5 issuer.

(6) In this Part—

"DTR5 issuer" means an issuer to which Chapter 5 of the Disclosure Rules and Transparency Rules sourcebook made by the Financial Conduct Authority (as amended or replaced from time to time) applies;

"relevant market" means any of the markets mentioned in article 4(1) of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001.

853F Duty to deliver shareholder information: non-traded companies

(1) This section applies where—

(a) a non-traded company makes a confirmation statement, and

(b) there is no election in force under section 128B in respect of the company.

(2) A "non-traded company" is a company none of whose shares were, at any time during the confirmation period concerned, shares admitted to trading on a relevant market or on any other market which is outside the United Kingdom.

(3) The company must deliver the information falling within subsection (5) to the registrar at the same time as it delivers the confirmation statement.

(4) Subsection (3) does not apply if and to the extent that the information most recently delivered to the registrar under this section applies equally to the confirmation period concerned.

(5) The information is—

(a) the name (as it appears in the company's register of members) of every person who was at any time during the confirmation period a member of the company,

(b) the number of shares of each class held at the end of the confirmation date concerned by each person who was a member of the company at that time,

(c) the number of shares of each class transferred during the confirmation period concerned by or to each person who was a member of the company at any time during that period, and

(d) the dates of registration of those transfers.

(6) The registrar may impose requirements about the form in which information of the kind mentioned in subsection (5)(a) is delivered for the purpose of enabling the entries on the register relating to any given person to be easily found.

853G Duty to deliver shareholder information: certain traded companies

(1) This section applies where a traded company makes a confirmation statement.

(2) A "traded company" is a company any of whose shares were, at any time during the confirmation period concerned, shares admitted to trading on a relevant market or on any other market which is outside the United Kingdom.

(3) But a company is not a traded company if throughout the confirmation period concerned—

(a) there were shares of the company which were shares admitted to trading on a relevant market, and

(b) the company was a DTR5 issuer.

(4) The company must deliver the information falling within subsection (6) to the registrar at the same time as it delivers the confirmation statement.

(5) Subsection (4) does not apply if and to the extent the information most recently delivered to the registrar under this section applies equally to the confirmation period concerned.

(6) The information is—

(a) the name and address (as they appear in the company's register of members) of each person who, at the end of the confirmation date concerned, held at least 5% of the issued shares of any class of the company, and

(b) the number of shares of each class held by each such person at that time.

853H Duty to deliver information about exemption from Part 21A

(1) This section applies where a company—

(a) which is not a DTR5 issuer, and

(b) to which Part 21A does not apply (information about people with significant control, see section 790B),

makes a confirmation statement.

(2) The company must deliver to the registrar a statement of the fact that it is a company to which Part 21A does not apply at the same time as it delivers the confirmation statement.

(3) Subsection (2) does not apply if the last statement delivered to the registrar under this section applies equally to the confirmation period concerned.

853I Duty to deliver information about people with significant control

(1) This section applies where—

(a) a company to which Part 21A (information about people with significant control) applies makes a confirmation statement, and

(b) there is no election in force under section 790X in respect of the company.

(2) The company must deliver the information stated in its PSC register to the registrar at the same time as it delivers the confirmation statement.

(3) Subsection (2) does not apply if and to the extent that the information most recently delivered to the registrar under this section applies equally to the confirmation period concerned.

(4) "PSC register" has the same meaning as in Part 21A (see section 790C).

853J Power to amend duties to deliver certain information

(1) The Secretary of State may by regulations make provision about the duties on a company in relation to the delivery of information falling within section 853E(4), 853F(5), 853G(6), 853H(2) or 853I(2) (referred to in this section as "relevant information").

(2) The regulations may, in particular, make provision requiring relevant information to be delivered—

(a) on such occasions as may be prescribed;

(b) at such intervals as may be prescribed.

(3) The regulations may amend or repeal the provisions of sections 853A, 853B and 853E to 853I.

(4) The regulations may provide—

(a) that where a company fails to comply with any duty to deliver relevant information an offence is committed by—

(i) the company,

(ii) every director of the company,

(iii) in the case of a private company with a secretary or a public company, every secretary of the company, and

(iv) every other officer of the company who is in default;

(b) that a person guilty of such an offence is liable on summary conviction—

(i) in England and Wales, to a fine and, for continued contravention, a daily default fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale;

(ii) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale;

(c) that, in the case of continued contravention, an offence is also committed by every officer of the company who did not commit an offence under provision made under paragraph (a) in relation to the initial contravention but who is in default in relation to the continued contravention;

(d) that a person guilty of such an offence is liable on summary conviction—

(i) in England and Wales, to a fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale for each

day on which the contravention continues and the person is in default;

(ii) in Scotland or Northern Ireland, to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the contravention continues and the person is in default.

(5) The regulations may provide that, for the purposes of any provision made under subsection (4), a shadow director is to be treated as a director.

(6) Regulations under this section are subject to affirmative resolution procedure.

853K Confirmation statements: power to make further provision by regulations

(1) The Secretary of State may by regulations make further provision as to the duties to deliver information to the registrar to which a confirmation statement is to relate.

(2) The regulations may—

(a) amend or repeal the provisions of sections 853A to 853I, and

(b) provide for exceptions from the requirements of those sections as they have effect from time to time.

(3) Regulations under this section which provide that a confirmation statement must relate to a duty to deliver information not for the time being mentioned in section 853A(2) are subject to affirmative resolution procedure.

(4) Any other regulations under this section are subject to negative resolution procedure.

853L Failure to deliver confirmation statement

(1) If a company fails to deliver a confirmation statement before the end of the period of 14 days after the end of a review period an offence is committed by—

(a) the company,

(b) every director of the company,

(c) in the case of a private company with a secretary or a public company, every secretary of the company, and

(d) every other officer of the company who is in default.

For this purpose a shadow director is treated as a director.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction—

(a) in England and Wales to a fine, and, for continued contravention, a daily default fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale;

(b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

(3) The contravention continues until such time as a confirmation statement specifying a confirmation date no later than the last day of the review period concerned is delivered by the company to the registrar.

(4) It is a defence for a director or secretary charged with an offence under subsection (1)(b) or (c) to prove that the person took all reasonable steps to avoid the commission or continuation of the offence.

(5) In the case of continued contravention, an offence is also committed by every officer of the company who did not commit an offence under subsection (1) in relation to the initial contravention but who is in default in relation to the continued contravention.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction—

(a) in England and Wales, to a fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale for each day on which the contravention continues and the person is in default;

(b) in Scotland or Northern Ireland, to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the contravention continues and the person is in default."

93 Section 92: related amendments

(1) The Companies Act 2006 is amended as follows.

(2) In section 9 (registration documents), in subsection (5)—

(a) omit the "and" after paragraph (a), and

(b) after paragraph (b) insert "; and

(c) a statement of the type of company it is to be and its intended principal business activities."

(3) Also in section 9, after subsection (5) insert—

"(5A) The information as to the company's type must be given by reference to the classification scheme prescribed for the purposes of this section.

(5B) The information as to the company's intended principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities."

(4) In section 108 (statement of capital required where company re-registering as a limited company already has share capital), in subsection (2), for paragraph (b) substitute—

"(b) (if different) the last statement of capital sent by the company."

(5) In section 1078 (documents subject to Directive disclosure requirements), in subsection (2)—

(a) for the heading "Accounts, reports and returns" substitute "Accounts and reports etc", and

(b) under that heading, for "The company's annual return" substitute "Any confirmation statement delivered by the company under section 853A."

(6) In section 1169 (dormant companies), in subsection (3)(b)(iv), for "an annual return" substitute "a confirmation statement".

(7) In Schedule 8 (index of defined expressions)—

(a) omit the entries for "annual return", "non-traded company" and "return period", and

(b) in the appropriate places insert—

"confirmation date (in Part 24)	section 853A(3)",
"confirmation period (in Part 24)	section 853A(3)",
"confirmation statement	section 853A(1)",
"DTR5 issuer (in Part 24)	section 853E(6)",
"relevant market (in Part 24)	section 853E(6)", and
"review period (in Part 24)	section 853A(5) and (6)".

Additional information on the register

94 Option for companies to keep information on central register

Schedule 5 amends the Companies Act 2006 to give private companies the option of keeping certain information on the register kept by the registrar instead of keeping it on their own registers.

95 Recording of optional information on register

(1) After section 1084 of the Companies Act 2006 insert—

"**1084A Recording of optional information on register**

(1) The Secretary of State may make provision by regulations authorising a company or other body to deliver optional information of a prescribed description to the registrar.

(2) In this section "optional information", in relation to a company or other body, means information about the company or body which, but for the regulations, the company or body would not be obliged or authorised under any enactment to deliver to the registrar.

(3) The regulations may, in particular, include provision—

(a) imposing requirements on a company or other body in relation to keeping any of its optional information recorded on the register up to date;

(b) about the consequences of a company or other body failing to do so.

(4) Regulations under this section are subject to affirmative resolution procedure."

(2) In section 1059A of that Act (scheme of Part 35), in subsection (2), after the entry in the list for section 1083 insert—

"section 1084A (recording optional information on register),".

Information about dates of birth

96 Protection of information about a person's date of birth

(1) Part 35 of the Companies Act 2006 (the registrar of companies) is amended as follows.

(2) In section 1087 (material not available for public inspection), in subsection (1), after paragraph (d) insert—

"(da) information falling within section 1087A(1) (information about a person's date of birth);".

(3) After that section insert—

"**1087A Information about a person's date of birth**

(1) Information falls within this subsection at any time ("the relevant time") if—

(a) it is DOB information,

(b) it is contained in a document delivered to the registrar that is protected at the relevant time as regards that information,

(c) the document is one in which such information is required to be stated, and

(d) if the document has more than one part, the part in which the information is contained is a part in which such information is required to be stated.

(2) "DOB information" is information as to the day of the month (but not the month or year) on which a relevant person was born.

(3) A "relevant person" is an individual—

(a) who is a director of a company, or

(b) whose particulars are stated in a company's PSC register as a registrable person in relation to that company (see Part 21A).

(4) A document delivered to the registrar is "protected" at any time unless—

(a) it is an election period document,

(b) subsection (7) applies to it at the time, or

(c) it was registered before this section comes into force.

(5) As regards DOB information about a relevant person in his or her capacity as a director of the company, each of the following is an "election period document"—

(a) a statement of the company's proposed officers delivered under section 9 in circumstances where the subscribers gave notice of election under section 167A (election to keep information on central register) in respect of the company's register of directors when the statement was delivered;

(b) a document delivered by the company under section 167D (duty to notify registrar of changes while election in force).

(6) As regards DOB information about a relevant person in his or her capacity as someone whose particulars are stated in the company's PSC register, each of the following is an "election period document"—

(a) a statement of initial significant control delivered under section 9 in circumstances where the subscribers gave notice of election under section 790X in respect of the company when the statement was delivered;

(b) a document containing a statement or updated statement delivered by the company under section 790X(6)(b) or (7) (statement accompanying notice of election made after incorporation);

(c) a document delivered by the company under section 790ZA (duty to notify registrar of changes while election in force).

(7) This subsection applies to a document if—

(a) the DOB information relates to the relevant person in his or her capacity as a director of the company,

(b) an election under section 167A is or has previously been in force in respect of the company's register of directors,

(c) the document was delivered to the registrar at some point before that election took effect,

(d) the relevant person was a director of the company when that election took effect, and

(e) the document was either—

(i) a statement of proposed officers delivered under section 9 naming the relevant person as someone who was to be a director of the company, or

(ii) notice given under section 167 of the relevant person having become a director of the company.

(8) Information about a person does not cease to fall within subsection (1) when he or she ceases to be a relevant person and, to that extent, references in this section to a relevant person include someone who used to be a relevant person.

(9) Nothing in subsection (1) obliges the registrar to check other documents or (as the case may be) other parts of the document to ensure the absence of DOB information.

1087B Disclosure of DOB information

(1) The registrar must not disclose restricted DOB information unless—

(a) the same information about the relevant person (whether in the same or a different capacity) is made available by the registrar for public inspection as a result of being contained in another description of document in relation to which no restriction under section 1087 applies (see subsection (2) of that section), or

(b) disclosure of the information by the registrar is permitted by subsection (2) or another provision of this Act.

(2) The registrar may disclose restricted DOB information—

(a) to a public authority specified for the purposes of this subsection by regulations made by the Secretary of State, or

(b) to a credit reference agency.

(3) Subsections (3) to (8) of section 243 (permitted use or disclosure of directors' residential addresses etc by the registrar) apply for the purposes of

subsection (2) as for the purposes of that section (reading references there to protected information as references to restricted DOB information).

(4) This section does not apply to restricted DOB information about a relevant person in his or her capacity as someone whose particulars are stated in the company's PSC register if an application under regulations made under section 790ZG (regulations for protecting PSC particulars) has been granted with respect to that information and not been revoked.

(5) "Restricted DOB information" means information falling within section 1087A(1)."

Statements of capital etc

97 Contents of statements of capital

Schedule 6 amends the Companies Act 2006 to alter the content of statements of capital required under various provisions of that Act.

98 Public companies: information about aggregate amount paid up on shares

(1) The Companies Act 2006 is amended as follows.

(2) In section 94 (application for re-registration as a public company), in subsection (2)—

(a) omit the "and" at the end of paragraph (c), and

(b) after paragraph (d) insert "; and

(e) a statement of the aggregate amount paid up on the shares of the company on account of their nominal value."

(3) In section 762 (procedure for a public company to obtain a trading certificate), in subsection (1)—

(a) omit the "and" at the end of paragraph (c), and

(b) after paragraph (d), insert ", and

(e) be accompanied by a statement of the aggregate amount paid up on the shares of the company on account of their nominal value."

(4) In section 1078 (documents subject to Directive disclosure requirements)—

(a) in subsection (3), under the heading "Share capital", after the entry numbered 11 insert—

"12 Any statement delivered under section 762(1)(e) (statement of the aggregate amount paid up on shares on account of their nominal value).", and

(b) after subsection (3) insert—

"(3A) In the case of a private company which applies to re-register as a public company, the statement delivered under section 94(2)(e) (statement of the aggregate amount paid up on shares on account of their nominal value)."

Registered office disputes

99 Address of company registered office

(1) After section 1097 of the Companies Act 2006 insert—

"**1097A Rectification of register relating to company registered office**

(1) The Secretary of State may make provision by regulations requiring the registrar, on application, to change the address of a company's registered office if the registrar is satisfied that the company is not authorised to use the address.

(2) The applicant and the company must provide such information as the registrar may require for the purposes of determining such an application.

(3) The regulations may make provision as to—

(a) who may make an application,

(b) the information to be included in and documents to accompany an application,

(c) the notice to be given of an application and of its outcome,

(d) the period in which objections to an application may be made,

(e) how an application is to be determined, including in particular the evidence, or descriptions of evidence, which the registrar may without further enquiry rely on to be satisfied that the company is authorised to use the address,

(f) the referral of the application, or any question relating to the application, by the registrar for determination by the court,

(g) the registrar requiring a company to provide an address to be the company's registered office,

(h) the nomination by the registrar of an address (a "default address") to be the company's registered office,

(i) the effect of the registration of any change.

(4) Subject to further provision which may be made by virtue of subsection (3)(i), the change takes effect upon it being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at the address previously registered.

(5) Provision made by virtue of subsection (3)(i) may in particular include provision, in relation to the registration of a default address—

(a) for the suspension, for up to 28 days beginning with the date on which it is registered, of duties of the company under this Act relating to the inspection of company records or to the provision, disclosure or display of information,

(b) that the default address may not be used for the purpose of keeping the company's registers, indexes or other documents,

(c) for there to be no requirement that documents delivered to the default address for the company must be opened,

(d) for the collection of such documents by the company, or the forwarding of such documents to the company,

(e) for the circumstances in which, and the period of time after which, such documents may be destroyed,

(f) about evidence, or descriptions of evidence, that the registrar may require a company to provide if giving notice to the registrar to change the address of its registered office from a default address.

(6) The applicant or the company may appeal the outcome of an application under this section to the court.

(7) On an appeal, the court must direct the registrar to register such address as the registered office of the company as the court considers appropriate in all the circumstances of the case.

(8) The regulations may make further provision about an appeal and in particular—

(a) provision about the time within which an appeal must be brought and the grounds on which an appeal may be brought,

(b) provision for the suspension, pending the outcome of an appeal, of duties of the company under this Act relating to the inspection of company records or to the provision, disclosure or display of information,

(c) further provision about directions by virtue of subsection (7).

(9) The regulations may include such provision applying (including applying with modifications), amending or repealing an enactment contained in this Act as the Secretary of State considers necessary or expedient in consequence of any provision made by the regulations.

(10) Regulations under this section are subject to affirmative resolution procedure."

(2) In section 1087(1) of that Act (material not available for public inspection), after paragraph (g) insert—

"(ga) any application or other document delivered to the registrar under section 1097A (rectification of company registered office) other than an order or direction of the court;".

Director disputes

100 Company filing requirements: consent to act as director or secretary

(1) The Companies Act 2006 is amended as follows.

(2) In section 12 (statement of proposed officers), for the first sentence of subsection (3) substitute—

"The statement must also include a statement by the subscribers to the memorandum of association that each of the persons named as a director, as secretary or as one of the joint secretaries has consented to act in the relevant capacity."

(3) In section 95 (statement of proposed secretary), for the first sentence of subsection (3) substitute—

"The statement must also include a statement by the company that the person named as secretary, or each of the persons named as joint secretaries, has consented to act in the relevant capacity."

(4) In section 167 (duty to notify registrar of changes), in subsection (2), for paragraph (b) substitute—

"(b) be accompanied by a statement by the company that the person has consented to act in that capacity."

(5) In section 276 (duty to notify registrar of changes), in subsection (2), for "consent by that person" substitute "statement by the company that the person has consented".

(6) The amendments made by this section do not apply if the statement of proposed officers, statement of the company's proposed secretary or notice under section 167 or 276 of the Companies Act 2006 was received by the registrar before this section comes into force.

101 Registrar's duty to inform new directors of entry in register

(1) In Part 35 of the Companies Act 2006 (the registrar of companies), after section 1079A insert—

"Notice of receipt of documents about new directors

1079B Duty to notify directors

(1) This section applies whenever the registrar registers either of the following documents—

(a) the statement of proposed officers required on formation of a company, or

(b) notice under section 167 or 167D of a person having become a director of a company.

(2) As soon as reasonably practicable after registering the document, the registrar must notify—

(a) in the case of a statement of proposed officers, the person or each person named in the statement as a director of the company, or

(b) in the case of a notice under section 167 or 167D, the person named in the document as having become a director of the company.

(3) The notice must—

(a) state that the person is named in the document as a director of the company, and

(b) include such information relating to the office and duties of a director (or such details of where information of that sort can be found) as the Secretary of State may from time to time direct the registrar to include.

(4) The notice may be sent in hard copy or electronic form to any address for the person that the registrar has received from either the subscribers or the company."

(2) The amendment made by this section does not apply if the statement of proposed officers or notice under section 167 or 167D of the Companies Act 2006 was received by the registrar before this section comes into force.

102 Removal from register of material about directors

(1) In section 1095 of the Companies Act 2006 (rectification of register on application to registrar), after subsection (4) insert—

"(4A) Subsections (4B) and (4C) apply, in place of subsection (4), in a case where—

(a) the material specified in the application is material naming a person—

(i) in a statement of a company's proposed officers as a person who is to be a director of the company, or

(ii) in a notice given by a company under section 167 or 167D as a person who has become a director of the company, and

(b) the application is made by or on behalf of the person named and is accompanied by a statement that the person did not consent to act as director of the company.

(4B) If the company provides the registrar with the necessary evidence within the time required by the regulations, the registrar must not remove the material from the register.

(4C) If the company does not provide the registrar with the necessary evidence within that time—

(a) the material is conclusively presumed for the purposes of this section to be derived from something that is factually inaccurate, and

(b) the registrar must accept the applicant's statement as sufficient evidence that the material should be removed from the register.

(4D) "The necessary evidence" is—

(a) evidence sufficient to satisfy the registrar that the person did consent to act as director of the company, plus

(b) a statement by the company that the evidence provided by it is true and is not misleading or deceptive in any material particular."

(2) The amendment made by this section does not apply to material contained in a statement of proposed officers or notice given under section 167 or 167D of the Companies Act 2006 if the statement or notice was received by the registrar before this section comes into force.

Accelerated strike-off

103 Reduction in notice periods etc for striking off companies

(1) Chapter 1 of Part 31 of the Companies Act 2006 (striking off) is amended as follows.

(2) In section 1000 (power to strike off company not carrying on business or in operation)—

(a) in subsection (2)—

(i) for "one month of sending" substitute "14 days of sending",

(ii) for "that month" substitute "that period", and

(iii) in paragraph (b), for "one month" substitute "14 days", and

(b) in subsection (3)—

(i) in paragraph (b), for "one month" substitute "14 days", and

(ii) for "three months" substitute "2 months".

(3) In section 1001 (duty to act in case of company being wound up), in subsection (1), for "three months" substitute "2 months".

(4) In section 1003 (striking off on application by company), in subsection (3), for "three months" substitute "2 months".

(5) The amendments made by subsection (2) do not apply in cases where the communication mentioned in section 1000(1) of the Companies Act 2006 has already been sent before this section comes into force.

(6) The amendment made by subsection (3) does not apply in cases where the notice mentioned in section 1001(1) of that Act has already been published in the Gazette before this section comes into force.

(7) The amendment made by subsection (4) does not apply in cases where the application under section 1003(1) of that Act has already been made before this section comes into force.

PART 9

DIRECTORS' DISQUALIFICATION ETC

New grounds for disqualification

104 Convictions abroad

(1) After section 5 of the Company Directors Disqualification Act 1986 insert—

"**5A Disqualification for certain convictions abroad**

(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under this section should be made against a person, the Secretary of State may apply to the court for such an order.

(2) The court may, on an application under subsection (1), make a disqualification order against a person who has been convicted of a relevant foreign offence.

(3) A "relevant foreign offence" is an offence committed outside Great Britain—

(a) in connection with—

(i) the promotion, formation, management, liquidation or striking off of a company (or any similar procedure),

(ii) the receivership of a company's property (or any similar procedure), or

(iii) a person being an administrative receiver of a company (or holding a similar position), and

(b) which corresponds to an indictable offence under the law of England and Wales or (as the case may be) an indictable offence under the law of Scotland.

(4) Where it appears to the Secretary of State that, in the case of a person who has offered to give a disqualification undertaking—

(a) the person has been convicted of a relevant foreign offence, and

(b) it is expedient in the public interest that the Secretary of State should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),

the Secretary of State may accept the undertaking.

(5) In this section—

"company" includes an overseas company;

"the court" means the High Court or, in Scotland, the Court of Session.

(6) The maximum period of disqualification under an order under this section is 15 years."

(2) Section 5A(2) and (4) of the Company Directors Disqualification Act 1986, as inserted by this section, applies in relation to a conviction of a relevant foreign offence which occurs on or after the day on which this section comes into force regardless of whether the act or omission which constituted the offence occurred before that day.

105 Persons instructing unfit director

After section 8 of the Company Directors Disqualification Act 1986 insert—

"Persons instructing unfit directors

8ZA Order disqualifying person instructing unfit director of insolvent company

(1) The court may make a disqualification order against a person ("P") if, on an application under section 8ZB, it is satisfied—

(a) either—

(i) that a disqualification order under section 6 has been made against a person who is or has been a director (but not a shadow director) of a company, or

(ii) that the Secretary of State has accepted a disqualification undertaking from such a person under section 7(2A), and

(b) that P exercised the requisite amount of influence over the person.

That person is referred to in this section as "the main transgressor".

(2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the order made under section 6, or

(b) in relation to which the undertaking was accepted from the main transgressor under section 7(2A),

was the result of the main transgressor acting in accordance with P's directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(4) Under this section the minimum period of disqualification is 2 years and the maximum period is 15 years.

(5) In this section and section 8ZB "the court" has the same meaning as in section 6; and subsection (3B) of section 6 applies in relation to proceedings mentioned in subsection (6) below as it applies in relation to proceedings mentioned in section 6(3B)(a) and (b).

(6) The proceedings are proceedings—

(a) for or in connection with a disqualification order under this section, or

(b) in connection with a disqualification undertaking accepted under section 8ZC.

8ZB Application for order under section 8ZA

(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order should be made against a person under section 8ZA, the Secretary of State may—

(a) make an application to the court for such an order, or

(b) in a case where an application for an order under section 6 against the main transgressor has been made by the official receiver, direct the official receiver to make such an application.

(2) Except with the leave of the court, an application for a disqualification order under section 8ZA must not be made after the end of the period of 3 years beginning with the day on which the company in question became insolvent (within the meaning given by section 6(2)).

(3) Subsection (4) of section 7 applies for the purposes of this section as it applies for the purposes of that section.

8ZC Disqualification undertaking instead of an order under section 8ZA

(1) If it appears to the Secretary of State that it is expedient in the public interest to do so, the Secretary of State may accept a disqualification undertaking from a person ("P") if—

(a) any of the following is the case—

(i) a disqualification order under section 6 has been made against a person who is or has been a director (but not a shadow director) of a company,

(ii) the Secretary of State has accepted a disqualification undertaking from such a person under section 7(2A), or

(iii) it appears to the Secretary of State that such an undertaking could be accepted from such a person (if one were offered), and

(b) it appears to the Secretary of State that P exercised the requisite amount of influence over the person.

That person is referred to in this section as "the main transgressor".

(2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the disqualification order made under section 6,

(b) in relation to which the disqualification undertaking was accepted from the main transgressor under section 7(2A), or

(c) which led the Secretary of State to the conclusion set out in subsection (1)(a)(iii),

was the result of the main transgressor acting in accordance with P's directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(4) Subsection (4) of section 7 applies for the purposes of this section as it applies for the purposes of that section.

8ZD Order disqualifying person instructing unfit director: other cases

(1) The court may make a disqualification order against a person ("P") if, on an application under this section, it is satisfied—

(a) either—

(i) that a disqualification order under section 8 has been made against a person who is or has been a director (but not a shadow director) of a company, or

(ii) that the Secretary of State has accepted a disqualification undertaking from such a person under section 8(2A), and

(b) that P exercised the requisite amount of influence over the person.

That person is referred to in this section as "the main transgressor".

(2) The Secretary of State may make an application to the court for a disqualification order against P under this section if it appears to the Secretary of State that it is expedient in the public interest for such an order to be made.

(3) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the order made under section 8, or

(b) in relation to which the undertaking was accepted from the main transgressor under section 8(2A),

was the result of the main transgressor acting in accordance with P's directions or instructions.

(4) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity.

(5) Under this section the maximum period of disqualification is 15 years.

(6) In this section "the court" means the High Court or, in Scotland, the Court of Session.

8ZE Disqualification undertaking instead of an order under section 8ZD

(1) If it appears to the Secretary of State that it is expedient in the public interest to do so, the Secretary of State may accept a disqualification undertaking from a person ("P") if—

(a) any of the following is the case—

(i) a disqualification order under section 8 has been made against a person who is or has been a director (but not a shadow director) of a company,

(ii) the Secretary of State has accepted a disqualification undertaking from such a person under section 8(2A), or

(iii) it appears to the Secretary of State that such an undertaking could be accepted from such a person (if one were offered), and

(b) it appears to the Secretary of State that P exercised the requisite amount of influence over the person.

That person is referred to in this section as "the main transgressor".

(2) For the purposes of this section, P exercised the requisite amount of influence over the main transgressor if any of the conduct—

(a) for which the main transgressor is subject to the disqualification order made under section 8,

(b) in relation to which the disqualification undertaking was accepted from the main transgressor under section 8(2A), or

(c) which led the Secretary of State to the conclusion set out in subsection (1)(a)(iii),

was the result of the main transgressor acting in accordance with P's directions or instructions.

(3) But P does not exercise the requisite amount of influence over the main transgressor by reason only that the main transgressor acts on advice given by P in a professional capacity."

Determining unfitness

106 Determining unfitness and disqualifications: matters to be taken into account

(1) The Company Directors Disqualification Act 1986 is amended as follows.

(2) In section 6 (duty of court to disqualify unfit directors of insolvent companies)—

(a) in subsection (1)(b), for "any other company or companies" substitute "one or more other companies or overseas companies",

(b) after subsection (1) insert—

"(1A) In this section references to a person's conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person's

conduct in relation to any matter connected with or arising out of the insolvency.",

(c) in subsection (2), omit the words from "and references" to the end, and

(d) after subsection (2) insert—

"(2A) For the purposes of this section, an overseas company becomes insolvent if the company enters into insolvency proceedings of any description (including interim proceedings) in any jurisdiction."

(3) In section 8 (disqualification where expedient in public interest)—

(a) in subsection (2), after "the company" insert "(either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies)",

(b) in subsection (2A)(a), after "shadow director" insert "(either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies)", and

(c) after subsection (2A) insert—

"(2B) Subsection (1A) of section 6 applies for the purposes of this section as it applies for the purposes of that section."

(4) Omit section 9 (matters for determining unfitness of directors).

(5) After section 12B insert—

"**12C Determining unfitness etc: matters to be taken into account**

(1) This section applies where a court must determine—

(a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;

(b) whether to exercise any discretion it has to make a disqualification order under any of sections 2 to 4, 5A, 8 or 10;

(c) where the court has decided to make a disqualification order under any of those sections or is required to make an order under section 6, what the period of disqualification should be.

(2) But this section does not apply where the court in question is one mentioned in section 2(2)(b) or (c).

(3) This section also applies where the Secretary of State must determine—

(a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;

(b) whether to exercise any discretion the Secretary of State has to accept a disqualification undertaking under section 5A, 7 or 8.

(4) In making any such determination in relation to a person, the court or the Secretary of State must—

(a) in every case, have regard in particular to the matters set out in paragraphs 1 to 4 of Schedule 1;

(b) in a case where the person concerned is or has been a director of a company or overseas company, also have regard in particular to the matters set out in paragraphs 5 to 7 of that Schedule.

(5) In this section "director" includes a shadow director.

(6) Subsection (1A) of section 6 applies for the purposes of this section as it applies for the purposes of that section.

(7) The Secretary of State may by order modify Schedule 1; and such an order may contain such transitional provision as may appear to the Secretary of State to be necessary or expedient.

(8) The power to make an order under this section is exercisable by statutory instrument.

(9) An order under this section may not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament."

(6) For Schedule 1 (matters determining unfitness of directors) substitute—

"SCHEDULE 1 Section 12C

DETERMINING UNFITNESS ETC: MATTERS TO BE TAKEN INTO ACCOUNT

Matters to be taken into account in all cases

1 The extent to which the person was responsible for the causes of any material contravention by a company or overseas company of any applicable legislative or other requirement.

2 Where applicable, the extent to which the person was responsible for the causes of a company or overseas company becoming insolvent.

3 The frequency of conduct of the person which falls within paragraph 1 or 2.

4 The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company or overseas company.

Additional matters to be taken into account where person is or has been a director

5 Any misfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.

6 Any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company or overseas company.

7 The frequency of conduct of the director which falls within paragraph 5 or 6.

Interpretation

8 Subsections (1A) to (2A) of section 6 apply for the purposes of this Schedule as they apply for the purposes of that section.

9 In this Schedule "director" includes a shadow director."

107 Reports of office-holders on conduct of directors of insolvent companies

(1) The Company Directors Disqualification Act 1986 is amended in accordance with subsections (2) to (4).

(2) After section 7 insert—

"**7A Office-holder's report on conduct of directors**

(1) The office-holder in respect of a company which is insolvent must prepare a report (a "conduct report") about the conduct of each person who was a director of the company—

(a) on the insolvency date, or

(b) at any time during the period of 3 years ending with that date.

(2) For the purposes of this section a company is insolvent if—

(a) the company is in liquidation and at the time it went into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

(b) the company has entered administration, or

(c) an administrative receiver of the company has been appointed;

and subsection (1A) of section 6 applies for the purposes of this section as it applies for the purpose of that section.

(3) A conduct report must, in relation to each person, describe any conduct of the person which may assist the Secretary of State in deciding whether to exercise the power under section 7(1) or (2A) in relation to the person.

(4) The office-holder must send the conduct report to the Secretary of State before the end of—

(a) the period of 3 months beginning with the insolvency date, or

(b) such other longer period as the Secretary of State considers appropriate in the particular circumstances.

(5) If new information comes to the attention of an office-holder, the office-holder must send that information to the Secretary of State as soon as reasonably practicable.

(6) "New information" is information which an office-holder considers should have been included in a conduct report prepared in relation to the company, or would have been so included had it been available before the report was sent.

(7) If there is more than one office-holder in respect of a company at any particular time (because the company is insolvent by virtue of falling within more than one paragraph of subsection (2) at that time), subsection (1) applies only to the first of the office-holders to be appointed.

(8) In the case of a company which is at different times insolvent by virtue of falling within one or more different paragraphs of subsection (2)—

(a) the references in subsection (1) to the insolvency date are to be read as references to the first such date during the period in which the company is insolvent, and

(b) subsection (1) does not apply to an office-holder if at any time during the period in which the company is insolvent a conduct report has already been prepared and sent to the Secretary of State.

(9) The "office-holder" in respect of a company which is insolvent is—

(a) in the case of a company being wound up by the court in England and Wales, the official receiver;

(b) in the case of a company being wound up otherwise, the liquidator;

(c) in the case of a company in administration, the administrator;

(d) in the case of a company of which there is an administrative receiver, the receiver.

(10) The "insolvency date"—

(a) in the case of a company being wound up by the court, means the date on which the court makes the winding-up order (see section 125 of the Insolvency Act 1986);

(b) in the case of a company being wound up by way of a members' voluntary winding up, means the date on which the liquidator forms the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration of solvency under section 89 of the Insolvency Act 1986;

(c) in the case of a company being wound up by way of a creditors' voluntary winding up where no such declaration under section 89 of that Act has been made, means the date of the passing of the resolution for voluntary winding up;

(d) in the case of a company which has entered administration, means the date the company did so;

(e) in the case of a company in respect of which an administrative receiver has been appointed, means the date of that appointment.

(11) For the purposes of subsection (10)(e), any appointment of an administrative receiver to replace an administrative receiver who has died or vacated office pursuant to section 45 of the Insolvency Act 1986 is to be ignored.

(12) In this section—

"court" has the same meaning as in section 6;

"director" includes a shadow director."

(3) In section 7 (disqualification order or undertaking and reporting provisions), omit subsection (3).

(4) For the heading of section 7 substitute "Disqualification orders under section 6: applications and acceptance of undertakings".

(5) In consequence of the repeal made by subsection (3), in Schedule 17 to the Enterprise Act 2002, omit paragraph 42.

Director disqualification: other amendments

108 Unfit directors of insolvent companies: extension of period for applying for disqualification order

(1) In section 7(2) of the Company Directors Disqualification Act 1986 (period within which application may be made for disqualification order against unfit director of insolvent company), for "2 years" substitute "3 years".

(2) Subsection (1) applies only to an application relating to a company which has become insolvent after the commencement of that subsection.

(3) Section 6(2) of the 1986 Act (meaning of "becoming insolvent") applies for the purposes of subsection (2) as it applies for the purposes of section 6 of that Act.

109 Directors: removal of restriction on application for disqualification order

(1) In section 8 of the Company Directors Disqualification Act 1986 (disqualification of director after investigation of company)—

(a) in subsection (1), omit "from investigative material",

(b) omit subsection (1A), and

(c) in subsection (2A), omit "from such report, information or documents".

(2) For the heading of that section substitute "Disqualification of director on finding of unfitness".

Compensation awards

110 Compensation orders and undertakings

After section 15 of the Company Directors Disqualification Act 1986 insert—

"Compensation orders and undertakings

15A Compensation orders and undertakings

(1) The court may make a compensation order against a person on the application of the Secretary of State if it is satisfied that the conditions mentioned in subsection (3) are met.

(2) If it appears to the Secretary of State that the conditions mentioned in subsection (3) are met in respect of a person who has offered to give the Secretary of State a compensation undertaking, the Secretary of State may accept the undertaking instead of applying, or proceeding with an application, for a compensation order.

(3) The conditions are that—

(a) the person is subject to a disqualification order or disqualification undertaking under this Act, and

(b) conduct for which the person is subject to the order or undertaking has caused loss to one or more creditors of an insolvent company of which the person has at any time been a director.

(4) An "insolvent company" is a company that is or has been insolvent and a company becomes insolvent if—

(a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

(b) the company enters administration, or

(c) an administrative receiver of the company is appointed.

(5) The Secretary of State may apply for a compensation order at any time before the end of the period of two years beginning with the date on which the disqualification order referred to in paragraph (a) of subsection (3) was made, or the disqualification undertaking referred to in that paragraph was accepted.

(6) In the case of a person subject to a disqualification order under section 8ZA or 8ZD, or a disqualification undertaking under section 8ZC or 8ZE, the reference in subsection (3)(b) to conduct is a reference to the conduct of the main transgressor in relation to which the person has exercised the requisite amount of influence.

(7) In this section and sections 15B and 15C "the court" means—

(a) in a case where a disqualification order has been made, the court that made the order,

(b) in any other case, the High Court or, in Scotland, the Court of Session.

15B Amounts payable under compensation orders and undertakings

(1) A compensation order is an order requiring the person against whom it is made to pay an amount specified in the order—

(a) to the Secretary of State for the benefit of—

(i) a creditor or creditors specified in the order;

(ii) a class or classes of creditor so specified;

(b) as a contribution to the assets of a company so specified.

(2) A compensation undertaking is an undertaking to pay an amount specified in the undertaking—

(a) to the Secretary of State for the benefit of—

(i) a creditor or creditors specified in the undertaking;

(ii) a class or classes of creditor so specified;

(b) as a contribution to the assets of a company so specified.

(3) When specifying an amount the court (in the case of an order) and the Secretary of State (in the case of an undertaking) must in particular have regard to—

(a) the amount of the loss caused;

(b) the nature of the conduct mentioned in section 15A(3)(b);

(c) whether the person has made any other financial contribution in recompense for the conduct (whether under a statutory provision or otherwise).

(4) An amount payable by virtue of subsection (2) under a compensation undertaking is recoverable as if payable under a court order.

(5) An amount payable under a compensation order or compensation undertaking is provable as a bankruptcy debt.

15C Variation and revocation of compensation undertakings

(1) The court may, on the application of a person who is subject to a compensation undertaking—

(a) reduce the amount payable under the undertaking, or

(b) provide for the undertaking not to have effect.

(2) On the hearing of an application under subsection (1), the Secretary of State must appear and call the attention of the court to any matters which the Secretary of State considers relevant, and may give evidence or call witnesses."

Consequential amendments and corresponding provision for Northern Ireland

111 Sections 104 to 110: consequential and related amendments

Schedule 7 makes amendments to the Company Directors Disqualification Act 1986, and other enactments, which are consequential on or related to the amendments made to that Act by the preceding provisions of this Part.

112 Provision for Northern Ireland corresponding to sections 104 to 111

Schedule 8 makes provision for Northern Ireland which corresponds to that made by sections 104 to 111.

Bankruptcy: Scotland and Northern Ireland

113 Disqualification as director: bankruptcy, etc in Scotland and Northern Ireland

(1) For subsections (1) and (2) of section 11 of the Company Directors Disqualification Act 1986 (undischarged bankrupts) substitute—

"(1) It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the court, at a time when any of the circumstances mentioned in subsection (2) apply to the person.

(2) The circumstances are—

(a) the person is an undischarged bankrupt—

(i) in England and Wales or Scotland, or

(ii) in Northern Ireland,

(b) a bankruptcy restrictions order or undertaking is in force in respect of the person under—

(i) the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986, or

(ii) the Insolvency (Northern Ireland) Order 1989,

(c) a debt relief restrictions order or undertaking is in force in respect of the person under—

(i) the Insolvency Act 1986, or

(ii) the Insolvency (Northern Ireland) Order 1989,

(d) a moratorium period under a debt relief order applies in relation to the person under—

(i) the Insolvency Act 1986, or

(ii) the Insolvency (Northern Ireland) Order 1989.

(2A) In subsection (1) "the court" means—

(a) for the purposes of subsection (2)(a)(i)—

(i) the court by which the person was adjudged bankrupt, or

(ii) in Scotland, the court by which sequestration of the person's estate was awarded or, if awarded other than by the court, the court which would have jurisdiction in respect of sequestration of the person's estate,

(b) for the purposes of subsection (2)(b)(i)—

(i) the court which made the order,

(ii) in Scotland, if the order has been made other than by the court, the court to which the person may appeal against the order, or

(iii) the court to which the person may make an application for annulment of the undertaking,

(c) for the purposes of subsection (2)(c)(i)—

(i) the court which made the order, or

(ii) the court to which the person may make an application for annulment of the undertaking,

(d) for the purposes of subsection (2)(d)(i), the court to which the person would make an application under section 251M(1) of the Insolvency Act 1986 (if the person were dissatisfied as mentioned there),

(e) for the purposes of paragraphs (a)(ii), (b)(ii), (c)(ii) and (d)(ii) of subsection (2), the High Court of Northern Ireland."

(2) In section 24 of that Act (extent), for subsection (2) substitute—

"(2) Subsections (1) to (2A) of section 11 also extend to Northern Ireland."

114 Company Directors Disqualification (Northern Ireland) Order 2002: bankruptcy, etc in England and Wales or Scotland

For paragraph (1) of Article 15 of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)) (undischarged bankrupts) substitute—

"(1) It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the court, at a time when any of the circumstances mentioned in paragraph (1A) apply to the person.

(1A) The circumstances are—

(a) the person is an undischarged bankrupt—

(i) in Northern Ireland, or

(ii) in England and Wales or Scotland,

(b) a bankruptcy restrictions order or undertaking is in force in respect of the person under—

(i) the Insolvency (Northern Ireland) Order 1989, or

(ii) the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986,

(c) a debt relief restrictions order or undertaking is in force in respect of the person under—

(i) the Insolvency (Northern Ireland) Order 1989, or

(ii) the Insolvency Act 1986,

(d) a moratorium period under a debt relief order applies in relation to the person under—

(i) the Insolvency (Northern Ireland) Order 1989, or

(ii) the Insolvency Act 1986.

(1B) In paragraph (1) "the court" means—

(a) for the purposes of sub-paragraphs (a)(i), (b)(i), (c)(i) and (d)(i) of paragraph (1A), the High Court,

(b) for the purposes of paragraph (1A)(a)(ii)—

(i) the court by which the person was adjudged bankrupt, or

(ii) in Scotland, the court by which sequestration of the person's estate was awarded or, if awarded other than by the court, the court which would have jurisdiction in respect of sequestration of the person's estate,

(c) for the purposes of paragraph (1A)(b)(ii)—

(i) the court which made the order,

(ii) in Scotland, if the order has been made other than by the court, the court to which the person may appeal against the order, or

(iii) the court to which the person may make an application for annulment of the undertaking,

(d) for the purposes of paragraph (1A)(c)(ii)—

(i) the court which made the order, or

(ii) the court to which the person may make an application for annulment of the undertaking,

(e) for the purposes of paragraph (1A)(d)(ii), the court to which the person would make an application under section 251M(1) of the Insolvency Act 1986 (if the person were dissatisfied as mentioned there)."

115 Disqualification as insolvency practitioner: bankruptcy, etc in Scotland or Northern Ireland

In section 390 of the Insolvency Act 1986 (persons not qualified to act as insolvency practitioners)—

(a) in subsection (4)—

(i) in paragraph (a), after "bankrupt" insert "under this Act or the Insolvency (Northern Ireland) Order 1989";

(ii) in paragraph (aa), after "a debt relief order" insert "under this Act or the Insolvency (Northern Ireland) Order 1989";

(b) for subsection (5) substitute—

"(5) A person is not qualified to act as an insolvency practitioner while there is in force in respect of that person—

(a) a bankruptcy restrictions order under this Act, the Bankruptcy (Scotland) Act 1985 or the Insolvency (Northern Ireland) Order 1989, or

(b) a debt relief restrictions order under this Act or that Order."

116 Disqualification as insolvency practitioner in Northern Ireland: bankruptcy, etc in England and Wales or Scotland

(1) Article 349 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (persons not qualified to act as insolvency practitioners) is amended as follows.

(2) In paragraph (4)—

(a) in sub-paragraph (a), after "bankrupt" insert "under this Order or the 1986 Act";

(b) in sub-paragraph (aa), after "a debt relief order" insert "under this Order or the 1986 Act".

(3) For paragraph (5) substitute—

"(5) A person is not qualified to act as an insolvency practitioner while there is in force in respect of that person—

(a) a bankruptcy restrictions order under this Order, the 1986 Act or the Bankruptcy (Scotland) Act 1985, or

(b) a debt relief restrictions order under this Order or the 1986 Act.

(6) In this Article "the 1986 Act" means the Insolvency Act 1986."

(4) In consequence of the amendment made by subsection (3), omit—

(a) paragraph 4 of Schedule 6 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10));

(b) paragraph 4(9)(b) of the Schedule to the Debt Relief Act (Northern Ireland) 2010 (c. 16 (N.I.)).

PART 10

INSOLVENCY

Office-holder actions

117 Power for administrator to bring claim for fraudulent or wrongful trading

(1) The Insolvency Act 1986 is amended as follows.

(2) After section 246 insert—

"Administration: penalisation of directors etc

246ZA Fraudulent trading: administration

(1) If while a company is in administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

246ZB Wrongful trading: administration

(1) Subject to subsection (3), if while a company is in administration it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the court, on the application of the administrator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

(2) This subsection applies in relation to a person if—

(a) the company has entered insolvent administration,

(b) at some time before the company entered administration, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid entering insolvent administration or going into insolvent liquidation, and

(c) the person was a director of the company at that time.

(3) The court must not make a declaration under this section with respect to any person if it is satisfied that, after the condition specified in subsection (2)(b) was first satisfied in relation to the person, the person took every step with a view to minimising the potential loss to the company's creditors as (on the assumption that the person had knowledge of the matter mentioned in subsection (2)(b)) the person ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which the director ought to reach and the steps which the director ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and

(b) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which the director does not carry out but which have been entrusted to the director.

(6) For the purposes of this section—

(a) a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration;

(b) a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) In this section "director" includes shadow director.

(8) This section is without prejudice to section 246ZA.

246ZC Proceedings under section 246ZA or 246ZB

Section 215 applies for the purposes of an application under section 246ZA or 246ZB as it applies for the purposes of an application under section 213 but as if the reference in subsection (1) of section 215 to the liquidator was a reference to the administrator."

(3) In section 214 (wrongful trading)—

(a) in subsection (2)(b), after "liquidation" insert "or entering insolvent administration",

(b) in subsection (3), for the words from "assuming" to "liquidation" substitute "on the assumption that he had knowledge of the matter mentioned in subsection (2)(b)", and

(c) after subsection (6) insert—

"(6A) For the purposes of this section a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration."

118 Power for liquidator or administrator to assign causes of action

After section 246ZC of the Insolvency Act 1986 (inserted by section 117) insert—

"Power to assign certain causes of action

246ZD Power to assign

(1) This section applies in the case of a company where—

(a) the company enters administration, or

(b) the company goes into liquidation;

and "the office-holder" means the administrator or the liquidator, as the case may be.

(2) The office-holder may assign a right of action (including the proceeds of an action) arising under any of the following—

(a) section 213 or 246ZA (fraudulent trading);

(b) section 214 or 246ZB (wrongful trading);

(c) section 238 (transactions at an undervalue (England and Wales));

(d) section 239 (preferences (England and Wales));

(e) section 242 (gratuitous alienations (Scotland));
(f) section 243 (unfair preferences (Scotland));
(g) section 244 (extortionate credit transactions).”

119 Application of proceeds of office-holder claims

After section 176ZA of the Insolvency Act 1986 insert—

“**176ZB Application of proceeds of office-holder claims**

(1) This section applies where—
(a) there is a floating charge (whether created before or after the coming into force of this section) which relates to property of a company which—
(i) is in administration, or
(ii) has gone into liquidation; and
(b) the administrator or the liquidator (referred to in this section as “the office-holder”) has—
(i) brought a claim under any provision mentioned in subsection (3), or
(ii) made an assignment (or, in Scotland, assignation) in relation to a right of action under any such provision under section 246ZD.

(2) The proceeds of the claim or assignment (or, in Scotland, assignation) are not to be treated as part of the company’s net property, that is to say the amount of its property which would be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.

(3) The provisions are—
(a) section 213 or 246ZA (fraudulent trading);
(b) section 214 or 246ZB (wrongful trading);
(c) section 238 (transactions at an undervalue (England and Wales));
(d) section 239 (preferences (England and Wales));
(e) section 242 (gratuitous alienations (Scotland));
(f) section 243 (unfair preferences (Scotland));
(g) section 244 (extortionate credit transactions).

(4) Subsection (2) does not apply to a company if or in so far as it is disapplied by—
(a) a voluntary arrangement in respect of the company, or
(b) a compromise or arrangement agreed under Part 26 of the Companies Act 2006 (arrangements and reconstructions).”

Removing requirements to seek sanction

120 Exercise of powers by liquidator: removal of need for sanction

(1) The Insolvency Act 1986 is amended as follows.

(2) In section 165 (voluntary winding up: powers of liquidator), for subsections (2) and (3) substitute—

"(2) The liquidator may exercise any of the powers specified in Parts 1 to 3 of Schedule 4."

(3) In section 167 (winding up by the court: powers of liquidator), for subsection (1) substitute—

"(1) Where a company is being wound up by the court, the liquidator may exercise any of the powers specified in Parts 1 to 3 of Schedule 4."

(4) In section 169 (supplementary powers (Scotland)), omit subsection (1).

(5) In Part 2 of Schedule 3 (appeals from orders in Scotland: orders which take effect until matter disposed of by Inner House), omit the entry relating to orders under section 167 or 169.

(6) In Schedule 4 (powers of liquidator in a winding up)—

(a) in paragraph 3, omit "In the case of a winding up in Scotland,",

(b) omit paragraph 6A, and

(c) omit the headings for each of Parts 1 to 3.

121 Exercise of powers by trustee in bankruptcy: removal of need for sanction

(1) The Insolvency Act 1986 is amended as follows.

(2) In section 314 (bankruptcy: powers of trustee)—

(a) for subsection (1) substitute—

"(1) The trustee may exercise any of the powers specified in Parts 1 and 2 of Schedule 5.",

(b) in subsection (2), omit "With the permission of the creditors' committee or the court,", and

(c) omit subsections (3) and (4).

(3) In Schedule 5 (powers of trustee in bankruptcy), omit the headings for each of Parts 1 to 3.

Position of creditors

122 Abolition of requirements to hold meetings: company insolvency

(1) The Insolvency Act 1986 is amended as follows.

(2) After section 246ZD (as inserted by section 118) insert—

"Decisions by creditors and contributories

246ZE Decisions by creditors and contributories: general

(1) This section applies where, for the purposes of this Group of Parts, a person ("P") seeks a decision about any matter from a company's creditors or contributories.

(2) The decision may be made by any qualifying decision procedure P thinks fit, except that it may not be made by a creditors' meeting or (as the case may be) a contributories' meeting unless subsection (3) applies.

(3) This subsection applies if at least the minimum number of creditors or (as the case may be) contributories make a request to P in writing that the decision be made by a creditors' meeting or (as the case may be) a contributories' meeting.

(4) If subsection (3) applies P must summon a creditors' meeting or (as the case may be) a contributories' meeting.

(5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—

(a) requiring a decision to be made, or prohibiting a decision from being made, by a particular qualifying decision procedure (other than a creditors' meeting or a contributories' meeting);

(b) permitting or requiring a decision to be made by a creditors' meeting or a contributories' meeting.

(6) Section 246ZF provides that in certain cases the deemed consent procedure may be used instead of a qualifying decision procedure.

(7) For the purposes of subsection (3) the "minimum number" of creditors or contributories is any of the following—

(a) 10% in value of the creditors or contributories;

(b) 10% in number of the creditors or contributories;

(c) 10 creditors or contributories.

(8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.

(9) In this section references to a meeting are to a meeting where the creditors or (as the case may be) contributories are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).

(10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.

(11) In this Group of Parts "qualifying decision procedure" means a procedure prescribed or authorised under paragraph 8A of Schedule 8.

246ZF Deemed consent procedure

(1) The deemed consent procedure may be used instead of a qualifying decision procedure where a company's creditors or contributories are to make a decision about any matter, unless—

(a) a decision about the matter is required by virtue of this Act, the rules, or any other legislation to be made by a qualifying decision procedure, or

(b) the court orders that a decision about the matter is to be made by a qualifying decision procedure.

(2) If the rules provide for a company's creditors or contributories to make a decision about the remuneration of any person, they must provide that the decision is to be made by a qualifying decision procedure.

(3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) or (as the case may be) the relevant contributories are given notice of—

(a) the matter about which they are to make a decision,

(b) the decision that the person giving the notice proposes should be made (the "proposed decision"),

(c) the effect of subsections (4) and (5), and

(d) the procedure for objecting to the proposed decision.

(4) If less than the appropriate number of relevant creditors or (as the case may be) relevant contributories object to the proposed decision in accordance with the procedure set out in the notice, the creditors or (as the case may be) the contributories are to be treated as having made the proposed decision.

(5) Otherwise—

(a) the creditors or (as the case may be) the contributories are to be treated as not having made a decision about the matter in question, and

(b) if a decision about that matter is again sought from the creditors or (as the case may be) the contributories, it must be sought using a qualifying decision procedure.

(6) For the purposes of subsection (4) the "appropriate number" of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.

(7) "Relevant creditors" means the creditors who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.

(8) "Relevant contributories" means the contributories who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.

(9) In this section references to creditors include creditors of a particular class.

(10) The rules may make further provision about the deemed consent procedure.

246ZG Power to amend sections 246ZE and 246ZF

(1) The Secretary of State may by regulations amend section 246ZE so as to change the definition of—

(a) the minimum number of creditors;

(b) the minimum number of contributories.

(2) The Secretary of State may by regulations amend section 246ZF so as to change the definition of—

(a) the appropriate number of relevant creditors;

(b) the appropriate number of relevant contributories.

(3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—

(a) a proportion in value,

(b) a proportion in number,

(c) an absolute number,

and the definition may include alternative, cumulative or relative requirements.

(4) Regulations under subsection (1) may define the minimum number of creditors or contributories by reference to all creditors or contributories, or by reference to creditors or contributories of a particular description.

(5) Regulations under this section may make provision that will result in section 246ZE or 246ZF having different definitions for different cases, including—

(a) for creditors and for contributories,

(b) for different kinds of decisions.

(6) Regulations under this section may make transitional provision.

(7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

(3) In Schedule 8 (provisions which may be included in company insolvency rules), after paragraph 8 insert—

"8A (1) Provision about the making of decisions by creditors and contributories, including provision—

(a) prescribing particular procedures by which creditors and contributories may make decisions;

(b) authorising the use of other procedures for creditors and contributories to make decisions, if those procedures comply with prescribed requirements.

(2) Provision under sub-paragraph (1) may in particular include provision about—

(a) how creditors and contributories may request that a creditors' meeting or a contributories' meeting be held,
(b) the rights of creditors, contributories and others to be given notice of, and participate in, procedures,
(c) creditors' and contributories' rights to vote in procedures,
(d) the period within which any right to participate or vote is to be exercised,
(e) the proportion of creditors or contributories that must vote for a proposal for it to be approved,
(f) how the value of any debt or contribution should be determined,
(g) the time at which decisions taken by a procedure are to be treated as having been made."

(4) In section 251 (interpretation of first Group of Parts)—
(a) after the definition of "the court" insert—
""deemed consent procedure" means the deemed consent procedure provided for by section 246ZF;";
(b) after the definition of "prescribed" insert—
""qualifying decision procedure" has the meaning given by section 246ZE(11);".

123 Abolition of requirements to hold meetings: individual insolvency

(1) The Insolvency Act 1986 is amended as follows.

(2) After section 379 insert—

"Creditors' decisions

379ZA Creditors' decisions: general

(1) This section applies where, for the purposes of this Group of Parts, a person ("P") seeks a decision from an individual's creditors about any matter.

(2) The decision may be made by any creditors' decision procedure P thinks fit, except that it may not be made by a creditors' meeting unless subsection (3) applies.

(3) This subsection applies if at least the minimum number of creditors request in writing that the decision be made by a creditors' meeting.

(4) If subsection (3) applies, P must summon a creditors' meeting.

(5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—
(a) requiring a decision to be made, or prohibiting a decision from being made, by a particular creditors' decision procedure (other than a creditors' meeting);
(b) permitting or requiring a decision to be made by a creditors' meeting.

(6) Section 379ZB provides that in certain cases the deemed consent procedure may be used instead of a creditors' decision procedure.

(7) For the purposes of subsection (3) the "minimum number" of creditors is any of the following—

(a) 10% in value of the creditors;

(b) 10% in number of the creditors;

(c) 10 creditors.

(8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.

(9) In this section references to a meeting are to a meeting where the creditors are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).

(10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.

(11) In this Group of Parts "creditors' decision procedure" means a procedure prescribed or authorised under paragraph 11A of Schedule 9.

379ZB Deemed consent procedure

(1) The deemed consent procedure may be used instead of a creditors' decision procedure where an individual's creditors are to make a decision about any matter, unless—

(a) a decision about the matter is required by virtue of this Act, the rules or any other legislation to be made by a creditors' decision procedure, or

(b) the court orders that a decision about the matter is to be made by a creditors' decision procedure.

(2) If the rules provide for an individual's creditors to make a decision about the remuneration of any person, they must provide that the decision is to be made by a creditors' decision procedure.

(3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) are given notice of—

(a) the matter about which the creditors are to make a decision,

(b) the decision the person giving the notice proposes should be made (the "proposed decision"),

(c) the effect of subsections (4) and (5), and

(d) the procedure for objecting to the proposed decision.

(4) If less than the appropriate number of relevant creditors object to the proposed decision in accordance with the procedure set out in the notice, the creditors are to be treated as having made the proposed decision.

(5) Otherwise—

(a) the creditors are to be treated as not having made a decision about the matter in question, and

(b) if a decision about that matter is again sought from the creditors, it must be sought using a creditors' decision procedure.

(6) For the purposes of subsection (4) the "appropriate number" of relevant creditors is 10% in value of those creditors.

(7) "Relevant creditors" means the creditors who, if the decision were to be made by a creditors' decision procedure, would be entitled to vote in the procedure.

(8) In this section references to creditors include creditors of a particular class.

(9) The rules may make further provision about the deemed consent procedure.

379ZC Power to amend sections 379ZA and 379ZB

(1) The Secretary of State may by regulations amend section 379ZA so as to change the definition of the minimum number of creditors.

(2) The Secretary of State may by regulations amend section 379ZB so as to change the definition of the appropriate number of relevant creditors.

(3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—

(a) a proportion in value,

(b) a proportion in number,

(c) an absolute number,

and the definition may include alternative, cumulative or relative requirements.

(4) Regulations under subsection (1) may define the minimum number of creditors by reference to all creditors, or by reference to creditors of a particular description.

(5) Regulations under this section may make provision that will result in section 379ZA or 379ZB having different definitions for different cases, including for different kinds of decisions.

(6) Regulations under this section may make transitional provision.

(7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament."

(3) In Schedule 9 (provisions which may be included in individual insolvency rules), after paragraph 11 insert—

"11A (1) Provision about the making of decisions by creditors, including provision—

(a) prescribing particular procedures by which creditors may make decisions;

(b) authorising the use of other procedures for creditors to make decisions, if those procedures comply with prescribed requirements.

(2) Provision under sub-paragraph (1) may in particular include provision about—

(a) how creditors may request that a creditors' meeting be held,

(b) the rights of creditors and others to be given notice of, and participate in, procedures,

(c) creditors' rights to vote in procedures,

(d) the period within which any right to participate or vote is to be exercised,

(e) the proportion of creditors that must vote for a proposal for it to be approved,

(f) how the value of any debt should be determined,

(g) the time at which decisions taken by a procedure are to be treated as having been made."

(4) In section 385(1) (miscellaneous definitions relating to individual insolvency)—

(a) after the definition of "the court" insert—

""creditors' decision procedure" has the meaning given by section 379ZA(11);";

(b) after the definition of "debt relief order" insert—

""deemed consent procedure" means the deemed consent procedure provided for by section 379ZB;".

124 Ability for creditors to opt not to receive certain notices: company insolvency

(1) The Insolvency Act 1986 is amended as follows.

(2) For the italic heading before section 246B substitute—

"Giving of notices etc by office-holders".

(3) After section 246B insert—

"**246C Creditors' ability to opt out of receiving certain notices**

(1) Any provision of the rules which requires an office-holder of a company to give a notice to creditors of the company does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.

(2) Subsection (1)—

(a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;

(b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).

(3) Except as provided by the rules, a creditor may participate and vote in a qualifying decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.

(4) In this section—

"give" includes deliver, furnish or send;

"notice" includes any document or information in any other form;

"office-holder", in relation to a company, means—

(a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,

(b) a receiver appointed under section 51 in relation to any property of the company, or

(c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company."

(4) After section 248 insert—

"**248A "Opted-out creditor"**

(1) For the purposes of this Group of Parts "opted-out creditor", in relation to an office-holder of a company, means a person who—

(a) is a creditor of the company, and

(b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.

(2) In this section, "office-holder", in relation to a company, means—

(a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,

(b) a receiver appointed under section 51 in relation to any property of the company, or

(c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company."

(5) In Schedule 8 (provisions which may be included in company insolvency rules), after paragraph 5 insert—

"5A Provision for enabling a creditor of a company to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder of the company (within the meaning of section 248A), including, in particular, provision—

(a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;

(b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder of a company to be such an election also in relation to any other office-holder of the company."

125 Ability for creditors to opt not to receive certain notices: individual insolvency

(1) The Insolvency Act 1986 is amended as follows.

(2) For the italic heading before section 379B substitute—

"Giving of notices etc by office-holders".

(3) After section 379B insert—

"**379C Creditors' ability to opt out of receiving certain notices**

(1) Any provision of the rules which requires an office-holder to give a notice to creditors of an individual does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.

(2) Subsection (1)—

(a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;

(b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).

(3) Except as provided by the rules, a creditor may participate and vote in a creditors' decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.

(4) In this section—

"give" includes deliver, furnish or send;

"notice" includes any document or information in any other form;

"office-holder", in relation to an individual, means—

(a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;

(b) where an interim receiver of the individual's property is appointed, the interim receiver;

(c) the supervisor of a voluntary arrangement approved under Part 8 in relation to the individual."

(4) After section 383 insert—

"**383A "Opted-out creditor"**

(1) For the purposes of this Group of Parts "opted-out creditor" in relation to an office-holder for an individual means a person who—

(a) is a creditor of the individual, and

(b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.

(2) In this section, "office-holder", in relation to an individual, means—

(a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;

(b) where an interim receiver of the individual's property is appointed, the interim receiver;

(c) the supervisor of a voluntary arrangement approved under Part 8 in relation to the individual."

(5) In Schedule 9 (provisions capable of inclusion in individual insolvency rules), after paragraph 7 insert—

"7F Provision for enabling a creditor of an individual to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder for the

individual (within the meaning of section 383A), including, in particular, provision—

(a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;

(b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder for an individual to be such an election also in relation to any other office-holder for the individual."

126 Sections 122 to 125: further amendments

Schedule 9 (abolition of requirements to hold meetings; opted-out creditors)—

(a) makes amendments relating to sections 122 to 125, and

(b) removes requirements to hold a general meeting of a company when the company's affairs are fully wound up.

Administration

127 Extension of administrator's term of office

In paragraph 76(2)(b) of Schedule B1 to the Insolvency Act 1986 (administrator's term of office may be extended for up to six months by consent) for "six months" substitute "one year".

128 Administration: payments to unsecured creditors

(1) Schedule B1 to the Insolvency Act 1986 (administration) is amended as follows.

(2) In paragraph 65(3) (restrictions on distribution to unsecured creditors) for "unless" substitute "unless—

(a) the distribution is made by virtue of section 176A(2)(a), or

(b)".

(3) In paragraph 83 (power to move from administration to creditors' voluntary liquidation), in sub-paragraphs (1)(b) and (2)(b), after "any)" insert "which is not a distribution by virtue of section 176A(2)(a)".

129 Administration: sales to connected persons

(1) Schedule B1 to the Insolvency Act 1986 (administration) is amended as follows.

(2) Paragraph 60 (power of administrators) becomes sub-paragraph (1) of that paragraph.

(3) After that sub-paragraph insert—

"(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 60A."

(4) After paragraph 60 insert—

"60A (1) The Secretary of State may by regulations make provision for—

(a) prohibiting, or

(b) imposing requirements or conditions in relation to,

the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.

(2) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by—

(a) creditors of the company,

(b) the court, or

(c) a person of a description specified in the regulations.

(3) In sub-paragraph (1), "connected person", in relation to a company, means—

(a) a relevant person in relation to the company, or

(b) a company connected with the company.

(4) For the purposes of sub-paragraph (3)—

(a) "relevant person", in relation to a company, means—

(i) a director or other officer, or shadow director, of the company;

(ii) a non-employee associate of such a person;

(iii) a non-employee associate of the company;

(b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.

(5) In sub-paragraph (4), "non-employee associate" of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.

(6) Subsection (10) of section 435 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that section.

(7) Regulations under this paragraph may—

(a) make different provision for different purposes;

(b) make incidental, consequential, supplemental and transitional provision.

(8) Regulations under this paragraph are to be made by statutory instrument.

(9) Regulations under this paragraph may not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

(10) This paragraph expires at the end of the period of 5 years beginning with the day on which it comes into force unless the power conferred by it is exercised during that period."

130 Attachment of floating charges on administration (Scotland)

(1) Paragraph 115 of Schedule B1 (administration) to the Insolvency Act 1986 is amended as follows.

(2) After sub-paragraph (1) insert—

"(1A) In Scotland, sub-paragraph (1B) applies in connection with the giving by the court of permission as provided for in paragraph 65(3)(b).

(1B) On the giving by the court of such permission, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is subject to the charge."

(3) In sub-paragraph (3), omit the words from "and" to the end.

(4) After that sub-paragraph insert—

"(4) Attachment of a floating charge under sub-paragraph (1B) or (3) has effect as if the charge is a fixed security over the property to which it has attached."

Small debts

131 Creditors not required to prove small debts: company insolvency

In Schedule 8 to the Insolvency Act 1986 (provisions capable of inclusion in company insolvency rules) after paragraph 13 insert—

"13A Provision for a creditor who has not proved a small debt to be treated as having done so for purposes relating to the distribution of a company's property (and for provisions of, or contained in legislation made under, this Act to apply accordingly)."

132 Creditors not required to prove small debts: individual insolvency

In Schedule 9 to the Insolvency Act 1986 (provisions capable of inclusion in individual insolvency rules) after paragraph 18 insert—

"18A Provision for a creditor who has not proved a small debt to be treated as having done so for purposes relating to the distribution of a bankrupt's estate (and for provisions of, or contained in legislation made under, this Act to apply accordingly)."

Trustees in bankruptcy

133 Trustees in bankruptcy

(1) In the Insolvency Act 1986, before section 292 insert—

"**291A First trustee in bankruptcy**

(1) On the making of a bankruptcy order the official receiver becomes trustee of the bankrupt's estate, unless the court appoints another person under subsection (2).

(2) If when the order is made there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part 8, the court may on making the order appoint the supervisor of the arrangement as the trustee.

(3) Where a person becomes trustee of a bankrupt's estate under this section, the person must give notice of that fact to the bankrupt's creditors (or, if the court so allows, advertise it in accordance with the court's directions).

(4) A notice or advertisement given by a trustee appointed under subsection (2) must explain the procedure for establishing a creditors' committee under section 301."

(2) Schedule 10 makes consequential amendments.

Voluntary arrangements

134 Time limit for challenging IVAs

In section 262(3)(a) of the Insolvency Act 1986 (time limit for challenging voluntary arrangement), for the words from "the report" to "section 259" substitute "the creditors decided whether to approve the proposed voluntary arrangement or, where a report was required to be made to the court under section 259(1)(b), the day on which the report was made".

135 Abolition of fast-track voluntary arrangements

(1) Omit sections 263A to 263G of the Insolvency Act 1986 (fast-track voluntary arrangements (England and Wales)) and the cross heading immediately before section 263A.

(2) In consequence of the repeals made by subsection (1), in the Insolvency Act 1986—

(a) in section 282 (court's power to annul bankruptcy order), in subsection (4), omit "or 263D", and

(b) in Schedule 4A (bankruptcy restrictions order and undertaking), in paragraph 11, omit ", 263D".

(3) Also in consequence of the repeals made by subsection (1), in the Enterprise Act 2002—

(a) omit section 264(2) to (4) (orders to extend application of provisions of sections 263B to 263G of the Insolvency Act 1986),

(b) in Schedule 22, omit paragraph 2 (fast-track voluntary arrangements) and the heading immediately before it, and

(c) in Schedule 23 (minor and consequential amendments), omit paragraph 4(a) and the "and" immediately after it.

(4) The repeals made by this section have no effect in relation to a case where a debtor has submitted the document and statement mentioned in section 263B(1) to the official receiver before this section comes into force.

Progress reports

136 Voluntary winding-up: progress reports

(1) The Insolvency Act 1986 is amended as follows.

(2) In section 92A (progress reports in members' voluntary winding-up)—

(a) in subsection (1), for the words from "in the event" to "one year," substitute "where the company is registered in England and Wales";
(b) in the heading, omit "at year's end".

(3) In section 104A (progress reports in creditors' voluntary winding-up)—
(a) in subsection (1), for the words from "If the" to "one year," substitute "Where the company is registered in England and Wales";
(b) in the heading, omit "at year's end".

(4) In the table in Schedule 10 (punishment of offences)—
(a) in the entry for section 92A(2), in column 2, omit "at year's end";
(b) in the entry for section 104A(2), in column 2, omit "at year's end".

Regulation of insolvency practitioners: amendments to existing regime

137 Recognised professional bodies: recognition

(1) In Part 13 of the Insolvency Act 1986 (insolvency practitioners), for section 391 (recognised professional bodies) (as substituted by section 17 of the Deregulation Act 2015) substitute—

"**391 Recognised professional bodies**

(1) The Secretary of State may by order, if satisfied that a body meets the requirements of subsection (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.

(2) The Secretary of State may by order, if satisfied that a body meets the requirements of subsection (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (as to which, see section 390A(1)).

(3) Section 391A makes provision about the making by a body of an application to the Secretary of State for an order under this section.

(4) The requirements are that—
(a) the body regulates (or is going to regulate) the practice of a profession,
(b) the body has rules which it is going to maintain and enforce for securing that its insolvency specialist members—
(i) are fit and proper persons to act as insolvency practitioners, and
(ii) meet acceptable requirements as to education and practical training and experience, and
(c) the body's rules and practices for or in connection with authorising persons to act as insolvency practitioners, and its rules and practices for or in connection with regulating persons acting as such, are designed to ensure that the regulatory objectives are met (as to which, see section 391C).

(5) An order of the Secretary of State under this section has effect from such date as is specified in the order.

(6) An order under this section may be revoked by an order under section 391L or 391N (and see section 415A(1)(b)).

(7) In this Part—

(a) references to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question;

(b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.

(8) A reference in this Part to a recognised professional body is to a body recognised under this section (and see sections 391L(6) and 391N(5)).

391A Application for recognition as recognised professional body

(1) An application for an order under section 391(1) or (2) must—

(a) be made to the Secretary of State in such form and manner as the Secretary of State may require,

(b) be accompanied by such information as the Secretary of State may require, and

(c) be supplemented by such additional information as the Secretary of State may require at any time between receiving the application and determining it.

(2) The requirements which may be imposed under subsection (1) may differ as between different applications.

(3) The Secretary of State may require information provided under this section to be in such form, and verified in such manner, as the Secretary of State may specify.

(4) An application for an order under section 391(1) or (2) must be accompanied by—

(a) a copy of the applicant's rules,

(b) a copy of the applicant's policies and practices, and

(c) a copy of any guidance issued by the applicant in writing.

(5) The reference in subsection (4)(c) to guidance issued by the applicant is a reference to guidance or recommendations which are—

(a) issued or made by it which will apply to its insolvency specialist members or to persons seeking to become such members,

(b) relevant for the purposes of this Part, and

(c) intended to have continuing effect,

including guidance or recommendations relating to the admission or expulsion of members.

(6) The Secretary of State may refuse an application for an order under section 391(1) or (2) if the Secretary of State considers that recognition of the

body concerned is unnecessary having regard to the existence of one or more other bodies which have been or are likely to be recognised under section 391.

(7) Subsection (8) applies where the Secretary of State refuses an application for an order under section 391(1) or (2); and it applies regardless of whether the application is refused on the ground mentioned in subsection (6), because the Secretary of State is not satisfied as mentioned in section 391(1) or (2) or because a fee has not been paid (see section 415A(1)(b)).

(8) The Secretary of State must give the applicant a written notice of the Secretary of State's decision; and the notice must set out the reasons for refusing the application."

(2) An order under section 391(1) or (2) of the Insolvency Act 1986 made before the coming into force of this section is, following the coming into force of this section, to be treated as if it were made under section 391(1) or (as the case may be) (2) as substituted by subsection (1) of this section.

138 Regulatory objectives

(1) After section 391A of the Insolvency Act 1986 (inserted by section 137) insert—

"Regulatory objectives

391B Application of regulatory objectives

(1) In discharging regulatory functions, a recognised professional body must, so far as is reasonably practicable, act in a way—

(a) which is compatible with the regulatory objectives, and

(b) which the body considers most appropriate for the purpose of meeting those objectives.

(2) In discharging functions under this Part, the Secretary of State must have regard to the regulatory objectives.

391C Meaning of "regulatory functions" and "regulatory objectives"

(1) This section has effect for the purposes of this Part.

(2) "Regulatory functions", in relation to a recognised professional body, means any functions the body has—

(a) under or in relation to its arrangements for or in connection with—

(i) authorising persons to act as insolvency practitioners, or

(ii) regulating persons acting as insolvency practitioners, or

(b) in connection with the making or alteration of those arrangements.

(3) "Regulatory objectives" means the objectives of—

(a) having a system of regulating persons acting as insolvency practitioners that—

(i) secures fair treatment for persons affected by their acts and omissions,

(ii) reflects the regulatory principles, and

(iii) ensures consistent outcomes,

(b) encouraging an independent and competitive insolvency-practitioner profession whose members—

(i) provide high quality services at a cost to the recipient which is fair and reasonable,

(ii) act transparently and with integrity, and

(iii) consider the interests of all creditors in any particular case,

(c) promoting the maximisation of the value of returns to creditors and promptness in making those returns, and

(d) protecting and promoting the public interest.

(4) In subsection (3)(a), "regulatory principles" means—

(a) the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and

(b) any other principle appearing to the body concerned (in the case of the duty under section 391B(1)), or to the Secretary of State (in the case of the duty under section 391B(2)), to lead to best regulatory practice."

(2) In section 419 of the Insolvency Act 1986 (regulations for the purposes of Part 13), at the end insert—

"(5) In making regulations under this section, the Secretary of State must have regard to the regulatory objectives (as defined by section 391C(3))."

139 Oversight of recognised professional bodies

(1) After section 391C of the Insolvency Act 1986 (inserted by section 138) insert—

"Oversight of recognised professional bodies

391D Directions

(1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Secretary of State considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.

(3) A direction under this section may require a recognised professional body—

(a) to take only such steps as it has power to take under its regulatory arrangements;

(b) to take steps with a view to the modification of any part of its regulatory arrangements.

(4) A direction under this section may require a recognised professional body—

(a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;
(b) to take steps in respect of all, or a specified class of, such proceedings.

(5) For the purposes of this section, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.

(6) In this section "regulatory arrangements", in relation to a recognised professional body, means the arrangements that the body has for or in connection with—
(a) authorising persons to act as insolvency practitioners, or
(b) regulating persons acting as insolvency practitioners.

391E Directions: procedure

(1) Before giving a recognised professional body a direction under section 391D, the Secretary of State must give the body a notice accompanied by a draft of the proposed direction.

(2) The notice under subsection (1) must—
(a) state that the Secretary of State proposes to give the body a direction in the form of the accompanying draft,
(b) specify why the Secretary of State has reached the conclusions mentioned in section 391D(1) and (2), and
(c) specify a period within which the body may make written representations with respect to the proposal.

(3) The period specified under subsection (2)(c)—
(a) must begin with the date on which the notice is given to the body, and
(b) must not be less than 28 days.

(4) On the expiry of that period, the Secretary of State must decide whether to give the body the proposed direction.

(5) The Secretary of State must give notice of that decision to the body.

(6) Where the Secretary of State decides to give the proposed direction, the notice under subsection (5) must—
(a) contain the direction,
(b) state the time at which the direction is to take effect, and
(c) specify the Secretary of State's reasons for the decision to give the direction.

(7) Where the Secretary of State decides to give the proposed direction, the Secretary of State must publish the notice under subsection (5); but this subsection does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.

(8) The Secretary of State may revoke a direction under section 391D; and, where doing so, the Secretary of State—

(a) must give the body to which the direction was given notice of the revocation, and

(b) must publish the notice and, if the notice under subsection (5) was published under subsection (7), must do so (if possible) in the same manner as that in which that notice was published.

391F Financial penalty

(1) This section applies if the Secretary of State is satisfied—

(a) that a recognised professional body has failed to comply with a requirement to which this section applies, and

(b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.

(2) This section applies to a requirement imposed on the recognised professional body—

(a) by a direction given under section 391D, or

(b) by a provision of this Act or of subordinate legislation under this Act.

(3) The Secretary of State may impose a financial penalty, in respect of the failure, of such amount as the Secretary of State considers appropriate.

(4) In deciding what amount is appropriate, the Secretary of State—

(a) must have regard to the nature of the requirement which has not been complied with, and

(b) must not take into account the Secretary of State's costs in discharging functions under this Part.

(5) A financial penalty under this section is payable to the Secretary of State; and sums received by the Secretary of State in respect of a financial penalty under this section (including by way of interest) are to be paid into the Consolidated Fund.

(6) In sections 391G to 391I, "penalty" means a financial penalty under this section.

391G Financial penalty: procedure

(1) Before imposing a penalty on a recognised professional body, the Secretary of State must give notice to the body—

(a) stating that the Secretary of State proposes to impose a penalty and the amount of the proposed penalty,

(b) specifying the requirement in question,

(c) stating why the Secretary of State is satisfied as mentioned in section 391F(1), and

(d) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under subsection (1)(d)—

(a) must begin with the date on which the notice is given to the body, and

(b) must not be less than 28 days.

(3) On the expiry of that period, the Secretary of State must decide—

(a) whether to impose a penalty, and

(b) whether the penalty should be the amount stated in the notice or a reduced amount.

(4) The Secretary of State must give notice of the decision to the body.

(5) Where the Secretary of State decides to impose a penalty, the notice under subsection (4) must—

(a) state that the Secretary of State has imposed a penalty on the body and its amount,

(b) specify the requirement in question and state—

(i) why it appears to the Secretary of State that the requirement has not been complied with, or

(ii) where, by that time, the requirement has been complied with, why it appeared to the Secretary of State when giving the notice under subsection (1) that the requirement had not been complied with, and

(c) specify a time by which the penalty is required to be paid.

(6) The time specified under subsection (5)(c) must be at least three months after the date on which the notice under subsection (4) is given to the body.

(7) Where the Secretary of State decides to impose a penalty, the Secretary of State must publish the notice under subsection (4).

(8) The Secretary of State may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Secretary of State—

(a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice, and

(b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under subsection (4) was published.

391H Appeal against financial penalty

(1) A recognised professional body on which a penalty is imposed may appeal to the court on one or more of the appeal grounds.

(2) The appeal grounds are—

(a) that the imposition of the penalty was not within the Secretary of State's power under section 391F;

(b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under section 391G(1) was given;

(c) that the requirements of section 391G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;

(d) that the amount of the penalty is unreasonable;

(e) that it was unreasonable of the Secretary of State to require the penalty imposed to be paid by the time specified in the notice under section 391G(5)(c).

(3) An appeal under this section must be made within the period of three months beginning with the day on which the notice under section 391G(4) in respect of the penalty is given to the body.

(4) On an appeal under this section the court may—

(a) quash the penalty,

(b) substitute a penalty of such lesser amount as the court considers appropriate, or

(c) in the case of the appeal ground in subsection (2)(e), substitute for the time imposed by the Secretary of State a different time.

(5) Where the court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.

(6) Where the court substitutes a later time for the time specified in the notice under section 391G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.

(7) Where the court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under section 391G(5)(c) at such rate as it considers just and equitable.

(8) In this section, "the court" means the High Court or, in Scotland, the Court of Session.

391I Recovery of financial penalties

(1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (but this is subject to any requirement imposed by the court under section 391H(5), (6) or (7)).

(2) If an appeal is made under section 391H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.

(3) Subsection (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and—

(a) no appeal relating to the penalty has been made under section 391H during the period within which an appeal may be made under that section, or

(b) an appeal has been made under that section and determined or withdrawn.

(4) The Secretary of State may recover from the recognised professional body in question, as a debt due to the Secretary of State, any of the penalty and any interest which has not been paid.

391J Reprimand

(1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to

have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

391K Reprimand: procedure

(1) If the Secretary of State proposes to publish a statement under section 391J in respect of a recognised professional body, it must give the body a notice—

(a) stating that the Secretary of State proposes to publish such a statement and setting out the terms of the proposed statement,

(b) specifying the acts or omissions to which the proposed statement relates, and

(c) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under subsection (1)(c)—

(a) must begin with the date on which the notice is given to the body, and

(b) must not be less than 28 days.

(3) On the expiry of that period, the Secretary of State must decide whether to publish the statement.

(4) The Secretary of State may vary the proposed statement; but before doing so, the Secretary of State must give the body notice—

(a) setting out the proposed variation and the reasons for it, and

(b) specifying a period within which the body may make written representations with respect to the proposed variation.

(5) The period specified under subsection (4)(b)—

(a) must begin with the date on which the notice is given to the body, and

(b) must not be less than 28 days.

(6) On the expiry of that period, the Secretary of State must decide whether to publish the statement as varied."

(2) In section 415A of the Insolvency Act 1986 (fees orders: general), after subsection (1A) (inserted by section 17 of the Deregulation Act 2015) insert—

"(1B) In setting under subsection (1) the amount of a fee in connection with maintenance of recognition, the matters to which the Secretary of State may have regard include, in particular, the costs of the Secretary of State in connection with any functions under sections 391D, 391E, 391J, 391K and 391N."

140 Recognised professional bodies: revocation of recognition

(1) After section 391K of the Insolvency Act 1986 (inserted by section 139) insert—

"Revocation etc of recognition

391L Revocation of recognition at instigation of Secretary of State

(1) An order under section 391(1) or (2) in relation to a recognised professional body may be revoked by the Secretary of State by order if the Secretary of State is satisfied that—

(a) an act or omission of the body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives, and

(b) it is appropriate in all the circumstances of the case to revoke the body's recognition under section 391.

(2) If the condition set out in subsection (3) is met, an order under section 391(1) in relation to a recognised professional body may be revoked by the Secretary of State by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see section 390A(1)).

(3) The condition is that the Secretary of State is satisfied—

(a) as mentioned in subsection (1)(a), and

(b) that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(4) In this Part—

(a) an order under subsection (1) is referred to as a "revocation order";

(b) an order under subsection (2) is referred to as a "partial revocation order".

(5) A revocation order or partial revocation order—

(a) has effect from such date as is specified in the order, and

(b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

(6) A partial revocation order has effect as if it were an order made under section 391(2).

391M Orders under section 391L: procedure

(1) Before making a revocation order or partial revocation order in relation to a recognised professional body, the Secretary of State must give notice to the body—

(a) stating that the Secretary of State proposes to make the order and the terms of the proposed order,

(b) specifying the Secretary of State's reasons for proposing to make the order, and

(c) specifying a period within which the body, members of the body or other persons likely to be affected by the proposal may make written representations with respect to it.

(2) Where the Secretary of State gives a notice under subsection (1), the Secretary of State must publish the notice on the same day.

(3) The period specified under subsection (1)(c)—

(a) must begin with the date on which the notice is given to the body, and

(b) must not be less than 28 days.

(4) On the expiry of that period, the Secretary of State must decide whether to make the revocation order or (as the case may be) partial revocation order in relation to the body.

(5) The Secretary of State must give notice of the decision to the body.

(6) Where the Secretary of State decides to make the order, the notice under subsection (5) must specify—

(a) when the order is to take effect, and

(b) the Secretary of State's reasons for making the order.

(7) A notice under subsection (5) must be published; and it must (if possible) be published in the same manner as that in which the notice under subsection (1) was published.

391N Revocation of recognition at request of body

(1) An order under section 391(1) or (2) in relation to a recognised professional body may be revoked by the Secretary of State by order if—

(a) the body has requested that an order be made under this subsection, and

(b) the Secretary of State is satisfied that it is appropriate in all the circumstances of the case to revoke the body's recognition under section 391.

(2) An order under section 391(1) in relation to a recognised professional body may be revoked by the Secretary of State by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see section 390A(1)) if—

(a) the body has requested that an order be made under this subsection, and

(b) the Secretary of State is satisfied that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(3) Where the Secretary of State decides to make an order under this section the Secretary of State must publish a notice specifying—

(a) when the order is to take effect, and
(b) the Secretary of State's reasons for making the order.

(4) An order under this section—
(a) has effect from such date as is specified in the order, and
(b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

(5) An order under subsection (2) has effect as if it were an order made under section 391(2)."

(2) In section 415A of the Insolvency Act 1986 (fees orders: general), after subsection (4) insert—

"(5) Section 391M applies for the purposes of an order under subsection (1)(b) as it applies for the purposes of a revocation order made under section 391L."

141 Court sanction of insolvency practitioners in public interest cases

After section 391N of the Insolvency Act 1986 (inserted by section 140) insert—

"Court sanction of insolvency practitioners in public interest cases

391O Direct sanctions orders

(1) For the purposes of this Part a "direct sanctions order" is an order made by the court against a person who is acting as an insolvency practitioner which—
(a) declares that the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
(b) declares that the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the order;
(c) declares that the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the order or until such time as the requirements so specified are complied with;
(d) requires the person to comply with such other requirements as may be specified in the order while acting as an insolvency practitioner;
(e) requires the person to make such contribution as may be specified in the order to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(2) Where the court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.

(3) A direct sanctions order must not be made against a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).

(4) A direct sanctions order must not specify a contribution as mentioned in subsection (1)(e) which is more than the remuneration that the person has

received or will receive in respect of acting as an insolvency practitioner in the case.

(5) In this section and section 391P—

"the court" means the High Court or, in Scotland, the Court of Session;

"relevant recognised professional body", in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

391P Application for, and power to make, direct sanctions order

(1) The Secretary of State may apply to the court for a direct sanctions order to be made against a person if it appears to the Secretary of State that it would be in the public interest for the order to be made.

(2) The Secretary of State must send a copy of the application to the relevant recognised professional body.

(3) The court may make a direct sanctions order against a person where, on an application under this section, the court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.

(4) The conditions are set out in section 391Q.

(5) In deciding whether to make a direct sanctions order against a person the court must have regard to the extent to which—

(a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1, and

(b) that action is sufficient to address the failure.

391Q Direct sanctions order: conditions

(1) Condition 1 is that the person, in acting as an insolvency practitioner or in connection with any appointment as such, has failed to comply with—

(a) a requirement imposed by the rules of the relevant recognised professional body;

(b) any standards, or code of ethics, for the insolvency-practitioner profession adopted from time to time by the relevant recognised professional body.

(2) Condition 2 is that the person—

(a) is not a fit and proper person to act as an insolvency practitioner;

(b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person's authorisation is not so limited; or

(c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person's authorisation is not so limited.

(3) Condition 3 is that it is appropriate for the person's authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.

(4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.

(5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(6) In this section "relevant recognised professional body" has the same meaning as in section 391O.

391R Direct sanctions direction instead of order

(1) The Secretary of State may give a direction (a "direct sanctions direction") in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Secretary of State is satisfied that—

(a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see section 391Q), and

(b) it is in the public interest for the direction to be given.

(2) But the Secretary of State may not give a direct sanctions direction in relation to a person without that person's consent.

(3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that—

(a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;

(b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;

(c) the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;

(d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;

(e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(4) A direct sanctions direction must not be given in relation to a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).

(5) A direct sanctions direction must not specify a contribution as mentioned in subsection (3)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.

(6) In this section "relevant recognised professional body" has the same meaning as in section 391O."

142 Power for Secretary of State to obtain information

After section 391R of the Insolvency Act 1986 (inserted by section 141) insert—

"General

391S Power for Secretary of State to obtain information

(1) A person mentioned in subsection (2) must give the Secretary of State such information as the Secretary of State may by notice in writing require for the exercise of the Secretary of State's functions under this Part.

(2) Those persons are—
- (a) a recognised professional body;
- (b) any individual who is or has been authorised under section 390A to act as an insolvency practitioner;
- (c) any person who is connected to such an individual.

(3) A person is connected to an individual who is or has been authorised to act as an insolvency practitioner if, at any time during the authorisation—
- (a) the person was an employee of the individual;
- (b) the person acted on behalf of the individual in any other way;
- (c) the person employed the individual;
- (d) the person was a fellow employee of the individual's employer;
- (e) in a case where the individual was employed by a firm, partnership or company, the person was a member of the firm or partnership or (as the case may be) a director of the company.

(4) In imposing a requirement under subsection (1) the Secretary of State may specify—
- (a) the time period within which the information in question is to be given, and
- (b) the manner in which it is to be verified."

143 Compliance orders

After section 391S of the Insolvency Act 1986 (inserted by section 142) insert—

"**391T Compliance orders**

(1) If at any time it appears to the Secretary of State that—
- (a) a recognised professional body has failed to comply with a requirement imposed on it by or by virtue of this Part, or
- (b) any other person has failed to comply with a requirement imposed on the person by virtue of section 391S,

the Secretary of State may make an application to the court.

(2) If, on an application under this section, the court decides that the body or other person has failed to comply with the requirement in question, it may order the body or person to take such steps as the court considers will secure that the requirement is complied with.

(3) In this section, "the court" means the High Court or, in Scotland, the Court of Session."

Power to establish single regulator of insolvency practitioners

144 Power to establish single regulator of insolvency practitioners

(1) The Secretary of State may by regulations designate a body for the purposes of—
- (a) authorising persons to act as insolvency practitioners, and
- (b) regulating persons acting as such.

(2) The designated body may be either—
- (a) a body corporate established by the regulations, or
- (b) a body (whether a body corporate or an unincorporated association) already in existence when the regulations are made (an "existing body").

(3) The regulations may, in particular, confer the following functions on the designated body—
- (a) establishing criteria for determining whether a person is a fit and proper person to act as an insolvency practitioner;
- (b) establishing the requirements as to education, practical training and experience which a person must meet in order to act as an insolvency practitioner;
- (c) establishing and maintaining a system for providing full authorisation or partial authorisation to persons who meet those criteria and requirements;
- (d) imposing technical standards for persons so authorised and enforcing compliance with those standards;
- (e) imposing professional and ethical standards for persons so authorised and enforcing compliance with those standards;
- (f) monitoring the performance and conduct of persons so authorised;
- (g) investigating complaints made against, and other matters concerning the performance or conduct of, persons so authorised.

(4) The regulations may require the designated body, in discharging regulatory functions, so far as is reasonably practicable, to act in a way—
- (a) which is compatible with the regulatory objectives, and
- (b) which the body considers most appropriate for the purpose of meeting those objectives.

(5) Provision made under subsection (3)(d) or (3)(e) for the enforcement of the standards concerned may include provision enabling the designated body to impose a financial penalty on a person who is or has been authorised to act as an insolvency practitioner.

(6) The regulations may, in particular, include provision for the purpose of treating a person authorised to act as an insolvency practitioner by virtue of being a member of a professional body recognised under section 391 of the Insolvency Act 1986

immediately before the regulations come into force as authorised to act as an insolvency practitioner by the body designated by the regulations after that time.

(7) Expressions used in this section which are defined for the purposes of Part 13 of the Insolvency Act 1986 have the same meaning in this section as in that Part.

(8) Section 145 makes further provision about regulations under this section which designate an existing body.

(9) Schedule 11 makes supplementary provision in relation to the designation of a body by regulations under this section.

145 Regulations under section 144: designation of existing body

(1) The Secretary of State may make regulations under section 144 designating an existing body only if it appears to the Secretary of State that—

(a) the body is able and willing to exercise the functions that would be conferred by the regulations, and

(b) the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (2) are met.

(2) The conditions are—

(a) that the functions in question will be exercised effectively, and

(b) where the regulations are to contain any requirements or other provisions prescribed under subsection (3), that those functions will be exercised in accordance with any such requirements or provisions.

(3) Regulations which designate an existing body may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Secretary of State to be appropriate.

146 Regulations under section 144: timing and supplementary

(1) Section 144 and, accordingly, section 145 and subsections (3) and (4) below expire at the end of the relevant period unless the power conferred by subsection (1) of section 144 is exercised before the end of that period.

(2) The "relevant period" is the period of 7 years beginning with the day on which section 144 comes into force.

(3) Regulations under section 144 are subject to affirmative resolution procedure.

(4) If a draft of a statutory instrument containing regulations under section 144 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

PART 11

EMPLOYMENT

Equal pay

147 Equal pay: transparency

(1) The Secretary of State must, as soon as possible and no later than 12 months after the passing of this Act, make regulations under section 78 of the Equality Act 2010 (gender pay gap information) for the purpose of requiring the publication of information showing whether there are differences in the pay of males and females.

(2) The Secretary of State must consult such persons as the Secretary of State thinks appropriate on the details of such regulations prior to publication.

Whistleblowing

148 Protected disclosures: reporting requirements

(1) The Employment Rights Act 1996 is amended as follows.

(2) In Part 4A (protected disclosures), after section 43F insert—

"**43FA Prescribed persons: duty to report on disclosures of information**

(1) The Secretary of State may make regulations requiring a person prescribed for the purposes of section 43F to produce an annual report on disclosures of information made to the person by workers.

(2) The regulations must set out the matters that are to be covered in a report, but must not require a report to provide detail that would enable either of the following to be identified—

(a) a worker who has made a disclosure;

(b) an employer or other person in respect of whom a disclosure has been made.

(3) The regulations must make provision about the publication of a report, and such provision may include (but is not limited to) any of the following requirements—

(a) to send the report to the Secretary of State for laying before Parliament;

(b) to include the report in another report or in information required to be published by the prescribed person;

(c) to publish the report on a website.

(4) The regulations may make provision about the time period within which a report must be produced and published.

(5) Regulations under subsections (2) to (4) may make different provision for different prescribed persons."

(3) In section 236 (orders and regulations)—

(a) in subsection (3), before "43K(4)" insert "43FA (but see subsection (3A)),";
(b) after subsection (3) insert—

"(3A) Subsection (3) does not apply to regulations under section 43FA that contain only the provision mentioned in section 43FA(2), (3) or (4)."

149 Protection for applicants for employment etc in the health service

(1) The Employment Rights Act 1996 is amended as follows.

(2) After section 49A insert—

"**PART 5A**

PROTECTION FOR APPLICANTS FOR EMPLOYMENT ETC IN THE HEALTH SERVICE

49B Regulations prohibiting discrimination because of protected disclosure

(1) The Secretary of State may make regulations prohibiting an NHS employer from discriminating against an applicant because it appears to the NHS employer that the applicant has made a protected disclosure.

(2) An "applicant", in relation to an NHS employer, means an individual who applies to the NHS employer for—
(a) a contract of employment,
(b) a contract to do work personally, or
(c) appointment to an office or post.

(3) For the purposes of subsection (1), an NHS employer discriminates against an applicant if the NHS employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract, office or post.

(4) Regulations under this section may, in particular—
(a) make provision as to circumstances in which discrimination by a worker or agent of an NHS employer is to be treated, for the purposes of the regulations, as discrimination by the NHS employer;
(b) confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal;
(c) make provision for or about the grant or enforcement of specified remedies by a court or tribunal;
(d) make provision for the making of awards of compensation calculated in accordance with the regulations;
(e) make different provision for different cases or circumstances;
(f) make incidental or consequential provision, including incidental or consequential provision amending—
(i) an Act of Parliament (including this Act),
(ii) an Act of the Scottish Parliament,
(iii) a Measure or Act of the National Assembly for Wales, or

(iv) an instrument made under an Act or Measure within any of sub-paragraphs (i) to (iii).

(5) Subsection (4)(f) does not affect the application of section 236(5) to the power conferred by this section.

(6) "NHS employer" means an NHS public body prescribed by regulations under this section.

(7) "NHS public body" means—

(a) the National Health Service Commissioning Board;
(b) a clinical commissioning group;
(c) a Special Health Authority;
(d) an NHS trust;
(e) an NHS foundation trust;
(f) the Care Quality Commission;
(g) Health Education England;
(h) the Health Research Authority;
(i) the Health and Social Care Information Centre;
(j) the National Institute for Health and Care Excellence;
(k) Monitor;
(l) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
(m) the Common Services Agency for the Scottish Health Service;
(n) Healthcare Improvement Scotland;
(o) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
(p) a Special Health Board constituted under that section.

(8) The Secretary of State must consult the Welsh Ministers before making regulations prescribing any of the following NHS public bodies for the purposes of the definition of "NHS employer"—

(a) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006;
(b) an NHS trust established under section 18 of that Act;
(c) a Local Health Board established under section 11 of that Act.

(9) The Secretary of State must consult the Scottish Ministers before making regulations prescribing an NHS public body within any of paragraphs (m) to (p) of subsection (7) for the purposes of the definition of "NHS employer".

(10) For the purposes of subsection (4)(a)—

(a) "worker" has the extended meaning given by section 43K, and
(b) a person is a worker of an NHS employer if the NHS employer is an employer in relation to the person within the extended meaning given by that section."

(3) In section 230(6) (interpretation of references to employees, workers etc) for "and 47B(3)" substitute ", 47B(3) and 49B(10)".

(4) In section 236(3) (orders and regulations subject to affirmative procedure) after "47C," insert "49B,".

Employment tribunals

150 Financial penalty for failure to pay sums ordered by employment tribunal etc

(1) The Employment Tribunals Act 1996 is amended as provided in subsections (2) to (6).

(2) After section 37ZC insert—

"**PART 2A**

FINANCIAL PENALTIES FOR FAILURE TO PAY SUMS ORDERED TO BE PAID OR SETTLEMENT SUMS

37A Sums to which financial penalty can relate

(1) This section has effect for the purposes of this Part.

(2) "Financial award"—

(a) means a sum of money (or, if more than one, the sums of money) ordered by an employment tribunal on a claim involving an employer and a worker, or on a relevant appeal, to be paid by the employer to the worker, and

(b) includes—

(i) any sum (a "costs sum") required to be paid in accordance with an order in respect of costs or expenses which relate to proceedings on, or preparation time relating to, the claim or a relevant appeal, and

(ii) in a case to which section 16 applies, a sum ordered to be paid to the Secretary of State under that section.

(3) Subsection (2)(b)(i) applies irrespective of when the order was made or the amount of the costs sum was determined.

(4) "Settlement sum" means a sum payable by an employer to a worker under the terms of a settlement in respect of which a certificate has been issued under section 19A(1).

(5) "Relevant sum" means—

(a) a financial award, or

(b) a settlement sum.

(6) "Relevant appeal", in relation to a financial award, means an appeal against—

(a) the decision on the claim to which it relates,

(b) a decision to make, or not to make, an order in respect of a financial award (including any costs sum) on the claim,

(c) the amount of any such award, or

(d) any decision made on an appeal within paragraphs (a) to (c) or this paragraph.

(7) Sections 37B to 37D apply for the purposes of calculating the unpaid amount on any day of a relevant sum.

37B Financial award: unpaid amount

(1) In the case of a financial award, the unpaid amount on any day means the amount outstanding immediately before that day in respect of—

(a) the initial amount of the financial award (see subsection (2)), and

(b) interest payable in respect of the financial award by virtue of section 14.

(2) The initial amount of a financial award is—

(a) in a case to which section 16 applies, the monetary award within the meaning of that section (see section 17(3)), together with any costs sum, and

(b) in any other case, the sum or sums of money ordered to be paid (including any costs sum).

(3) An amount in respect of a financial award is not to be regarded as outstanding—

(a) when the worker could make an application for an order for a costs sum in relation to—

(i) proceedings on the claim to which the financial award relates,

(ii) proceedings on a relevant appeal,

(b) when the worker has made such an application but the application has not been withdrawn or finally determined,

(c) when the employer or worker could appeal against—

(i) the decision on the claim to which it relates,

(ii) a decision to make, or not to make, a financial award (including any costs sum) on the claim,

(iii) the amount of any such award, or

(iv) any decision made on an appeal within sub-paragraphs (i) to (iii) or this sub-paragraph,

but has not done so, or

(d) when the employer or worker has made such an appeal but the appeal has not been withdrawn or finally determined.

37C Settlement sum: unpaid amount

(1) In the case of a settlement sum, the unpaid amount on any day means the amount outstanding immediately before that day in respect of—

(a) the settlement sum, and

(b) interest (if any) calculated in accordance with the settlement (within the meaning of section 19A).

(2) Subject to section 37D(2) and (3), an amount in respect of a settlement sum is not to be regarded as outstanding if the settlement sum is not recoverable under section 19A(3).

37D Unpaid amount of relevant sum: further provision

(1) Subsections (2) and (3) apply where—

(a) a relevant sum is to be paid by instalments,

(b) any instalment is not paid on or before the day on which it is due to be paid, and

(c) a warning notice (see section 37E) is given in consequence of the failure to pay that instalment ("the unpaid instalment").

(2) For the purposes of calculating the unpaid amount for—

(a) that warning notice, and

(b) any penalty notice given in respect of that warning notice,

any remaining instalments (whether or not yet due) are to be treated as having been due on the same day as the unpaid instalment.

(3) Accordingly, the amount outstanding in respect of the financial award or settlement sum is to be taken to be—

(a) the aggregate of—

(i) the unpaid instalment, and

(ii) any remaining instalments,

including, in the case of a settlement sum, any amount which is not recoverable under section 19A(3) by reason only of not being due,

(b) interest on those amounts calculated in accordance with section 37B(1)(b) or 37C(1)(b) (and subsection (2)).

(4) Subsections (2) and (3) are not to be taken to affect the time at which any remaining instalment is due to be paid by the employer.

(5) The provisions of this Part apply where a financial award consists of two or more sums (whether or not any of them is a costs sum) which are required to be paid at different times as if—

(a) it were a relevant sum to be paid by instalments, and

(b) those sums were the instalments.

(6) Where a payment by an employer is made, or purported to be made, in respect of a relevant sum, an enforcement officer may determine whether, and to what extent, the payment is to be treated as being—

(a) in respect of that relevant sum or instead in respect of some other amount owed by the employer;

(b) in respect of the initial amount or interest on it, in the case of a payment treated as being in respect of the relevant sum.

37E Warning notice

(1) This section applies where an enforcement officer considers that an employer who is required to pay a relevant sum has failed—

(a) in the case of a relevant sum which is to be paid by instalments, to pay an instalment on or before the day on which it is due to be paid, or

(b) in any other case, to pay the relevant sum in full on or before the day on which it is due to be paid.

(2) The officer may give the employer a notice (a "warning notice") stating the officer's intention to impose a financial penalty in respect of the relevant sum unless before a date specified in the warning notice ("the specified date") the employer has paid in full the amount so specified ("the specified amount").

This is subject to subsection (3).

(3) Where a penalty notice has previously been given in respect of the relevant sum, the officer may not give a warning notice until—

(a) 3 months have elapsed since the end of the relevant period (within the meaning of section 37H) relating to the last penalty notice given in respect of the relevant sum, and

(b) if the relevant sum is to be paid by instalments, the last instalment has become due for payment.

(4) The specified date must be after the end of the period of 28 days beginning with the day on which the warning notice is given.

(5) The specified amount must be the unpaid amount of the relevant sum on the day on which the warning notice is given.

(6) A warning notice must identify the relevant sum and state—

(a) how the specified amount has been calculated;

(b) the grounds on which it is proposed to impose a penalty;

(c) the amount of the financial penalty that would be imposed if no payment were made in respect of the relevant sum before the specified date;

(d) that the employer may before the specified date make representations about the proposal to impose a penalty, including representations—

(i) about payments which the employer makes in respect of the relevant sum after the warning notice is given;

(ii) about the employer's ability to pay both a financial penalty and the relevant sum;

(e) how any such representations may be made.

(7) The statement under subsection (6)(e) must include provision for allowing representations to be made by post (whether or not it also allows them to be made in any other way).

(8) If the employer pays the specified amount before the specified date, the relevant sum is to be treated for the purposes of this Part as having been paid in full.

(9) Subsection (8) is not to be taken to affect the liability of the employer to pay any increase in the unpaid amount between the date of the warning notice and the date of payment.

37F Penalty notice

(1) This section applies where an enforcement officer—

(a) has given a warning notice to an employer, and

(b) is satisfied that the employer has failed to pay the specified amount in full before the specified date.

(2) The officer may give the employer a notice (a "penalty notice") requiring the employer to pay a financial penalty to the Secretary of State.

(3) A penalty notice must identify the relevant sum and state—

(a) the grounds on which the penalty notice is given;
(b) the unpaid amount of the relevant sum on the specified date and how it has been calculated;
(c) the amount of the financial penalty (see subsections (4) to (6));
(d) how the penalty must be paid;
(e) the period within which the penalty must be paid;
(f) how the employer may pay a reduced penalty instead of the financial penalty;
(g) the amount of the reduced penalty (see subsection (8));
(h) how the employer may appeal against the penalty notice;
(i) the consequences of non-payment.

(4) Subject to subsections (5) and (6), the amount of the financial penalty is 50% of the unpaid amount of the relevant sum on the specified date.

(5) If the unpaid amount on the specified date is less than £200, the amount of the penalty is £100.

(6) If the unpaid amount on the specified date is more than £10,000, the amount of the financial penalty is £5,000.

(7) The period specified under subsection (3)(e) must be a period of not less than 28 days beginning with the day on which the penalty notice is given.

(8) The amount of the reduced penalty is 50% of the amount of the financial penalty.

(9) Subsection (10) applies if, within the period of 14 days beginning with the day on which the penalty notice is given, the employer—
(a) pays the unpaid amount of the relevant sum on the specified date (as stated in the notice under subsection (3)(b)), and
(b) pays the reduced penalty to the Secretary of State.

(10) The employer is to be treated—
(a) for the purposes of this Part, as having paid the relevant sum in full, and
(b) by paying the reduced penalty, as having paid the whole of the financial penalty.

(11) Subsection (10)(a) is not to be taken to affect the liability of the employer to pay any increase in the unpaid amount of the relevant sum between the specified date and the date of payment.

37G Appeal against penalty notice

(1) An employer to whom a penalty notice is given may, before the end of the period specified under section 37F(3)(e) (period within which penalty must be paid), appeal against—
(a) the penalty notice; or
(b) the amount of the financial penalty.

(2) An appeal under subsection (1) lies to an employment tribunal.

(3) An appeal under subsection (1) may be made on one or more of the following grounds—

(a) that the grounds stated in the penalty notice under section 37F(3)(a) were incorrect;

(b) that it was unreasonable for the enforcement officer to have given the notice;

(c) that the calculation of an amount stated in the penalty notice was incorrect.

(4) On an appeal under subsection (1), an employment tribunal may—

(a) allow the appeal and cancel the penalty notice;

(b) in the case of an appeal made on the ground that the calculation of an amount stated in the penalty notice was incorrect, allow the appeal and substitute the correct amount for the amount stated in the penalty notice;

(c) dismiss the appeal.

(5) Where an employer has made an appeal under subsection (1), the penalty notice is not enforceable until the appeal has been withdrawn or finally determined.

37H Interest and recovery

(1) This section applies if all or part of a financial penalty which an employer is required by a penalty notice to pay is unpaid at the end of the relevant period.

(2) The relevant period is—

(a) if no appeal is made under section 37G(1) relating to the penalty notice, the period specified in the penalty notice under section 37F(3)(e);

(b) if such an appeal is made, the period ending when the appeal is withdrawn or finally determined.

(3) The outstanding amount of the financial penalty for the time being carries interest—

(a) at the rate that, on the last day of the relevant period, was specified in section 17 of the Judgments Act 1838,

(b) from the end of the relevant period until the time when the amount of interest calculated under this subsection equals the amount of the financial penalty,

(and does not also carry interest as a judgment debt under that section).

(4) The outstanding amount of a penalty and any interest is recoverable—

(a) in England and Wales, if the county court so orders, under section 85 of the County Courts Act 1984 or otherwise as if the sum were payable under an order of the county court;

(b) in Scotland, by diligence as if the penalty notice were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(5) Any amount received by the Secretary of State under this Part is to be paid into the Consolidated Fund.

37I Withdrawal of warning notice

(1) Where—

(a) a warning notice has been given (and not already withdrawn),

(b) it appears to an enforcement officer that—

(i) the notice incorrectly omits any statement or is incorrect in any particular, or

(ii) the warning notice was given in contravention of section 37E(3), and

(c) if a penalty notice has been given in relation to the warning notice, any appeal made under section 37G(1) has not been determined,

the officer may withdraw the warning notice by giving notice of withdrawal to the employer.

(2) Where a warning notice is withdrawn, no penalty notice may be given in relation to it.

(3) Where a warning notice is withdrawn after a penalty notice has been given in relation to it—

(a) the penalty notice ceases to have effect;

(b) any sum paid by or recovered from the employer by way of financial penalty payable under the penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered;

(c) any appeal under section 37G(1) relating to the penalty notice must be dismissed.

(4) In subsection (3)(b), the appropriate rate means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838.

(5) A notice of withdrawal under this section must indicate the effect of the withdrawal (but a failure to do so does not make the notice of withdrawal ineffective).

(6) Withdrawal of a warning notice relating to a relevant sum does not preclude a further warning notice being given in relation to that sum (subject to section 37E(3)).

37J Withdrawal of penalty notice

(1) Where—

(a) a penalty notice has been given (and not already withdrawn or cancelled), and

(b) it appears to an enforcement officer that—

(i) the notice incorrectly omits any statement required by section 37F(3), or

(ii) any statement so required is incorrect in any particular,

the officer may withdraw it by giving notice of the withdrawal to the employer.

(2) Where a penalty notice is withdrawn and no replacement penalty notice is given in accordance with section 37K—

(a) any sum paid by or recovered from the employer by way of financial penalty payable under the notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered;

(b) any appeal under section 37G(1) relating to the penalty notice must be dismissed.

(3) In a case where subsection (2) applies, the notice of withdrawal must indicate the effect of that subsection (but a failure to do so does not make the withdrawal ineffective).

(4) In subsection (2)(a), "the appropriate rate" means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838.

37K Replacement penalty notice

(1) Where an enforcement officer—

(a) withdraws a penalty notice ("the original penalty notice") under section 37J, and

(b) is satisfied that the employer failed to pay the specified amount in full before the specified date in accordance with the warning notice in relation to which the original penalty notice was given,

the officer may at the same time give another penalty notice in relation to the warning notice ("the replacement penalty notice").

(2) The replacement penalty notice must—

(a) indicate the differences between it and the original penalty notice that the enforcement officer reasonably considers material, and

(b) indicate the effect of section 37L.

(3) Failure to comply with subsection (2) does not make the replacement penalty notice ineffective.

(4) Where a replacement penalty notice is withdrawn under section 37J, no further replacement penalty notice may be given under subsection (1) pursuant to the withdrawal.

(5) Nothing in this section affects any power that arises apart from this section to give a penalty notice.

37L Effect of replacement penalty notice

(1) This section applies where a penalty notice is withdrawn under section 37J and a replacement penalty notice is given in accordance with section 37K.

(2) If an appeal relating to the original penalty notice has been made under section 37G(1) and has not been withdrawn or finally determined before the time when that notice is withdrawn—

(a) the appeal ("the earlier appeal") is to have effect after that time as if it were against the replacement penalty notice, and

(b) the employer may exercise the right under section 37G to appeal against the replacement penalty notice only after withdrawing the earlier appeal.

(3) If a sum was paid by or recovered from the employer by way of financial penalty under the original penalty notice—

(a) an amount equal to that sum (or, if more than one, the total of those sums) is to be treated as having been paid in respect of the replacement penalty notice, and

(b) any amount by which that sum (or total) exceeds the amount of the financial penalty payable under the replacement penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum (or, if more than one, the first of them) was paid or recovered.

(4) In subsection (3)(b) "the appropriate rate" means the rate that, on the date mentioned in that provision, was specified in section 17 of the Judgments Act 1838.

37M Enforcement officers

The Secretary of State may appoint or authorise persons to act as enforcement officers for the purposes of this Part.

37N Power to amend Part 2A

(1) The Secretary of State may by regulations—

(a) amend subsection (5) or (6) of section 37F by substituting a different amount;

(b) amend subsection (4) or (8) of that section by substituting a different percentage;

(c) amend section 37E(4) or 37F(7) or (9) by substituting a different number of days.

(2) Any provision that could be made by regulations under this section may instead be included in an order under section 12A(12).

37O Modification in particular cases

(1) The Secretary of State may by regulations make provision for this Part to apply with modifications in cases where—

(a) two or more financial awards were made against an employer on claims relating to different workers that were considered together by an employment tribunal, or

(b) settlement sums are payable by an employer under two or more settlements in cases dealt with together by a conciliation officer.

(2) Regulations under subsection (1) may in particular provide for any provision of this Part to apply as if any such financial awards or settlement sums, taken together, were a single relevant sum.

(3) The Secretary of State may by regulations make provision for this Part to apply with modifications in cases where a financial award has been made against an

employer but is not regarded as outstanding by virtue only of the fact that an application for an order for a costs sum has not been finally determined (or any appeal within section 37B(3)(c) so far as relating to the application could still be made or has not been withdrawn or finally determined).

(4) Regulations under subsection (3) may in particular provide—

(a) for any provision of this Part to apply, or to apply if the enforcement officer so determines, as if the application had not been, and could not be, made;

(b) for any costs sum the amount of which is subsequently determined, or the order for which is subsequently made, to be treated for the purposes of this Part as a separate relevant sum.

37P Giving of notices

(1) For the purposes of section 7 of the Interpretation Act 1978 in its application to this Part, the proper address of an employer is—

(a) if the employer has notified an enforcement officer of an address at which the employer is willing to accept notices, that address;

(b) otherwise—

(i) in the case of a body corporate, the address of the body's registered or principal office;

(ii) in the case of a partnership or an unincorporated body or association, the principal office of the partnership, body or association;

(iii) in any other case, the last known address of the person in question.

(2) In the case of—

(a) a body corporate registered outside the United Kingdom,

(b) a partnership carrying on business outside the United Kingdom, or

(c) an unincorporated body or association with offices outside the United Kingdom,

the references in subsection (1) to its principal office include references to its principal office within the United Kingdom (if any).

37Q Financial penalties for non-payment: interpretation

(1) In this Part, the following terms have the following meanings—

"claim"—

(a) means anything that is referred to in the relevant legislation as a claim, a complaint or a reference, other than a reference made by virtue of section 122(2) or 128(2) of the Equality Act 2010 (reference by court of question about a non-discrimination or equality rule etc), and

(b) also includes an application, under regulations made under section 45 of the Employment Act 2002, for a declaration that a person is a permanent employee;

"costs sum" has the meaning given by section 37A;

"employer" has the same meaning as in section 12A;

"enforcement officer" means a person appointed or authorised to act under section 37M;

"financial award" has the meaning given by section 37A;

"penalty notice" has the meaning given by section 37F;

"relevant appeal" has the meaning given by section 37A;

"relevant sum" has the meaning given by section 37A;

"settlement sum" has the meaning given by section 37A;

"specified amount" and "specified date", in relation to a warning notice or a penalty notice given in relation to it, have the meanings given by section 37E(2);

"unpaid amount"—

(a) in relation to a financial award, has the meaning given by section 37B;

(b) in relation to a settlement sum, has the meaning given by section 37C;

subject, in each case, to section 37D;

"warning notice" has the meaning given by section 37E(2);

"worker" has the same meaning as in section 12A.

(2) References in this Part to an employer, in relation to a warning notice or penalty notice, are to the person to whom the notice is given (whether or not the person is an employer at the time in question).

(3) For the purposes of this Part a relevant sum is to be regarded as having been paid in full when the amount unpaid in respect of that sum on the date of payment has been paid.

(4) For the purposes of this Part, a penalty notice is given in relation to a warning notice if it is given as the result of a failure by the employer to pay the specified amount before the specified date.

(5) The Secretary of State may by regulations amend this section so as to alter the meaning of "claim".

(6) Any provision that could be made by regulations under subsection (5) may instead be included in an order under section 12A(12)."

(3) In section 12A (financial penalties), after subsection (12) insert—

"(12A) Any provision that could be made by an order under subsection (12) may instead—

(a) in the case of provision that could be made under paragraph (a) or (b) of that subsection, be included in regulations under section 37N;

(b) in the case of provision that could be made under paragraph (c) of that subsection, be included in regulations under section 37Q."

(4) In section 19A (conciliation: recovery of sums payable under settlements), after subsection (10) insert—

"(10A) A term of any document which is a relevant document for the purposes of subsection (1) is void to the extent that it purports to prevent the disclosure of any provision of any such document to a person appointed or authorised to act under section 37M."

(5) In section 41 (orders, regulations and rules), in subsection (2)—

(a) after "38(4)," omit "and";

(b) after "40," insert "and no regulations are to be made under section 37N, 37O or 37Q(5),";

(c) for "or order" substitute ", order or regulations",

and in subsection (3)(b) for "regulations" substitute "any other regulations".

(6) In section 42(1) (interpretation), after "In this Act" insert "(except where otherwise expressly provided)".

(7) In section 251B of the Trade Union and Labour Relations (Consolidation) Act 1992 (prohibition on disclosure of information by ACAS), in subsection (2), after paragraph (c) insert—

"(ca) the disclosure is made for the purpose of enabling or assisting an enforcement officer within the meaning of Part 2A of the Employment Tribunals Act 1996 to carry out the officer's functions under that Part;".

(8) The amendments made by this section have effect only in relation to relevant sums where—

(a) in the case of a financial award, the decision of the employment tribunal on the claim to which the financial award relates is made on or after the day on which this section comes into force;

(b) in the case of a settlement sum, the certificate under section 19A(1) of the Employment Tribunals Act 1996 in respect of the settlement under whose terms it is payable is issued on or after that day.

151 Employment tribunal procedure regulations: postponements

(1) The Employment Tribunals Act 1996 is amended as follows.

(2) In section 7 (employment tribunal procedure regulations), after subsection (3ZA) insert—

"(3ZB) Provision in employment tribunal procedure regulations about postponement of hearings may include provision for limiting the number of relevant postponements available to a party to proceedings.

(3ZC) For the purposes of subsection (3ZB)—

(a) "relevant postponement", in relation to a party to proceedings, means the postponement of a hearing granted on the application of that party in—

(i) the proceedings, or

(ii) any other proceedings identified in accordance with the regulations,

except in circumstances determined in accordance with the regulations, and

(b) "postponement" includes adjournment."

(3) In section 13 (costs and expenses), after subsection (2) insert—

"(3) Provision included in employment tribunal procedure regulations under subsection (1) must include provision for requiring an employment tribunal, in any proceedings in which a late postponement application has been granted, to consider whether to make an award against the party who made the application in respect of any costs or expenses connected with the postponement, except in circumstances specified in the regulations.

(4) For the purposes of subsection (3)—

(a) a late postponement application is an application for the postponement of a hearing in the proceedings which is made after a time determined in accordance with the regulations (whether before or after the hearing has begun), and

(b) "postponement" includes adjournment."

(4) In section 13A (payments in respect of preparation time), after subsection (2) insert—

"(2A) Provision included in employment tribunal procedure regulations under subsection (1) must include provision for requiring an employment tribunal, in any proceedings in which a late postponement application has been granted, to consider whether to make an order of the kind mentioned in subsection (1) against the party who made the application in respect of any time spent in connection with the postponement, except in circumstances specified in the regulations.

(2B) For the purposes of subsection (2A)—

(a) a late postponement application is an application for the postponement of a hearing in the proceedings which is made after a time determined in accordance with the regulations (whether before or after the hearing has begun), and

(b) "postponement" includes adjournment."

National minimum wage

152 Amount of financial penalty for underpayment of national minimum wage

(1) Section 19A of the National Minimum Wage Act 1998 (notices of underpayment: financial penalty) is amended as follows.

(2) In subsection (4), for the words following "to be" substitute "the total of the amounts for all workers to whom the notice relates calculated in accordance with subsections (5) to (5B)."

(3) For subsection (5) substitute—

"(5) The amount for each worker to whom the notice relates is the relevant percentage of the amount specified under section 19(4)(c) in respect of each pay reference period specified under section 19(4)(b).

(5A) In subsection (5), "the relevant percentage", in relation to any pay reference period, means 100%.

(5B) If the amount as calculated under subsection (5) for any worker would be more than £20,000, the amount for the worker taken into account in calculating the financial penalty is to be £20,000."

(4) Omit subsection (7).

(5) In subsection (8)—

(a) in paragraph (a), for "(4)" substitute "(5A)";

(b) in paragraph (b), for "(6) or (7)" substitute "(5B) or (6)".

(6) The amendments made by this section have effect in relation to notices of underpayment which relate only to pay reference periods commencing on or after the day on which this section comes into force.

Exclusivity in zero hours contracts

153 Exclusivity terms unenforceable in zero hours contracts

(1) The Employment Rights Act 1996 is amended as follows.

(2) After section 27 insert—

"**PART 2A**

ZERO HOURS WORKERS

27A Exclusivity terms unenforceable in zero hours contracts

(1) In this section "zero hours contract" means a contract of employment or other worker's contract under which—

(a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and

(b) there is no certainty that any such work or services will be made available to the worker.

(2) For this purpose, an employer makes work or services available to a worker if the employer requests or requires the worker to do the work or perform the services.

(3) Any provision of a zero hours contract which—

(a) prohibits the worker from doing work or performing services under another contract or under any other arrangement, or

(b) prohibits the worker from doing so without the employer's consent,

is unenforceable against the worker.

(4) Subsection (3) is to be disregarded for the purposes of determining any question whether a contract is a contract of employment or other worker's contract.

27B Power to make further provision in relation to zero hours workers

(1) The Secretary of State may by regulations make provision for the purpose of securing that zero hours workers, or any description of zero hours workers, are not restricted by any provision or purported provision of their contracts

or arrangements with their employers from doing any work otherwise than under those contracts or arrangements.

(2) In this section, "zero hours workers" means—

(a) employees or other workers who work under zero hours contracts;

(b) individuals who work under non-contractual zero hours arrangements;

(c) individuals who work under worker's contracts of a kind specified by the regulations.

(3) The worker's contracts which may be specified by virtue of subsection (2)(c) are those in relation to which the Secretary of State considers it appropriate for provision made by the regulations to apply, having regard, in particular, to provision made by the worker's contracts as to income, rate of pay or working hours.

(4) In this section "non-contractual zero hours arrangement" means an arrangement other than a worker's contract under which—

(a) an employer and an individual agree terms on which the individual will do any work where the employer makes it available to the individual and the individual agrees to do it, but

(b) the employer is not required to make any work available to the individual, nor the individual required to accept it,

and in this section "employer", in relation to a non-contractual zero hours arrangement, is to be read accordingly.

(5) Provision that may be made by regulations under subsection (1) includes provision for—

(a) modifying—

(i) zero hours contracts;

(ii) non-contractual zero hours arrangements;

(iii) other worker's contracts;

(b) imposing financial penalties on employers;

(c) requiring employers to pay compensation to zero hours workers;

(d) conferring jurisdiction on employment tribunals;

(e) conferring rights on zero hours workers.

(6) Provision that may be made by virtue of subsection (5)(a) may, in particular, include provision for exclusivity terms in prescribed categories of worker's contracts to be unenforceable, in cases in which section 27A does not apply.

For this purpose an exclusivity term is any term by virtue of which a worker is restricted from doing any work otherwise than under the worker's contract.

(7) Regulations under this section may—

(a) make different provision for different purposes;

(b) make provision subject to exceptions.

(8) For the purposes of this section—

(a) "zero hours contract" has the same meaning as in section 27A;

(b) an employer makes work available to an individual if the employer requests or requires the individual to do it;

(c) references to work and doing work include references to services and performing them.

(9) Nothing in this section is to be taken to affect any worker's contract except so far as any regulations made under this section expressly apply in relation to it."

(3) In section 236(3) (orders and regulations subject to affirmative procedure), after "made under section" insert "27B,".

Public sector exit payments

154 Regulations in connection with public sector exit payments

(1) Regulations may make provision requiring the repayment of some or all of any qualifying exit payment in qualifying circumstances (see section 155).

(2) The regulations may make such other provision in connection with the repayment mentioned in subsection (1) as the person making the regulations thinks fit.

(3) A qualifying exit payment is a payment of a prescribed description—

(a) made to an employee of a prescribed public sector authority in consequence of the employee leaving employment, or

(b) made to a holder of a prescribed public sector office in consequence of the office holder leaving office.

(4) The descriptions of payment which may be prescribed by virtue of subsection (3) 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,

(d) any severance payment or other ex gratia payment,

(e) any payment in respect of an outstanding entitlement (such as to annual leave or an allowance),

(f) any payment of compensation under the terms of a contract,

(g) any payment in lieu of notice, and

(h) any payment in the form of shares or share options.

(5) If more than one qualifying exit payment is payable to an employee or office holder the provision made in the exit payments regulations is to apply in relation to the aggregated payments.

(6) For the purposes of this section and sections 155 and 157—

an "exit payee" is an employee or office holder to whom any qualifying exit payment is payable,

the "exit payments regulations" are regulations under subsection (1),

a "responsible authority" means an authority by which any qualifying exit payments are payable, and

"prescribed" means prescribed by the exit payments regulations.

155 Section 154(1): further provision

(1) For the purposes of section 154(1) circumstances are qualifying circumstances if—

(a) an exit payee becomes—

(i) an employee or a contractor of a prescribed public sector authority, or

(ii) a holder of a prescribed public sector office,

(b) less than one year has elapsed between the exit payee leaving the employment or office in respect of which a qualifying exit payment is payable and the event mentioned in paragraph (a), and

(c) any other prescribed conditions are met.

(2) The exit payment regulations may, in particular, make provision—

(a) exempting an exit payee from the requirement to repay in the prescribed circumstances;

(b) exempting some or all of a qualifying exit payment from that requirement in the prescribed circumstances;

(c) for the amount required to be repaid to be tapered according to the time which has elapsed between an exit payee leaving employment or office and the event mentioned in subsection (1)(a);

(d) imposing duties, in connection with a qualifying exit payment, on—

(i) an exit payee,

(ii) a responsible authority, and

(iii) a subsequent authority;

(e) as to the arrangements required to be made by an exit payee to repay to a responsible authority the amount of a qualifying exit payment required to be repaid;

(f) for preventing an exit payee from becoming an employee or a contractor, or a holder of a public sector office, as mentioned in subsection (1)(a) until the arrangements required by virtue of paragraph (e) have been made;

(g) as to the consequences of an exit payee failing to repay the amount required to be repaid (including the dismissal of the exit payee).

(3) In subsection (2)(d)(iii) a "subsequent authority" means—

(a) in relation to an exit payee who becomes an employee or a contractor, a public sector authority of which the exit payee becomes an employee or a contractor, or

(b) in relation to an exit payee who becomes a holder of a public sector office, an authority which is responsible for the appointment.

(4) For the purposes of this section an exit payee becomes a contractor of a public sector authority if the exit payee provides services to the authority under a contract for services.

156 Power to make regulations to be exercisable by the Treasury or Scottish Ministers

(1) The power to make regulations under section 154(1) is exercisable—

(a) by the Scottish Ministers in relation to payments made by a relevant Scottish authority;

(b) by the Treasury in relation to any other payments,

(but this subsection is subject to subsection (2)).

(2) Where the relevant Scottish authority is the Scottish Administration the power to make regulations under section 154(1) is exercisable by the Treasury (instead of the Scottish Ministers) in relation to payments made to—

(a) 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) the members of the staff of the Scottish Administration (read in accordance with section 126(7)(b) of that Act).

(3) In this section "relevant Scottish authority" means—

(a) the Scottish Parliamentary Corporate Body, or

(b) any authority which wholly or mainly exercises functions which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998).

(4) The first regulations under section 154(1)—

(a) if made by the Treasury, are subject to affirmative resolution procedure;

(b) if made by the Scottish Ministers, are subject to the affirmative procedure.

(5) Any other regulations under section 154(1)—

(a) if made by the Treasury, are subject to negative resolution procedure;

(b) if made by the Scottish Ministers, are subject to the negative procedure.

157 Power of Secretary of State to waive repayment requirement

(1) The Secretary of State may waive the whole or any part of any repayment required by regulations made by the Treasury under section 154(1).

(2) The Scottish Ministers may waive the whole or any part of any repayment required by regulations made by the Scottish Ministers under section 154(1).

(3) A waiver may be given in respect of—

(a) a particular exit payee, or

(b) a description of exit payees.

(4) The exit payments regulations made by the Treasury may—

(a) make provision for the power under subsection (1) to be exercisable on behalf of the Secretary of State by a prescribed person,

(b) make provision for a waiver to be given only—

(i) with the consent of the Treasury, or

(ii) following compliance with any directions given by the Treasury, and

(c) make provision as to the publication of information about any waivers given.

(5) The exit payments regulations 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 prescribed person,

(b) make provision for a waiver to be given only—

(i) with the consent of the Scottish Ministers, or

(ii) following compliance with any directions given by the Scottish Ministers,

(where provision is made by virtue of paragraph (a)), and

(c) make provision as to the publication of information about any waivers given.

(6) The exit payments regulations made by the Treasury may make provision for the power conferred on the Secretary of State by subsection (1) to be exercised instead—

(a) by the Department of Finance and Personnel in Northern Ireland, in relation to qualifying exit payments made by responsible 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);

(b) by the Welsh Ministers, in relation to qualifying exit payments made by responsible authorities who wholly or mainly exercise functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006).

Concessionary coal

158 Concessionary coal

(1) This section applies to an entitlement to concessionary coal or payments in lieu of concessionary coal—

(a) arising in connection with employment by a company which on 1 January 2014 was carrying on the business of deep coal-mining in the United Kingdom, and

(b) which is not being met otherwise than by virtue of this section.

(2) The Secretary of State may, out of money provided by Parliament, make such payments as the Secretary of State considers appropriate for the purpose of securing that an entitlement to which this section applies is met.

(3) Payments under this section may be made only with the consent of the Treasury.

(4) "Concessionary coal" means coal or other solid fuel supplied free of charge or at reduced prices.

PART 12

GENERAL

159 Consequential amendments, repeals and revocations

(1) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate in consequence of this Act (other than sections 35 and 36 as they apply in Wales).

(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 contained in this Act and any enactment passed or made in the same Session as this Act).

(3) Subject to subsection (4)(b), regulations under subsection (1) which amend, repeal or revoke any provision of primary legislation are subject to affirmative resolution procedure.

(4) Regulations under subsection (1) which—

(a) do not amend, repeal or revoke any provision of primary legislation, or

(b) amend, repeal or revoke any provision of primary legislation only in connection with there ceasing to be any share warrants (see section 84),

are subject to negative resolution procedure.

(5) The Welsh Ministers may by regulations make such provision as they consider appropriate in consequence of section 35 or 36 as it applies in Wales.

(6) The power conferred by subsection (5) includes power—

(a) to make transitional, transitory or saving provision;

(b) to amend, repeal, revoke or otherwise modify any provision made by or under any Act (including this Act and any Act passed in the same Session as this Act) or any Measure or Act of the National Assembly for Wales.

(7) A statutory instrument containing regulations under subsection (5) which amend or repeal an Act or a Measure or Act of the National Assembly for Wales may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(8) A statutory instrument containing regulations under subsection (5), other than a statutory instrument within subsection (7), is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(9) In this Part—

"enactment" includes an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales and Northern Ireland legislation;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"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.

160 Transitional, transitory or saving provision

(1) A Minister of the Crown may by regulations make such transitional, transitory or saving provision as the Minister considers appropriate in connection with the coming into force of this Act (other than sections 35 and 36 as they apply in Wales).

(2) The Welsh Ministers may by regulations make such transitional, transitory or saving provision as they consider appropriate in connection with the coming into force of section 35 or 36 as it applies in Wales.

161 Supplementary provision about regulations

(1) Regulations under this Act, other than regulations made by the Scottish Ministers under section 1 or 154(1), are to be made by statutory instrument.

(2) Regulations under this Act may make—

(a) different provision for different purposes or cases;

(b) different provision for different areas;

(c) provision generally or for specific cases;

(d) provision subject to exceptions;

(e) incidental, supplementary, consequential, transitional or transitory provision or savings.

(3) Where regulations under this Act are subject to "negative resolution procedure" the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Where regulations under this Act are subject to "affirmative resolution procedure" the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.

(5) Any provision that may be included in an instrument under this Act for which no Parliamentary procedure is prescribed may be made by regulations subject to negative or affirmative resolution procedure.

(6) Any provision that may be included in an instrument under this Act subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.

162 Financial provisions

There is to be paid out of money provided by Parliament—

(a) any expenditure incurred under or by virtue of this Act by a Minister of the Crown, and

(b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

163 Extent

(1) Subject to subsections (2) to (4), this Act extends to England and Wales, Scotland and Northern Ireland.

(2) Any amendment, repeal or revocation made by this Act has the same extent as the enactment amended, repealed or revoked, except the amendments made by sections 113 and 114, which extend as mentioned in subsection (1).

(3) Part 4 extends to England and Wales only.

(4) In Part 10, sections 144 to 146 and Schedule 11 extend to England and Wales and Scotland only.

164 Commencement

(1) The provisions of this Act come into force on such day as a Minister of the Crown may by regulations appoint, subject to subsections (2) to (5).

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

(a) in Part 1, sections 4 to 7 (regulations about financial information on small and medium sized businesses);

(b) in Part 3, section 39 (regulations about procurement);

(c) in Part 5, section 74 (funding for free of charge early years provision);

(d) in Part 11, section 151 (employment tribunal procedure regulations: postponements);

(e) this Part.

(3) The following provisions of this Act come into force at the end of the period of two months beginning with the day on which this Act is passed—

(a) in Part 1—

(i) sections 1 and 2 (power to invalidate certain restrictive terms of business contracts),

(ii) section 3 (companies: duty to publish report on payment practices),

(iii) sections 8 and 9 (VAT registration information),

(iv) sections 10 to 12 (exports), and

(v) section 14 (powers of the Payment Systems Regulator);

(b) in Part 2—

(i) sections 15 and 16 (streamlined company registration),

(ii) sections 21 to 27 (business impact target), and

(iii) section 37 (CMA to publish recommendations on proposals for Westminster legislation);

(c) in Part 3, section 40 (investigation of procurement functions);

(d) in Part 4—

(i) sections 42 to 44 (the Pubs Code), and

(ii) sections 68 to 73 (Part 4: supplementary);

(e) in Part 5, section 75 (exemption from requirement to register as early years provider);

(f) Part 6;

(g) in Part 7—

(i) section 83 (amendment of section 813 of the Companies Act 2006),

(ii) sections 84 to 86 and Schedule 4 (abolition of share warrants to bearer), and

(iii) sections 89 to 91 (shadow directors);

(h) in Part 8—

(i) section 95 (recording of optional information on register),

(ii) section 99 (address of company registered office);

(i) in Part 10—

(i) sections 120 and 121 (removing requirements to seek sanction),

(ii) sections 127 to 130 (administration),

(iii) sections 131 and 132 (small debts),

(iv) sections 134 and 135 (voluntary arrangements), and

(v) section 136 (voluntary winding-up: progress reports);

(j) in Part 11, section 158 (concessionary coal).

(4) Section 13 (electronic paying in of cheques etc) comes into force—

(a) on the day this Act is passed, for the purpose of enabling the making of regulations under Part 4A of the Bills of Exchange Act 1882 (as inserted by section 13);

(b) on 31 July 2016, for all other purposes.

(5) Sections 35 and 36 as they apply in Wales come into force on such day as the Welsh Ministers may by regulations appoint.

(6) Before making regulations under subsection (1) in relation to section 112 and Schedule 8, the Secretary of State must consult the Department of Enterprise, Trade and Investment in Northern Ireland.

165 Short title

This Act may be cited as the Small Business, Enterprise and Employment Act 2015.