

# **SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015**

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## **EXPLANATORY NOTES**

### **BACKGROUND AND SUMMARY**

#### **Part 10: Insolvency**

67. Insolvency practitioners (IPs) act as office holders in insolvency procedures. To be qualified to act as an IP, the Insolvency Act 1986 requires an individual to be authorised to act by virtue of membership of a professional body which has been recognised for this purpose by the Secretary of State. There are seven of these ‘Recognised Professional Bodies’ (RPBs). As at 1 January 2015 there are 1,745 authorised IPs, of whom 1,359 take appointments in insolvency procedures.
68. Once authorised, IPs are regulated through a system of self-regulation by the RPBs overseen by the Secretary of State acting through the Insolvency Service (an Executive Agency of the Department for Business, Innovation and Skills) as oversight regulator.

#### **Insolvency Red Tape Challenge**

69. The Insolvency Red Tape Challenge identified a number of measures to improve the efficiency of insolvency processes, which will reduce costs of administering insolvency proceedings leading to higher returns for creditors. The Insolvency Service consulted on these measures in July 2013 and published the Government response to the consultation in January 2014. Part 10 of the Act contains measures that result from these proposals and includes removing the requirement to hold physical meetings in every case.

#### **Administration: sales to connected persons**

70. This section creates a power for the Government to make regulations in respect of sales in administration to connected parties. Such regulations could prohibit such sales or stipulate conditions to be met to allow such sales to proceed. This follows a report, ‘The Graham Review into Pre-Pack Administration’ which recommended a package of voluntary reforms to improve the transparency and outcomes of pre-pack administrations. It also recommended that government take a power along the lines set out in section 129 to cover all business sales to connected persons in administrations, not just what are traditionally thought of as pre-packs (in case the market did not adopt the Review’s voluntary reforms).
71. The conditions and requirements that could be stipulated include, in particular, the requirement to seek the approval of creditors, the court or an independent person. This would subject the connected sale to independent scrutiny.

#### **Regulation of the regulators**

72. The RPBs are recognised and regulated by the Secretary of State (acting through the Insolvency Service). The Secretary of State currently has only one sanction against an RPB which is not regulating effectively and that is to revoke its recognition as an RPB.

*These notes refer to the Small Business, Enterprise and Employment  
Act 2015 (c.26) which received Royal Assent on 26 March 2015*

This is the ultimate sanction. It would be disproportionate in all but the most serious circumstances and has never been used.

73. [Sections 137 to 146](#) amend Part 13 of the Insolvency Act 1986 to introduce:
- i. regulatory objectives for the RPBs when regulating IPs
  - ii. a range of sanctions so that proportionate action can be taken where the Secretary of State (as oversight regulator) is satisfied that an RPB is not adequately fulfilling its role as a regulator, or where it is in the public interest to do so, apply to court for a direct sanctions order against an IP and
  - iii. a reserve power for the Secretary of State to designate a single regulator of IPs. This power will lapse if not used within 7 years of it coming into force.