



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 1

#### ACCESS TO FINANCE

##### *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).

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- (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.

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- (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;

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- (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).

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- (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;

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“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;

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- (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).

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