



# Enterprise Act 2016

## 2016 CHAPTER 12

### PART 1

#### THE SMALL BUSINESS COMMISSIONER

##### *The Commissioner*

#### **1 Small Business Commissioner**

- (1) A Small Business Commissioner is established.
- (2) The Commissioner's principal functions are—
  - (a) to provide general advice and information to small businesses (see section 3), and
  - (b) to consider complaints from small businesses relating to payment matters in connection with the supply of goods and services to larger businesses, and make recommendations (see sections 4 to 8).
- (3) Schedule 1 makes provision about the Commissioner.

##### *“Small businesses”*

#### **2 Small businesses in relation to which the Commissioner has functions**

- (1) In this Part “small business” means a relevant undertaking which—
  - (a) has a headcount of staff of less than 50,
  - (b) if the business threshold condition applies to the relevant undertaking, meets that condition, and
  - (c) is not a public authority.
- (2) The Secretary of State may by regulations (“SBC scope regulations”) make further provision about the meaning of “small business” in this Part.

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- (3) For the purposes of subsection (1)(b), the business threshold condition applies to a relevant undertaking if—
- (a) SBC scope regulations provide for that condition to apply in relation to all relevant undertakings, or
  - (b) the relevant undertaking falls within a description of undertakings to which SBC scope regulations apply that condition.
- (4) A relevant undertaking meets the business threshold condition if it has a turnover, or balance sheet total, of an amount less than or equal to the small business threshold.
- (5) SBC scope regulations may (amongst other things) make provision about—
- (a) the date (“the assessment date”) on which, or the period (“the assessment period”) for which, a relevant undertaking must meet a requirement of subsection (1)(a) or (b) in order to be a small business;
  - (b) the calculation of the headcount of staff, turnover or balance sheet total of a relevant undertaking at the assessment date or for the assessment period;
  - (c) the circumstances in which a relevant undertaking which has been established for less than a complete assessment period is to be regarded as meeting a requirement for that period.
- (6) SBC scope regulations may provide that a relevant undertaking of a specified description is not a small business even if it falls within the definition.
- (7) SBC scope regulations may—
- (a) make transitional or transitory provision or savings;
  - (b) make different provision for different purposes.
- (8) SBC scope regulations are to be made by statutory instrument.
- (9) A statutory instrument containing SBC scope regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (10) In this section—
- “balance sheet total”, “headcount of staff”, “turnover” and “small business threshold” have such meanings as may be specified;
  - “relevant undertaking” means a person who is carrying on one or more businesses and whose registered office or principal place of business is in the United Kingdom;
  - “specified” means specified in SBC scope regulations.

### *General advice and information*

## **3 General advice and information**

- (1) The Commissioner may publish, or give to small businesses, general advice or information that the Commissioner considers may be useful to small businesses in connection with their supply relationships with larger businesses.
- (2) In considering under subsection (1) what advice and information may be useful, the Commissioner must, in particular, consider how useful any advice or information

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would be for the purposes of encouraging small businesses to resolve disputes with larger businesses or preventing such disputes arising.

- (3) General advice or information published or given under subsection (1) may include general advice or information about—
  - (a) principles of the law of contract;
  - (b) other sources of rights or obligations in relation to the supply of goods or services;
  - (c) dispute resolution.
- (4) General advice or information published or given under subsection (1) may also include general advice or information about—
  - (a) complaint-handling bodies, ombudsmen, regulators or other persons (other than courts or tribunals) who, in connection with small businesses' supply relationships with larger businesses, may be able—
    - (i) to resolve or facilitate the resolution of disputes, or
    - (ii) to give other advice or assistance to small businesses;
  - (b) statutory rights to refer disputes in connection with such relationships for adjudication by a person other than a court or tribunal.
- (5) The Commissioner may publish, or give to small businesses, general advice or information about—
  - (a) complaint-handling bodies, ombudsmen, regulators or public authorities (other than courts or tribunals) who, in connection with the supply relationships of small businesses with public authorities, may be able—
    - (i) to resolve or facilitate the resolution of disputes, or
    - (ii) to give other advice or assistance to small businesses;
  - (b) statutory rights to refer disputes in connection with such relationships for adjudication by a person other than a court or tribunal.
- (6) Advice published or given under this section must be impartial, and information published or given under this section must be presented in an impartial manner.
- (7) The powers conferred on the Commissioner by this section to publish or give general advice or information may be exercised by making arrangements with any other person in accordance with which that person publishes or provides that advice or information.
- (8) The Commissioner may make recommendations to the Secretary of State about the publication, or provision to small businesses, by the Secretary of State of advice or information of a kind which the Commissioner is authorised to publish or give under this section.
- (9) Where a recommendation is made under subsection (8), the Secretary of State must inform the Commissioner whether anything is to be done in response to the recommendation and, if it is, give details of the action to be taken.
- (10) For the purposes of this section a small business has a “supply relationship” with a larger business or public authority if—
  - (a) the small business has an agreement to supply, has supplied or may supply, goods or services to the larger business or public authority, or
  - (b) the larger business or public authority has an agreement to supply, has supplied or may supply, goods or services to the small business.
- (11) In this section—

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- “dispute” includes any difference;  
 “larger business” means a person carrying on one or more businesses who—
- (a) is not a small business,
  - (b) has a place of business in the United Kingdom, and
  - (c) is not a public authority.

### *Complaints scheme*

#### **4 The SBC complaints scheme**

- (1) The Commissioner must establish, maintain and administer a scheme (in this Part referred to as “the SBC complaints scheme”) under which the Commissioner—
  - (a) enquires into, considers and determines relevant complaints, and
  - (b) may make recommendations as to how the issues raised by those complaints may be remedied, resolved or mitigated or how similar issues may be prevented from arising in future.
- (2) The Commissioner must establish, maintain and administer the SBC complaints scheme in accordance with regulations made by the Secretary of State under section 7 (scheme regulations).
- (3) “Relevant complaint” means a complaint which—
  - (a) is made by a small business (“the complainant”) which has an agreement to supply, or has supplied or may supply, goods or services to a larger business (“the respondent”),
  - (b) relates to a payment matter (see subsection (4)), and
  - (c) is not excluded from the scheme (see subsection (5)).
- (4) A complaint relates to a payment matter if it relates to—
  - (a) a request or other act, or a failure to pay or other omission, in relation to a payment—
    - (i) for or in connection with the supply of goods or services, or
    - (ii) in connection with the relationship or possible relationship between the small business and the larger business so far as relevant to the supply, or
  - (b) any provision made or proposed to be made in connection with the supply or that relationship which restricts, or purports to restrict, any right of the small business to make a complaint under the SBC complaints scheme or to have a complaint enquired into, considered or determined under the scheme.
- (5) A complaint is excluded from the scheme if—
  - (a) it relates to the appropriateness of the price payable or proposed to be payable under a contract for the goods or services supplied or to be supplied by the small business under the contract by comparison with those goods or services,
  - (b) it concerns matters which are currently the subject of legal proceedings or adjudication proceedings,
  - (c) it falls within the jurisdiction of an ombudsman, regulator or public authority (other than the Commissioner, a court or a tribunal),

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- (d) the complainant has a statutory right to refer the complaint for adjudication by a person other than a court or tribunal,
  - (e) the complaint relates to—
    - (i) an act or omission which occurred before the appointed start date, or
    - (ii) an act or omission in accordance with a term of a contract entered into before that date, where that term has not been varied on or after that date, or
  - (f) it is of a description specified by regulations made by the Secretary of State.
- (6) For the purposes of paragraph (e) of subsection (5), “the appointed start date” means the date appointed by the Secretary of State by regulations.
- (7) Regulations under this section may—
  - (a) make transitory or transitional provision or savings;
  - (b) make different provision for different purposes.
- (8) Regulations under subsection (6) may appoint different dates for different areas.
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this section (other than regulations under subsection (6)) must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) In this section “larger business” has the meaning given by section 3(11).

## **5 Enquiry into, consideration and determination of complaints**

- (1) This section applies where a complaint is to be determined under the SBC complaints scheme.
- (2) The Commissioner may ask the complainant or the respondent to provide the Commissioner voluntarily with any information or documents relevant to the complaint.
- (3) The Commissioner must give the respondent, and may give the complainant, an opportunity to make representations to the Commissioner.
- (4) In enquiring into, considering and determining a complaint, the Commissioner must act impartially as between the complainant and the respondent.
- (5) A complaint is to be determined under the SBC complaints scheme by reference to what is, in the Commissioner’s opinion, fair and reasonable in all the circumstances of the case.
- (6) The determination may contain one or more recommendations as to the steps that ought to be taken by the complainant or the respondent to remedy, resolve or mitigate any issue which is the subject of the complaint or to prevent a similar issue from arising in future.
- (7) Where a complaint has been determined, the Commissioner must prepare a written statement of the determination.
- (8) The statement must give the Commissioner’s reasons for the determination (including any recommendations).

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- (9) If the determination does not contain any recommendations, the statement must contain the Commissioner’s reasons for this.
- (10) The Commissioner must give a copy of the statement to the complainant and the respondent.
- (11) A determination made under the SBC complaints scheme is not legally binding.

## **6 Reports on complaints**

- (1) The Commissioner may publish a report of the enquiry into, consideration and determination of a complaint under the SBC complaints scheme.
- (2) A report under subsection (1) must not identify the complainant, unless the complainant consents.

See also section 7(7) which requires provision to be made about factors to be taken into account when deciding whether to identify the respondent in a report.

- (3) A report identifies a person if it—
  - (a) mentions the person’s name, or
  - (b) includes any particulars which, in the Commissioner’s opinion, are likely to identify the person.
- (4) Before publishing a report under subsection (1), the Commissioner must give the respondent and the complainant an opportunity to make representations to the Commissioner about the proposed publication of the report (including, in the case of the respondent, about any proposal to identify the respondent in the report).

## **7 Scheme regulations**

- (1) The Secretary of State must make regulations (“scheme regulations”) about—
  - (a) the making of complaints for consideration under the SBC complaints scheme,
  - (b) the consideration and determination of complaints by the Commissioner, and the making of any recommendations, and
  - (c) the preparation and publication of reports under section 6.
- (2) Scheme regulations must—
  - (a) provide that a complaint (or part of a complaint) is, except in specified circumstances, to be dismissed if the Commissioner considers that the complainant has not previously communicated the substance of the complaint (or part) to the respondent and given the respondent a reasonable opportunity to deal with it;
  - (b) provide that a complaint is not to be entertained under the SBC complaints scheme unless the complainant has referred it under the scheme before the expiry of the applicable time limit (determined in accordance with the scheme regulations);
  - (c) provide that the Commissioner may extend that time limit in specified circumstances.
- (3) Scheme regulations may, among other things—
  - (a) make provision about the content and form of a complaint and the manner in which it is to be made;

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- (b) allow the Commissioner to fix time limits for any aspect of the proceedings and to extend a time limit;
  - (c) provide that a complaint may, or may in specified circumstances, be dismissed, if or to the extent that the Commissioner considers—
    - (i) that the complaint is frivolous or vexatious,
    - (ii) that the complaint concerns matters which are more appropriately dealt with in another way,
    - (iii) that the complainant has not suffered, and is not likely to suffer, any financial loss, material distress, material inconvenience or other material adverse effect, as a result of the matter to which the complaint relates,
    - (iv) that the matter to which the complaint relates has been remedied,
    - (v) that the complainant is seeking an outcome other than a recommendation of the kind that can be made under the scheme,
    - (vi) that the complaint concerns matters that have been the subject of legal proceedings or adjudication proceedings,
    - (vii) that the matter to which the complaint relates has previously been considered under the SBC complaints scheme or by another complaints-handling body, ombudsman or regulator,
    - (viii) that any other condition specified by the scheme regulations is met, or
    - (ix) that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the SBC complaints scheme;
  - (d) provide that a complaint is to be dismissed if or to the extent that it becomes the subject of legal proceedings or adjudication proceedings;
  - (e) require the Commissioner to notify the person who makes a complaint under the scheme if the Commissioner considers that it is not a relevant complaint or it is dismissed in accordance with the scheme regulations;
  - (f) authorise or require the Commissioner to notify the person against whom a complaint is made if it is not a relevant complaint or it is dismissed in accordance with the scheme regulations.
- (4) For the purposes of regulations under subsections (2)(a) and (3)(c) and (d) it does not matter whether there has been a consideration of the merits of the complaint by the time it is dismissed.
- (5) Scheme regulations must also specify matters which are to be taken into account, or are to be taken into account in specified circumstances, by the Commissioner in determining under the scheme whether an act or omission was fair and reasonable.
- Those matters must include any relevant law.
- (6) But nothing in this section requires or authorises scheme regulations to specify that particular practices are to be regarded by the Commissioner, in making that determination, as “fair” or “unfair”.
- (7) Scheme regulations must make provision about factors which are to be taken into account, or are to be taken into account in specified circumstances, by the Commissioner when deciding whether to identify the respondent in a report under section 6(1).
- (8) Scheme regulations may—
- (a) confer a discretion on the Commissioner;

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- (b) make transitional or transitory provision or savings;
  - (c) make different provision for different purposes.
- (9) Before making scheme regulations the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (10) Regulations under this section are to be made by statutory instrument.
- (11) A statutory instrument containing regulations under this section must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (12) In this section—
- “relevant complaint” has the meaning given by section 4(3);
  - “specified” means specified in scheme regulations.

## **8 Confidentiality**

- (1) The Commissioner may not make a disclosure of information that the Commissioner considers is likely to cause someone to think that a particular person has made a complaint under the SBC complaints scheme, except where subsection (2) applies.
- (2) This subsection applies if—
- (a) the Commissioner has obtained the consent of the person concerned,
  - (b) the disclosure is made by the Commissioner to the respondent in relation to the complaint or in a report published under section 6,
  - (c) the disclosure is required for the purposes of any EU obligation,
  - (d) the disclosure is required, under rules of court or rules of a tribunal, or an order of a court or tribunal, for the purposes of legal proceedings of any description, or
  - (e) the information has already been made available to the public from other sources.

### *Reports and reviews*

## **9 Annual report**

- (1) After the end of each reporting period, the Commissioner must prepare and publish a report which—
- (a) describes what the Commissioner has done during the period,
  - (b) contains a summary of the matters which the Commissioner considers to be the most significant matters raised by small businesses with the Commissioner during the period, and
  - (c) states the Commissioner’s recommendations (if any) as to how any of these matters might be addressed.
- (2) As well as publishing the report, the Commissioner must send a copy to the Secretary of State.
- (3) The Secretary of State must lay a copy of the report before Parliament.
- (4) In this section “reporting period” means—



- (a) the period beginning with the day on which section 1 comes into force and ending with the following 31 March, and
- (b) each successive period of 12 months.

## **10 Review of Commissioner's performance**

- (1) The Secretary of State must review the Commissioner's performance for each review period.
- (2) For the purposes of subsection (1), the Secretary of State may direct the Commissioner to provide the Secretary of State with information specified in the direction.
- (3) The first review period is the period beginning with the day on which section 1 comes into force and ending 2 years after the following 31 March.
- (4) Subsequent review periods are each successive period of 3 years after the first review period.
- (5) A review must, in particular, assess how effective the Commissioner has been in carrying out his or her functions, and in doing so may, in particular, assess the impact of the Commissioner's actions on—
  - (a) improving payment practices in commercial transactions;
  - (b) the awareness of small businesses of, or the use by small businesses of, alternative dispute resolution procedures.
- (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.

### *Power to abolish*

## **11 Power to abolish the Commissioner**

- (1) The Secretary of State may, by regulations, abolish the office of Small Business Commissioner if, as a result of a review under section 10, the Secretary of State is satisfied that—
  - (a) it is no longer necessary for there to be a Small Business Commissioner carrying out the functions under this Part, or
  - (b) the Commissioner's role has not been sufficiently effective to justify the office's continued existence.
- (2) For the purposes of subsection (1)(b), the Secretary of State must, in particular, take account of the Commissioner's role in—
  - (a) carrying out any of the functions under this Part,
  - (b) improving payment practices in commercial transactions, and
  - (c) improving the awareness of small businesses of alternative dispute resolution procedures.
- (3) For the purposes of giving effect to the abolition of the office of Small Business Commissioner, the regulations may amend or repeal this Part or any provision made by or under any other enactment (whether passed or made before or after this Act).

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- (4) Regulations under this section may make incidental, supplemental, consequential, transitional or transitory provision or savings.
- (5) Before making regulations under this section, the Secretary of State must consult—
  - (a) the Small Business Commissioner (unless that office is vacant),
  - (b) such other persons as appear to the Secretary of State to be persons affected by the regulations, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (6) If, as a result of consultation under subsection (5), the Secretary of State considers it appropriate to change the whole or part of the proposed regulations, the Secretary of State must carry out such further consultation with respect to the changes as seems appropriate.

## **12 Regulations under section 11: procedure**

- (1) In this section “regulations” means regulations under section 11.
- (2) If after consultation under section 11, the Secretary of State considers it appropriate to proceed with the making of regulations, the Secretary of State may lay before Parliament—
  - (a) draft regulations, and
  - (b) an explanatory document.
- (3) The explanatory document must—
  - (a) explain why the Secretary of State considers that one of the conditions in section 11(1) is met, and
  - (b) contain a summary of representations received in the consultation.
- (4) The Secretary of State may not act under subsection (2) before the end of the period of 12 weeks beginning with the day on which the consultation began under section 11(5).
- (5) Subject to subsections (6) to (13), if after the expiry of the 40-day period the draft regulations laid under subsection (2) are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (6) The procedure in subsections (7) to (10) applies to the draft regulations instead of the procedure in subsection (5) if—
  - (a) either House of Parliament so resolves within the 30-day period, or
  - (b) a committee of either House charged with reporting on the draft regulations so recommends within the 30-day period and the House to which the recommendation is made does not by resolution reject the recommendation within that period.
- (7) The Secretary of State must have regard to—
  - (a) any representations,
  - (b) any resolution of either House of Parliament, and
  - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft regulations,made during the 60-day period with regard to the draft regulations.

- (8) If after the expiry of the 60-day period the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (9) If after the expiry of the 60-day period the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
  - (a) revised draft regulations, and
  - (b) a statement giving a summary of the changes proposed.
- (10) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
- (11) For the purposes of this section regulations are made in the terms of draft regulations or revised draft regulations if they contain no material changes to their provisions.
- (12) In this section, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Parliament.
- (13) For the purposes of subsection (12) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.
- (14) Regulations are to be made by statutory instrument.

### *Definitions*

## **13 Definitions used in Part 1**

In this Part—

- “adjudication” includes arbitration;
- “the Commissioner” means the Small Business Commissioner;
- “the complainant” has the same meaning as in section 4;
- “legal proceedings” means civil or criminal proceedings in or before a court or tribunal;
- “public authority” means—
  - (a) a public authority within the meaning of section 3(1) of the Freedom of Information Act 2000, or
  - (b) a Scottish public authority within the meaning of section 3(1) of the Freedom of Information (Scotland) Act 2002;
- “SBC complaints scheme” has the meaning given by section 4(1);
- “small business” has the meaning given by section 2;
- “the respondent” has the same meaning as in section 4.