



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 1

#### ACCESS TO FINANCE

##### *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—

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- (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—

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- (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.

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- (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

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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.

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#### Commencement Information

- II** [S. 13](#) partly in force; [s. 13](#) in force for specified purposes at Royal Assent otherwise in force at 31.7.2016, see [s. 164\(4\)](#)

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