

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: ACCESS TO FINANCE

Assignment of receivables

Section 1: Power to invalidate certain restrictive terms of business contracts

104. This section provides a power for the appropriate authority to make regulations restricting the effect of terms in business contracts that restrict the ability of one of the parties to assign a right to be paid under the contract (known as a “receivable”) to a third party. The appropriate authority is the Secretary of State, except in relation to contracts to which the law of Scotland applies, for which the Scottish Ministers are the appropriate authority. Businesses commonly obtain up-front finance against the value of unpaid invoices, assigning the right to the payment due under those invoices to a third party finance provider. Contractual terms which restrict the ability to assign rights to be paid have an impact on businesses’ ability to obtain finance in this way.
105. Subsection (1) enables regulations made under the power to make such terms ineffective either generally or in relation to particular persons or for specified purposes. Subsection (2) defines the type of contractual term concerned. This covers terms which prohibit assignment or impose conditions or other restrictions on a contracting party’s ability to assign a right to be paid, whether under that contract or any other contract between the parties.
106. Subsection (3) sets out which types of contracts come within the scope of the power to make regulations. It applies to contracts for goods, services or intangible assets, where at least one of the parties is acting in the course of a business. Financial services contracts are, however, excluded from scope: the definition of a financial services contract for these purposes is set out in subsection (4) and section 2, although the regulations are to prescribe the types of financial services contract which are excluded.
107. Subsections (7) and (8) provide ancillary powers for the Scottish Ministers in consequence of regulations made under Section 1. These include the power to make transitional, transitory and saving provision and to amend, repeal, revoke or otherwise modify provisions made by or under an enactment (including an Act of the Scottish Parliament).
108. Subsection (10) makes the making of regulations by the Secretary of State under the power subject to affirmative procedure, so that a draft of the regulations must be approved by both Houses of Parliament, before the regulations can be made. Regulations made by the Scottish Ministers are subject to the affirmative procedure in the Scottish Parliament.

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

109. This section defines “financial services” for the purposes of section 1, subsection (4). The definition covers any service of a financial nature and includes an indicative list of the types of service covered. These include insurance related services, banking and other financial services.