

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 1

#### THE SMALL BUSINESS COMMISSIONER

##### *Status*

- 1 The Commissioner is a corporation sole.

##### **Commencement Information**

- I1** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I2** [Sch. 1 para. 1](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

##### *Appointment of Commissioner*

- 2 The Commissioner is to be appointed by the Secretary of State.

##### **Commencement Information**

- I3** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I4** [Sch. 1 para. 2](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

##### *Deputy Commissioners*

- 3 The Secretary of State may appoint one or more Deputy Commissioners.

##### **Commencement Information**

- I5** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I6** [Sch. 1 para. 3](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

- 4 The Commissioner may delegate any of the Commissioner's functions to a Deputy Commissioner.

##### **Commencement Information**

- I7** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I8** [Sch. 1 para. 4](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

##### *Term of office etc*

- 5 A person holds and vacates office as the Commissioner or a Deputy Commissioner in accordance with the terms of the appointment, but—

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- (a) the initial term of office may not be more than 4 years,
- (b) a person may be appointed for no more than 2 further terms of office (whether as the Commissioner or a Deputy Commissioner),
- (c) a further term may not be more than 3 years,
- (d) the person may resign by giving written notice to the Secretary of State, and
- (e) the Secretary of State may dismiss the person if satisfied that the person is unable, unwilling or unfit to perform his or her functions.

#### Commencement Information

**I9** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)

**I10** [Sch. 1 para. 5](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Remuneration*

- 6 The Secretary of State may pay to or in respect of the person holding office as the Commissioner or a Deputy Commissioner—
- (a) remuneration;
  - (b) allowances;
  - (c) sums by way of or in respect of pensions.

#### Commencement Information

**I11** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)

**I12** [Sch. 1 para. 6](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Commissioner and Deputy Commissioners not civil servants*

- 7 Service as the Commissioner or a Deputy Commissioner is not service in the civil service of the state.

#### Commencement Information

**I13** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)

**I14** [Sch. 1 para. 7](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Acting as Commissioner during vacancy etc*

- 8 (1) The nominated person is to act as Commissioner—
- (a) during any vacancy in the office of Commissioner, or
  - (b) if the Commissioner is disqualified.
- (2) “The nominated person” means—
- (a) if there is only one Deputy Commissioner who is not disqualified, that Deputy Commissioner,
  - (b) if there is more than one Deputy Commissioner who is not disqualified, such of them as the Secretary of State appoints to act as Commissioner, or

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- (c) if neither paragraph (a) nor (b) applies, a member of the Commissioner's staff appointed under paragraph 11, or seconded under paragraph 12, who is appointed by the Secretary of State to act as Commissioner.
- (3) For the purposes of this paragraph a person is “disqualified” if the person is absent, subject to suspension or unable to act (whether as a result of arrangements under paragraph 9 or otherwise).

#### Commencement Information

- I15** Sch. 1 in force at Royal Assent for specified purposes, see s. 44(1)(a)
- I16** Sch. 1 para. 8 in force at 6.4.2017 in so far as not already in force by S.I. 2017/473, reg. 2

#### *Conflicts of interest*

- 9 (1) The Commissioner must make procedural arrangements for dealing with any conflict of interest affecting—
  - (a) the Commissioner,
  - (b) a Deputy Commissioner,
  - (c) a member of staff acting as the Commissioner under paragraph 8(2)(c), or
  - (d) any other staff working for the Commissioner.
- (2) The Commissioner must consult the Secretary of State before making or revising the arrangements.
- (3) The Commissioner must publish a summary of the arrangements.

#### Commencement Information

- I17** Sch. 1 in force at Royal Assent for specified purposes, see s. 44(1)(a)
- I18** Sch. 1 para. 9 in force at 6.4.2017 in so far as not already in force by S.I. 2017/473, reg. 2

#### *Validity of acts*

- 10 A defect in appointment does not affect the validity of things done by the Commissioner, a Deputy Commissioner or a member of staff acting as the Commissioner under paragraph 8(2)(c).

#### Commencement Information

- I19** Sch. 1 in force at Royal Assent for specified purposes, see s. 44(1)(a)
- I20** Sch. 1 para. 10 in force at 6.4.2017 in so far as not already in force by S.I. 2017/473, reg. 2

#### *Staff*

- 11 (1) The Commissioner may appoint staff.
- (2) Staff are to be appointed on terms and conditions determined by the Commissioner.
- (3) The terms and conditions on which a member of staff is appointed may provide for the Commissioner to pay to or in respect of the member of staff—

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- (a) remuneration;
  - (b) allowances;
  - (c) sums by way of or in respect of pensions.
- (4) Service as a member of the Commissioner's staff appointed under sub-paragraph (1) is not service in the civil service of the state.

**Commencement Information**

**I21** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)

**I22** [Sch. 1 para. 11](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

- 12 (1) The Commissioner may make arrangements for persons to be seconded to the Commissioner to serve as members of the Commissioner's staff.
- (2) The arrangements may include provision for payments by the Commissioner to the person with whom the arrangements are made or directly to seconded staff (or both).
- (3) A period of secondment to the Commissioner does not affect the continuity of a person's employment with the employer from whose service he or she is seconded (and, in particular, nothing in paragraph 11(4) affects such a person's continuity of service in the civil service of the state).

**Commencement Information**

**I23** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)

**I24** [Sch. 1 para. 12](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

- 13 Before appointing staff under paragraph 11 or making arrangements under paragraph 12(1), the Commissioner must obtain the approval of the Secretary of State as to the Commissioner's policies on—
- (a) the number of staff to be appointed or seconded;
  - (b) payments to be made to or in respect of staff;
  - (c) the terms and conditions on which staff are to be appointed or seconded.

**Commencement Information**

**I25** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)

**I26** [Sch. 1 para. 13](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

*Financial and other assistance from the Secretary of State*

- 14 (1) The Secretary of State may make payments and provide other financial assistance to the Commissioner.
- (2) The Secretary of State may—
- (a) provide staff in accordance with arrangements made by the Secretary of State and the Commissioner under paragraph 12;
  - (b) provide premises, facilities or other assistance to the Commissioner.

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#### Commencement Information

- I27** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I28** [Sch. 1 para. 14](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Application of seal and proof of documents*

- 15 (1) The application of the Commissioner's seal must be authenticated by the signature of—
- (a) the Commissioner, or
  - (b) a person who has been authorised by the Commissioner for that purpose (whether generally or specially).
- (2) A document purporting to be duly executed under the seal—
- (a) is to be received in evidence, and
  - (b) is to be treated as duly executed unless the contrary is shown.

#### Commencement Information

- I29** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I30** [Sch. 1 para. 15](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Incidental powers*

- 16 The Commissioner may do anything that is calculated to facilitate the carrying out of the Commissioner's functions or is conducive or incidental to the carrying out of those functions.

#### Commencement Information

- I31** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I32** [Sch. 1 para. 16](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Exemption from liability for damages*

- 17 (1) The following are exempt from liability in damages for anything done or omitted in the exercise or purported exercise of their functions—
- (a) the Commissioner,
  - (b) a Deputy Commissioner,
  - (c) a member of staff acting as the Commissioner under paragraph 8(2)(c), and
  - (d) any other staff working for the Commissioner.
- (2) But sub-paragraph (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith, or
  - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (acts of public authorities).

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#### Commencement Information

- I33** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I34** [Sch. 1 para. 17](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Parliamentary Commissioner Act 1967*

- 18 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), at the appropriate place insert— “ Small Business Commissioner.”

#### Commencement Information

- I35** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I36** [Sch. 1 para. 18](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *House of Commons Disqualification Act 1975*

- 19 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert— “ Small Business Commissioner or Deputy Small Business Commissioner.”

#### Commencement Information

- I37** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I38** [Sch. 1 para. 19](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Northern Ireland Assembly Disqualification Act 1975*

- 20 In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert— “ Small Business Commissioner or Deputy Small Business Commissioner.”

#### Commencement Information

- I39** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I40** [Sch. 1 para. 20](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

#### *Freedom of Information Act 2000*

- 21 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities), at the appropriate place insert— “ Small Business Commissioner.”

#### Commencement Information

- I41** [Sch. 1](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(a\)](#)  
**I42** [Sch. 1 para. 21](#) in force at 6.4.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 2](#)

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## SCHEDULE 2

Section 14

### BUSINESS IMPACT TARGET: CONSEQUENTIAL AND RELATED AMENDMENTS

1 The Small Business, Enterprise and Employment Act 2015 is amended as follows.

2 (1) In section 23 (Secretary of State's duty to publish reports in respect of the business impact target), subsection (3) (things to be included in a report) is amended as follows.

(2) Omit the “and” at the end of paragraph (e).

(3) In paragraph (f) (report to include a list of certain regulatory provisions) for the words from “which have” to the end substitute “which—

(i) have come into force or ceased to be in force during the reporting period,

(ii) fall within section 22(6)(a) or (b), and

(iii) do not fall within paragraph (a).”.

(4) After that paragraph insert—

“(g) a summary of all the regulatory provisions (as defined in section 22(3)) which—

(i) have come into force or ceased to be in force during the reporting period,

(ii) fall within section 22(6)(c), and

(iii) do not fall within paragraph (a).”

#### Commencement Information

**I43** Sch. 2 para. 2 in force at Royal Assent for specified purposes and 4.7.2016 in so far as not already in force, see s. 44(1)(f)

3 In that section, after subsection (3) insert—

“(3A) The contribution of qualifying regulatory provisions which have come into force or ceased to be in force during preceding reporting periods to the aggregate economic impact mentioned in subsection (3)(d) is to be assessed by reference to the assessments in relation to those provisions included in reports in respect of those periods under subsection (3)(b).”

4 After section 24 insert—

#### “24A Duty on relevant regulators to assess economic impact etc

(1) A relevant regulator must publish the required documents in respect of each reporting period during the relevant period.

(2) The required documents are—

(a) a list of all qualifying regulatory provisions which—

(i) have effect by virtue of the exercise of a function conferred on the regulator, and

(ii) have come into force or ceased to be in force during the reporting period;

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- (b) an assessment verified by the body appointed under section 25 of the economic impact on business activities of each qualifying regulatory provision falling within paragraph (a) made by reference to the methodology published under section 21(3)(b);
- (c) a summary of all regulatory provisions (as defined in section 22(3)) which—
  - (i) have effect by virtue of the exercise of a function conferred on the regulator,
  - (ii) have come into force or ceased to be in force during the reporting period, and
  - (iii) do not fall within paragraph (a).
- (3) The required documents must be published no later than two weeks after the end of the reporting period, if they are in respect of a reporting period mentioned in any of section 23(7)(a) to (d).
- (4) If the required documents are in respect of a reporting period mentioned in section 23(7)(e)—
  - (a) they must be published at least two weeks before the dissolution of Parliament;
  - (b) the references to qualifying regulatory provisions or regulatory provisions which have come into force or ceased to be in force during the reporting period include qualifying regulatory provisions or regulatory provisions which are expected to come into force or to cease to be in force during that reporting period.
- (5) A relevant regulator must have regard to any guidance issued from time to time by the Secretary of State in relation to the required documents.
- (6) The guidance may, in particular, include guidance as to—
  - (a) information that should be published, or given to the body appointed under section 25, in advance of the publication of a required document;
  - (b) the time when a required document should be published (subject to subsections (3) and (4)(a));
  - (c) the form of a required document or the manner in which it should be published.
- (7) In this section “relevant regulator” has the same meaning as in section 22 (see subsection (9) of that section).”

5 In section 26 (amending the business impact target etc) after subsection (4) insert—

- “(5) If the Secretary of State amends the thing mentioned in subsection (1)(c) a relevant regulator must—
- (a) amend anything already published under section 24A or this section so that it takes account of the amendments;
  - (b) make a back-dated assessment in relation to any regulatory provision which—
    - (i) is a qualifying regulatory provision by virtue of the amendments,
    - (ii) has effect by virtue of the exercise of a function conferred on the regulator, and



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- (iii) came into force or ceased to be in force in a past reporting period;
- (c) publish anything amended and any back-dated assessment.
- (6) A “back-dated assessment” is an assessment of the economic impact on business activities of a regulatory provision mentioned in subsection (5)(b), in respect of the past reporting period in which the provision came into force or ceased to be in force, made by reference to the methodology published under section 21(3)(b).
- (7) If the Secretary of State amends the thing mentioned in subsection (1)(d) a relevant regulator must—
  - (a) amend any assessment or back-dated assessment already published under section 24A or this section so that it takes account of the amendments;
  - (b) publish any amended assessment or back-dated assessment.
- (8) Each back-dated assessment, amended assessment or amended back-dated assessment is to be verified by the body appointed under section 25 before it is published.
- (9) If the Secretary of State amends the thing mentioned in subsection (1)(c) or (d), a relevant regulator must have regard to any guidance issued by the Secretary of State in relation to anything to be published under subsection (5) or (7) (any “updating document”).
- (10) The guidance may, in particular, include guidance as to—
  - (a) information that should be published, or given to the body appointed under section 25, in advance of the publication of an updating document;
  - (b) the time when an updating document should be published;
  - (c) the form of an updating document or the manner in which it should be published.
- (11) In this section “relevant regulator” has the same meaning as in section 22 (see subsection (9) of that section).”

## SCHEDULE 3

Section 20

### PRIMARY AUTHORITY SCHEME: NEW SCHEDULE 4A TO RESA 2008

#### Commencement Information

**I44** [Sch. 3](#) in force at Royal Assent for specified purposes, see [s. 44\(1\)\(c\)](#)

**I45** [Sch. 3](#) in force at 1.10.2017 in so far as not already in force by [S.I. 2017/473](#), [reg. 3\(b\)](#)

This is the Schedule 4A to be substituted for Schedule 4 to the Regulatory Enforcement and Sanctions Act 2008—

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## “SCHEDULE 4A

Sections 25B and 25C

### REFERENCES TO THE SECRETARY OF STATE

#### PART 1

##### ENFORCEMENT ACTION BY PRIMARY AUTHORITY

- 1 (1) If the primary authority notifies the regulated person, or a member of the regulated group, under section 25B(2)(a) that it proposes to take enforcement action against the regulated person or the member, the regulated person or the member may, with the consent of the Secretary of State, refer the proposed enforcement action to the Secretary of State.
- (2) On a reference under sub-paragraph (1) the Secretary of State must—
  - (a) if satisfied as to the matters in sub-paragraph (3), direct the primary authority not to take the proposed enforcement action;
  - (b) otherwise, consent to the action.
- (3) The matters referred to in sub-paragraph (2) are that—
  - (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), and
  - (b) the advice or guidance was correct and properly given.
- (4) If the Secretary of State directs the primary authority not to take the proposed enforcement action, the Secretary of State may direct the primary authority to take some other enforcement action (and section 25B does not apply in relation to that other action).

#### PART 2

##### ENFORCEMENT ACTION OTHER THAN BY PRIMARY AUTHORITY

##### *Reference by an enforcing authority*

- 2 (1) If the primary authority directs an enforcing authority under section 25C(4) not to take the proposed enforcement action, the enforcing authority may, with the consent of the Secretary of State, refer the proposed action to the Secretary of State.
- (2) On a reference under sub-paragraph (1) the Secretary of State must—
  - (a) if satisfied as to the matters in sub-paragraph (3), confirm the direction;
  - (b) otherwise, revoke the direction.
- (3) The matters referred to in sub-paragraph (2) are that—
  - (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), and
  - (b) the advice or guidance was correct and properly given.
- (4) If the Secretary of State confirms the direction, the Secretary of State may direct the enforcing authority to take some other enforcement action (and section 25C does not apply in relation to that other action).

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*Reference by regulated person or member of the regulated group*

- 3 (1) If section 25C applies and the primary authority does not direct the enforcing authority (under subsection (4) of that section) not to take the proposed enforcement action, the regulated person or the member of the regulated group may, with the consent of the Secretary of State, refer the action to the Secretary of State.
- (2) On a reference under sub-paragraph (1) the Secretary of State must—
- (a) if satisfied as to the matters in sub-paragraph (3), direct the enforcing authority not to take the proposed enforcement action;
  - (b) otherwise, consent to the action.
- (3) The matters referred to in sub-paragraph (2) are that—
- (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), and
  - (b) the advice or guidance was correct and properly given.
- (4) If the Secretary of State directs the enforcing authority not to take the proposed enforcement action, the Secretary of State may direct the enforcing authority to take some other enforcement action (and section 25C does not apply in relation to that other action).

*Reference by primary authority*

- 4 (1) The primary authority may, with the consent of the Secretary of State, instead of making a determination under section 25C(4) as to whether to direct an enforcing authority not to take proposed enforcement action, refer the action to the Secretary of State.
- (2) On a reference under this paragraph the Secretary of State must—
- (a) if satisfied as to the matters in sub-paragraph (3), direct the enforcing authority not to take the proposed enforcement action;
  - (b) otherwise, consent to the action.
- (3) The matters referred to in sub-paragraph (2) are that—
- (a) the proposed enforcement action is inconsistent with advice or guidance previously given by the primary authority (generally or specifically), and
  - (b) the advice or guidance was correct and properly given.
- (4) If the Secretary of State directs the enforcing authority not to take the proposed enforcement action, the Secretary of State may direct the enforcing authority to take some other enforcement action (and section 25C does not apply in relation to that other action).

**PART 3**

GENERAL

*Timing*

- 5 (1) Any reference under this Schedule must be made as soon as is reasonably practicable, and in any event within the referral period.

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- (2) The “referral period” for the purposes of a reference under paragraph 1(1) is the period which—
  - (a) begins when the regulated person or the member is notified under section 25B(2)(a) of the proposed enforcement action, and
  - (b) ends at the end of the tenth working day after the day on which the period begins, or at such later time as the Secretary of State may direct.
- (3) The “referral period” for the purposes of a reference under paragraph 2(1) is the period which—
  - (a) begins when the enforcing authority is directed under section 25C(4) not to take the proposed enforcement action, and
  - (b) ends at the end of the tenth working day after the day on which the period begins, or at such later time as the Secretary of State may direct.
- (4) The “referral period” for the purposes of a reference under paragraph 3(1) is the period which—
  - (a) begins when the regulated person or the member is informed under section 25C(6)(a) that the enforcing authority continues to propose to take the enforcement action, and
  - (b) ends at the end of the tenth working day after the day on which the period begins, or at such later time as the Secretary of State may direct.
- (5) The “referral period” for the purposes of a reference under paragraph 4(1) is the relevant period under section 25C(9).
- (6) The Secretary of State must determine a reference under this Schedule within the period of 28 days beginning with the day on which the reference is made.
- (7) The primary authority (in the case of a reference under paragraph 1(1)) or the enforcing authority (in the case of a reference under paragraph 2(1), 3(1) or 4(1)) may not take the proposed enforcement action at any time after the making of the reference and before its determination.

#### *Consultation*

- 6 (1) Before determining a reference under this Schedule, the Secretary of State—
  - (a) must consult any relevant regulator, where appropriate, and
  - (b) may consult other persons.
- (2) In sub-paragraph (1)(a), “relevant regulator” means a person who has regulatory functions which relate to the matter to which the determination relates.
- (3) But a person is not a “relevant regulator” within the meaning of sub-paragraph (1)(a) if—
  - (a) the person is a qualifying regulator, and
  - (b) the partnership function pursuant to which the proposed enforcement action would be taken is a relevant function of the person.

#### *Information*

- 7 (1) For the purposes of determining whether to consent to a reference under this Schedule, or of determining such a reference, the Secretary of State may require any of the following to provide the Secretary of State with information—

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- (a) the primary authority;
  - (b) in the case of a reference under paragraph 2(1), 3(1) or 4(1), the enforcing authority;
  - (c) the regulated person concerned or the member of the regulated group concerned.
- (2) The information must be information which the authority, person or member may lawfully provide to the Secretary of State.

*Secretary of State's costs*

- 8 The Secretary of State may require the regulated person or a member of the regulated group to pay reasonable costs incurred by the Secretary of State as a result of—
- (a) a reference by the regulated person or the member under paragraph 1(1) or 3(1), or
  - (b) an application by the regulated person or the member for consent to make such a reference.

*Procedure*

- 9 The Secretary of State may by regulations make further provision as to the procedure to be followed for the purposes of this Schedule.”

SCHEDULE 4

Section 22

THE INSTITUTE FOR APPRENTICESHIPS

- 1 The Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.

**Commencement Information**

**I46** Sch. 4 para. 1 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 2 In Part 1 (apprenticeships, study and training) before Chapter A1 insert—

**“CHAPTER ZA1**

THE INSTITUTE FOR APPRENTICESHIPS

*Establishment*

**The Institute for Apprenticeships**

ZA1(1) A body corporate known as the Institute for Apprenticeships is established.

(2) In this Act that body is referred to as “the IfA”.

(3) Schedule A1 makes further provision about the IfA.

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### *General duties and functions*

#### **General duties**

- ZA2(1) So far as relevant, and subject to any notice given by the Secretary of State under subsection (2), in performing its functions the IfA must have regard to—
- (a) the reasonable requirements of industry, commerce, finance, the professions and other employers regarding education and training within the IfA's remit;
  - (b) the reasonable requirements of persons who may wish to undertake education and training within the IfA's remit;
  - (c) the need to ensure that education and training within the IfA's remit is of an appropriate quality;
  - (d) the need to ensure that education and training within the IfA's remit represents good value in relation to financial resources provided out of public funds;
  - (e) any information provided to it by any person designated by the Secretary of State for the purposes of this paragraph.
- (2) The Secretary of State may give a notice in writing to the IfA setting out other matters to which the IfA must have regard when performing its functions.
- (3) The Secretary of State may not give a notice under subsection (2) more than once in any financial year (within the meaning given by section ZA6(6)), except as provided by subsection (4).
- (4) Where in a financial year—
- (a) a notice is given under subsection (2), and
  - (b) after the giving of the notice a new Parliament meets for the first time,
- the Secretary of State may give one further notice under subsection (2) in that year.
- (5) The IfA must perform its functions efficiently and effectively.
- (6) For the purposes of this section, education or training is within the IfA's remit if the education or training is or may be provided in the course of an approved English apprenticeship.
- (7) Subsection (1) and any notice under subsection (2) do not apply in relation to functions that are—
- (a) delegated by directions under section ZA4, or
  - (b) conferred by regulations under section ZA5,
- unless the directions or regulations provide for them to apply in relation to the functions.
- (8) Where directions or regulations so provide, the directions or regulations—
- (a) may provide for any education or training to which the functions relate to be treated as within the IfA's remit for the purposes of this section;

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- (b) may provide for subsection (1) and any notice under subsection (2) to apply in relation to the functions with such modifications as the Secretary of State thinks fit.
- (9) The Secretary of State must—
  - (a) publish in such manner as the Secretary of State thinks fit any notice under subsection (2), and
  - (b) lay a copy of it before Parliament.

#### **Provision of advice and assistance to the Secretary of State etc**

- ZA3(1) The IfA may, if requested to do so by the Secretary of State, provide the Secretary of State with advice and assistance in connection with the Secretary of State's functions relating to apprenticeships in relation to England.
- (2) The Secretary of State's functions mentioned in subsection (1) include those under section 100(1A) or otherwise relating to the funding of apprenticeships in relation to England.

#### **Delegation of functions to the IfA by Secretary of State**

- ZA4(1) The Secretary of State may by direction delegate to the IfA any of the Secretary of State's functions relating to apprenticeships in relation to England.
- (2) The functions may be delegated—
  - (a) to any extent that the Secretary of State specifies in the direction, and
  - (b) subject to any conditions that the Secretary of State specifies in the direction.
- (3) The Secretary of State's functions mentioned in subsection (1) include those under section 100(1A) or otherwise relating to the funding of apprenticeships in relation to England.

#### **Conferral of further functions on the IfA by regulations**

- ZA5(1) The Secretary of State may by regulations confer on the IfA such functions relating to apprenticeships in relation to England as the Secretary of State considers appropriate.
- (2) A function conferred by regulations under subsection (1) may involve the exercise of a discretion.

#### **Annual and other reports**

- ZA6(1) As soon as reasonably practicable after the end of each financial year, the IfA must prepare an annual report.
- (2) An annual report is a report which includes—
  - (a) a description of what the IfA has done during the year, including a description of what the IfA has done as a result of any notice given by the Secretary of State under section ZA2(2),

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- (b) the statement of accounts prepared for that year under paragraph 11 of Schedule A1, and
  - (c) such other provision as the Secretary of State may direct.
- (3) The IfA must send the report to the Secretary of State as soon as reasonably practicable after it has been prepared.
- (4) The Secretary of State must lay a copy of the report before Parliament.
- (5) The Secretary of State may direct the IfA to prepare, and send to the Secretary of State, as soon as reasonably practicable a report on any matter relating to its functions.
- (6) In this section “financial year” means—
- (a) the period beginning with the day on which this section comes into force and ending with the following 31 March, and
  - (b) each successive period of 12 months.

### *Compliance*

#### **Secretary of State directions where the IfA fails to discharge duties etc**

- ZA7 If the Secretary of State is satisfied that the IfA—
- (a) has failed to discharge a duty imposed on it by or under this Act, or
  - (b) has acted or is proposing to act in an unreasonable way in exercising any function,
- the Secretary of State may give the IfA such directions as the Secretary of State considers appropriate.

### *Directions*

#### **General provision about directions under Chapters ZA1 and A1**

- ZA8(1) This section applies to a direction given to the IfA by the Secretary of State under this Chapter or Chapter A1.
- (2) The IfA must comply with the direction.
- (3) The direction must be in writing.”

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#### **Commencement Information**

**I47** Sch. 4 para. 2 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 3 Before section A1 insert— “Introductory ”

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#### **Commencement Information**

**I48** Sch. 4 para. 3 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 4 In section A1 (meaning of “approved English apprenticeship”), in subsection (3)(a) for “the Secretary of State has published an approved apprenticeship standard under



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section A2” substitute “ an approved apprenticeship standard has been published under section A2 ”.

**Commencement Information**

**I49** Sch. 4 para. 4 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

5 For section A2 (approved apprenticeship standards) substitute—

*“Publication of standards and assessment plans*

**A2 Apprenticeship standards and assessment plans**

- (1) The IfA must publish—
  - (a) standards for such sectors of work as the IfA considers appropriate for the purposes of this Chapter, and
  - (b) assessment plans in respect of published standards.
- (2) Each standard must—
  - (a) describe the sector of work to which it relates, and
  - (b) if there is more than one standard for the sector, describe the kind of work within the sector to which it relates.
- (3) Each standard must set out the outcomes that persons seeking to complete an approved English apprenticeship are expected to attain in order to achieve the standard.
- (4) An assessment plan in respect of a standard is a plan in accordance with which a person's attainment of the outcomes set out in the standard is to be assessed.
- (5) Each assessment plan must—
  - (a) specify the standard to which it relates, and
  - (b) set out the proposed arrangements for evaluating the quality of any assessment provided for by the plan.
- (6) The following provisions supplement the provision made by this section—
  - section A2A makes provision about the preparation of apprenticeship standards and assessment plans;
  - sections A2B to A2D make provision related to ensuring the quality of apprenticeship assessments;
  - sections A2E and A2F make provision about the review, revision and withdrawal of apprenticeship standards and assessment plans;
  - section A2G makes provision for independent examinations of apprenticeship standards and assessment plans;
  - section A2H makes provision about the maintenance of a published list of apprenticeship standards and assessment plans;
  - section A2I provides for the automatic transfer to the IfA of copyright in apprenticeship standards and assessment plans.

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### **A2A Preparation of apprenticeship standards and assessment plans**

- (1) Each standard or assessment plan published under section A2 must have been prepared by a group of persons and approved by the IfA.
- (2) The group of persons that prepared a standard or assessment plan published under section A2 must have been approved by the IfA for the purposes of this section.
- (3) The IfA may provide advice or assistance to a group of persons in connection with the preparation of a standard or assessment plan.
- (4) The IfA must publish—
  - (a) information about matters that it takes into account when deciding whether or not to approve standards or plans for the purposes of subsection (1);
  - (b) information about matters that it takes into account when deciding whether or not to approve groups of persons for the purposes of subsection (2).
- (5) When making a decision of the kind mentioned in subsection (4)(a) or (b) in a particular case, the IfA may also take into account such other matters as it considers appropriate in the case in question.
- (6) Information published under subsection (4) may be revised or replaced, and the IfA must publish under that subsection any revised or replacement information.

### *Quality assurance*

### **A2B Evaluation of quality of apprenticeship assessments**

- (1) The IfA must secure that evaluations are carried out of the quality of apprenticeship assessments provided by persons in relation to assessment plans published under section A2.
- (2) “Apprenticeship assessment” means the assessment of a person's attainment of the outcomes set out in the standard to which the assessment plan relates.
- (3) For the purposes of subsection (1) the IfA may approve or make arrangements for other persons to carry out evaluations.

### **A2C Unsatisfactory apprenticeship assessments**

- (1) If the IfA considers that the quality of any apprenticeship assessment provided by a person is or may become unsatisfactory, it may carry out a review of the assessment, or make arrangements with another person for the carrying out of such a review.
- (2) The IfA may, in consequence of a review, make arrangements for the purpose of improving the quality of the assessment to which the review relates.
- (3) If the IfA—

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- (a) considers that the quality of any apprenticeship assessment provided by a person is or may become unsatisfactory, or
  - (b) that a person who provides an apprenticeship assessment has failed to co-operate with a review carried out under this section or with arrangements made under subsection (2),
- it may report the matter to the Secretary of State or such other person as the IfA considers appropriate.
- (4) A report under subsection (3) may contain recommendations as to the action to be taken by the person to whom the report is made.
  - (5) The IfA may publish a report under subsection (3).

#### **A2D Committee to advise on quality evaluations etc**

- (1) The IfA may establish a committee with—
  - (a) the function of giving the IfA advice on the performance of its functions under sections A2B and A2C, and
  - (b) such other functions as may be conferred on the committee by the IfA.
- (2) A majority of the members of the committee—
  - (a) must be persons who appear to the IfA to have experience of the assessment of education or training, and
  - (b) must not be members of the IfA.
- (3) Subject to that, Schedule A1 applies to a committee established under this section as it applies to committees established under paragraph 7 of that Schedule.

#### *Review, revision and withdrawal*

#### **A2E Regular reviews of published standards and assessment plans**

- (1) The IfA must maintain arrangements for the review at regular intervals of each standard or assessment plan published under this Chapter, with a view to determining whether the standard or plan ought to be revised or withdrawn.
- (2) In respect of each standard or assessment plan published under this Chapter, the IfA must publish information about the intervals at which those reviews are to be conducted.

#### **A2F Revision or withdrawal of published standards and assessment plans**

- (1) The IfA may—
  - (a) publish a revised version of a standard or assessment plan published under this Chapter, or
  - (b) withdraw a standard or assessment plan published under this Chapter (with or without publishing another in its place).

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- (2) Section A2A applies in relation to a revised version of a standard or plan published under this section as it applies in relation to a standard or plan published under section A2.

*Other provisions about English approved apprenticeships*

**A2G Examinations by independent third parties**

- (1) Before the IfA approves a standard or assessment plan for the purposes of section A2A(1) it must make arrangements for the carrying out of an examination of the standard or plan by an independent third party.
- (2) The duty imposed by subsection (1) does not apply in relation to a revised version of a standard or assessment plan, but the IfA may, for the purposes of a review under section A2E or at any other time, make arrangements for the carrying out of an examination of a standard or assessment plan by an independent third party.
- (3) Where an examination of a standard or assessment plan is carried out under this section, the IfA must take account of the finding of the examination in exercising its functions in relation to the standard or plan under this Chapter.
- (4) Nothing in subsection (1) prevents the IfA deciding to reject a standard or assessment plan without first making arrangements for the carrying out of an examination by an independent third party.

**A2H List of published standards and assessment plans**

- (1) The IfA must maintain a list of the standards and assessment plans published by it under this Chapter.
- (2) In respect of each standard and plan listed (including any revised version), the list must include details of when it comes into force.
- (3) Where a revised version is listed, the list must include a general description of the cases to which the revised version applies.
- (4) Where a standard or plan has been withdrawn, the list must include details of when the withdrawal comes into force and a general description of the cases to which it applies.
- (5) The IfA must secure that the list is available free of charge at all reasonable times.

**A2I Transfer of copyright in standards and assessment plans**

- (1) This section applies where—
  - (a) a standard or assessment plan is approved by the IfA under section A2A, and
  - (b) a person (other than the IfA) is entitled, immediately before the time the approval is given, to any right or interest in any copyright in the standard or plan.

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- (2) The right or interest is, by virtue of this section, transferred from that person to the IfA at the time the approval is given.
- (3) The IfA must ensure that a standard or assessment plan in relation to which a right or interest has transferred by virtue of subsection (2) is made available to the public, subject to any conditions that the IfA considers appropriate.”

**Commencement Information**

**I50** Sch. 4 para. 5 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 6
- (1) Section A3 (power to issue apprenticeship certificate) is amended as follows.
  - (2) In subsection (1) for “to” substitute “ in respect of”.
  - (3) In subsection (2), for paragraph (b) substitute—
    - “(b) the supply by the Secretary of State of apprenticeship certificates issued under that subsection, and copies of those certificates, to—
      - (i) persons in respect of whom they were issued;
      - (ii) persons for whom those persons work or have worked under approved English apprenticeship agreements to which the certificates relate.”

**Commencement Information**

**I51** Sch. 4 para. 6 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 7
- In section 122 (sharing of information for education and training purposes)—
    - (a) in subsection (3) (persons who may provide and receive information), after paragraph (f) insert—
      - “(g) the IfA.”;
    - (b) in subsection (5) (functions for the purposes of which information may be provided)—
      - (i) omit the “or” at the end of paragraph (b), and
      - (ii) after paragraph (b) insert—
        - “(ba) any function of the IfA, or”.

**Commencement Information**

**I52** Sch. 4 para. 7 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 8
- In section 262(6) (orders and regulations subject to affirmative procedure) before paragraph (ab) insert—
    - “(aab) regulations under section ZA5;”

**Commencement Information**

**I53** Sch. 4 para. 8 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 9
- Before Schedule 1 insert—

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

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## “SCHEDULE A1

### THE INSTITUTE FOR APPRENTICESHIPS

#### *Status*

- 1 The IfA is to perform its functions on behalf of the Crown.

#### *Membership*

- 2 (1) The IfA is to consist of—
- (a) a member appointed by the Secretary of State to chair the IfA (“the chair”);
  - (b) the chief executive appointed in accordance with paragraph 5;
  - (c) at least 4 and no more than 10 other members appointed by the Secretary of State.
- (2) The chair and members appointed under sub-paragraph (1)(c) are referred to in this Schedule as the “non-executive members”.

#### *Tenure of non-executive members*

- 3 (1) The non-executive members hold and vacate office in accordance with the terms of their appointment.
- (2) Those terms are to be determined by the Secretary of State, subject to the following provisions of this Schedule.
- (3) A non-executive member must not be appointed for a term of more than five years.
- (4) A non-executive member may resign from office at any time by giving written notice to the Secretary of State.
- (5) The Secretary of State may remove a non-executive member from office on either of the following grounds—
- (a) inability or unfitness to carry out the duties of office;
  - (b) absence from the IfA's meetings for a continuous period of more than 6 months without the IfA's permission.
- (6) The previous appointment of a person as a non-executive member does not affect the person's eligibility for re-appointment.

#### *Remuneration of non-executive members*

- 4 (1) The IfA must, if the Secretary of State requires it to do so, pay remuneration, allowances and expenses to its non-executive members.
- (2) The IfA must, if the Secretary of State requires it to do so, pay, or make provision for the payment of, a pension, allowances or gratuities to or in respect of a person who is or has been a non-executive member.

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

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- (3) If a person ceases to be a non-executive member of the IfA and the Secretary of State decides that the person should be compensated because of special circumstances, the IfA must pay compensation to the person.
- (4) The amount of a payment under sub-paragraph (1), (2) or (3) is to be determined by the Secretary of State.
- (5) Service as a non-executive member is one of the kinds of service to which a scheme under section 1 of the Superannuation Act 1972 (superannuation schemes as respects civil servants etc) can apply (see Schedule 1 to that Act).
- (6) The IfA must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to the provision of pensions, allowances or gratuities under section 1 of the Superannuation Act 1972 payable to or in respect of non-executive members in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

*Chief executive and other staff*

- 5
  - (1) The first chief executive is to be appointed by the Secretary of State on conditions of service determined by the Secretary of State, after consulting the chair.
  - (2) Subsequent chief executives are to be appointed by the IfA after consulting the Secretary of State.
  - (3) The chief executive must not be appointed for a term of more than five years.
  - (4) The previous appointment of a person as chief executive does not affect the person's eligibility for re-appointment.
  - (5) The chief executive holds that office as a member of staff of the IfA.
  - (6) The IfA may appoint other members of staff.
  - (7) Service as a member of staff of the IfA is employment in the civil service of the State.
  - (8) The following are to be determined by the IfA with the approval of the Secretary of State—
    - (a) the number of members of staff of the IfA (in addition to the chief executive);
    - (b) the conditions of service of staff of the IfA.
  - (9) Sub-paragraph (8)(b) is subject to sub-paragraph (1).

*Arrangements with Secretary of State*

- 6 The Secretary of State and the IfA may enter into arrangements with each other for the provision to the IfA by the Secretary of State, on such terms as may be agreed, of staff, accommodation or services.

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### *Committees*

- 7 (1) The IfA may establish committees, and any committee established by the IfA may establish sub-committees.
- (2) The IfA may—
- (a) dissolve a sub-committee established under sub-paragraph (1), or
  - (b) alter the purposes for which such a sub-committee is established.
- (3) In this Schedule a committee or sub-committee established under sub-paragraph (1) is referred to as an “IfA committee”.
- (4) An IfA committee must include at least two persons who are members of the IfA or its staff.
- (5) The IfA may, with the approval of the Secretary of State, arrange for the payment of remuneration, allowances and expenses to any person who—
- (a) is a member of an IfA committee, but
  - (b) is not a member of the IfA or its staff.
- (6) The IfA must, if directed to do so by the Secretary of State, review—
- (a) the structure of IfA committees, and
  - (b) the scope of the activities of each IfA committee.

### *Procedure*

- 8 (1) The IfA may regulate—
- (a) its own proceedings (including quorum), and
  - (b) the procedure (including quorum) of IfA committees.
- (2) The validity of proceedings of the IfA, or of an IfA committee, is not affected by—
- (a) a vacancy;
  - (b) a defective appointment.

### *Exercise of functions*

- 9 (1) Subject to sub-paragraphs (2) and (3), the IfA may authorise any of the following to exercise functions on its behalf—
- (a) a member of the IfA;
  - (b) a member of the IfA's staff;
  - (c) an IfA committee;
  - (d) any other person.
- (2) The IfA may not authorise any of the functions under sections A2, A2A and A2E to A2I to be exercised on its behalf—
- (a) under sub-paragraph (1)(c), by a committee a majority of the members of which are not members of the IfA's staff, or
  - (b) under sub-paragraph (1)(d).
- (3) The IfA may authorise the exercise on its behalf of functions that have been—



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- (a) delegated to the IfA by directions under section ZA4, or
  - (b) conferred on the IfA by regulations under section ZA5,
- only if and to the extent that the directions or regulations so provide.

*Supplementary powers*

- 10 (1) The IfA may—
- (a) provide information or advice to any person in connection with any of the IfA's functions;
  - (b) co-operate or work jointly with any person where it is appropriate to do so for the efficient and effective performance of any of the IfA's functions;
  - (c) carry out research for the purposes of, or in connection with, the IfA's functions;
  - (d) do anything else that the IfA considers necessary or appropriate for the purposes of, or in connection with, its functions.
- (2) The power in sub-paragraph (1)(d) is subject to any restrictions imposed by or under any provision of any Act.
- (3) The IfA may not borrow money.
- (4) The IfA may not, without the consent of the Secretary of State—
- (a) lend money,
  - (b) form, participate in forming or invest in a company, or
  - (c) form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of section 69A of the Charities Act 1993).
- (5) In sub-paragraph (4) the reference to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.

*Accounts and reports*

- 11 (1) The IfA must—
- (a) keep proper accounts and proper records in relation to its accounts, and
  - (b) prepare in respect of each financial year a statement of accounts.
- (2) Each statement of accounts must comply with any directions given by the Secretary of State as to—
- (a) the information to be contained in it,
  - (b) the manner in which such information is to be presented, or
  - (c) the methods and principles according to which the statement is to be prepared.
- (3) The IfA must send a copy of each statement of accounts to—
- (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General,
- before the end of the month of August following the financial year to which the statement relates.

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

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- (4) The Comptroller and Auditor General must—
  - (a) examine, certify and report on each statement of accounts, and
  - (b) send a copy of each report and certified statement to the Secretary of State.
- (5) The Secretary of State must lay before Parliament—
  - (a) a copy of each statement sent to the Secretary of State under sub-paragraph (3), and
  - (b) a copy of each report and certified statement sent to the Secretary of State under sub-paragraph (4).
- (6) “Financial year” has the meaning given by section ZA6(6) (annual and other reports).

*Application of seal and proof of documents*

- 12 (1) The application of the IfA's seal must be authenticated by the signature of—
  - (a) the chief executive, or
  - (b) a member of the IfA who has been authorised by the IfA for that purpose (whether generally or specifically).
- (2) A document purporting to be duly executed under the IfA's seal, or signed on its behalf—
  - (a) is to be received in evidence, and
  - (b) is to be treated as executed or signed in that way, unless the contrary is proved.

*Funding*

- 13 (1) The Secretary of State may make grants to the IfA, or provide the IfA with any other kind of financial assistance, subject to any conditions that the Secretary of State considers appropriate.
- (2) The conditions may, in particular—
  - (a) enable the Secretary of State to require full or partial repayment of sums paid by the Secretary of State if any of the conditions are not complied with;
  - (b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the conditions remains unpaid.”

**Commencement Information**

**I54** Sch. 4 para. 9 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 10 In Schedule 1 to the Superannuation Act 1972, in the list of “Offices”, at the appropriate place insert— “ Non-executive member of the Institute for Apprenticeships. ”

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)*

**Commencement Information**

**I55** Sch. 4 para. 10 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

- 11 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities) at the appropriate place insert— “ The Institute for Apprenticeships. ”

**Commencement Information**

**I56** Sch. 4 para. 11 in force at 1.4.2017 by S.I. 2017/346, reg. 2(a)

SCHEDULE 5

Section 33

SUNDAY WORKING

*Employment Rights Act 1996*

- 1 The Employment Rights Act 1996 is amended as follows.

**Commencement Information**

**I57** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

- 2 In section 41 (opted-out shop workers and betting workers), for subsection (3) substitute—

“(3) In this Act “notice period”, in relation to an opted-out shop worker or an opted-out betting worker, means—

- (a) in the case of an opted-out shop worker who does shop work in or about a large shop, the period of one month beginning with the day on which the opting-out notice concerned was given;
- (b) in any other case, the period of three months beginning with that day.

This subsection is subject to sections 41D(2) and 42(2).”

**Commencement Information**

**I58** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

- 3 After section 41 insert—

**“41A Notice of objection by shop workers to working additional hours on Sunday**

- (1) A shop worker may at any time give to his or her employer a written notice, signed and dated by the shop worker, to the effect that he or she objects to doing shop work for additional hours on Sunday.

- (2) In this Part—

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)*

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“additional hours” means any number of hours of shop work that a shop worker is (or could be) required to work under a contract of employment on Sunday that are (or would be) in excess of the shop worker's normal Sunday working hours;

“objection notice” means a notice given under subsection (1).

- (3) The “normal Sunday working hours” of a shop worker are to be calculated in accordance with regulations.
- (4) Regulations under this section may provide—
  - (a) for the calculation to be determined (for example) by reference to the average number of hours that the shop worker has worked on Sundays during a period specified or described in the regulations;
  - (b) for a calculation of the kind mentioned in paragraph (a) to be varied in special cases;
  - (c) for the right to give an objection notice not to be exercisable in special cases (and subsection (1) is subject to provision made by virtue of this paragraph).
- (5) Provision under subsection (4)(b) or (c) may, in particular, include provision—
  - (a) about how the calculation of normal Sunday working hours is to be made in the case of a shop worker who has not been employed for a sufficient period of time to enable a calculation to be made as otherwise provided for in the regulations;
  - (b) for the right to give an objection notice not to be exercisable by such a shop worker until he or she has completed a period of employment specified or described in the regulations.
- (6) But regulations under this section may not include provision preventing a shop worker who has been continuously employed under a contract of employment for a period of one year or more from giving to the employer an objection notice.
- (7) Regulations under this section may make different provision for different purposes.

#### **41B Explanatory statement: persons who become shop workers**

- (1) This section applies where a person becomes a shop worker who, under a contract of employment, is or may be required to do shop work on Sundays.
- (2) The employer must give to the shop worker a written statement informing the shop worker of the following rights—
  - (a) the right to object to working on Sundays by giving the employer an opting-out notice (if section 40 applies to the shop worker);
  - (b) the right to object to doing shop work for additional hours on Sundays by giving the employer an objection notice.
- (3) The statement must be given before the end of the period of two months beginning with the day on which the person becomes a shop worker as mentioned in subsection (1).

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- (4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).
- (5) A statement under this section must comply with such requirements as to form and content as regulations may provide.
- (6) Regulations under this section may make different provision for different purposes.

#### **41C Explanatory statement: shop workers at commencement date**

- (1) This section applies where—
  - (a) under a contract of employment a shop worker is or may be required to do shop work on Sundays, and
  - (b) the shop worker was employed under that contract on the day before the commencement date.
- (2) The shop worker's employer must give to the shop worker a written statement informing the shop worker of the rights mentioned in section 41B(2).
- (3) The statement must be given before the end of the period of two months beginning with the commencement date.
- (4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).
- (5) A statement under this section must comply with such requirements as to form and content as regulations may provide.
- (6) Regulations under this section may make different provision for different purposes.
- (7) In this section “commencement date” means the date appointed by regulations under section 44 of the Enterprise Act 2016 for the coming into force of section 33 of, and Schedule 5 to, that Act.

#### **41D Failure to give explanatory statement under section 41B or 41C**

- (1) This section applies if an employer fails to give to a shop worker a written statement in accordance with—
  - (a) section 41B(2) and (3), or
  - (b) section 41C(2) and (3).
- (2) If the shop worker gives to the employer an opting-out notice, the notice period under section 41(3) that applies in relation to the shop worker is varied as follows—
  - (a) if the notice period under that provision would have been one month, it becomes 7 days instead;
  - (b) if the notice period under that provision would have been three months, it becomes one month instead.

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- (3) If the shop worker gives to the employer an objection notice, the relevant period under section 43ZA(2) that applies in relation to the shop worker is varied as follows—
- (a) if the relevant period under that provision would have been one month, it becomes 7 days instead;
  - (b) if the relevant period under that provision would have been three months, it becomes one month instead.”

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**Commencement Information**

**I59** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

- 4 (1) Section 42 (explanatory statement) is amended as follows.
- (2) In the heading, after “statement” insert “ : betting workers ”.
- (3) In subsection (1) omit “shop worker or”.
- (4) In subsection (2)—
- (a) in paragraph (a) omit “shop worker or”;
  - (b) in paragraph (b)—
    - (i) after “the” omit “shop worker or”;
    - (ii) omit “an opted-out shop worker or”;
  - (c) in the words after paragraph (b), omit “shop worker or”.
- (5) In subsection (3) omit “shop worker or”.
- (6) Omit subsection (4).
- (7) In subsection (6)—
- (a) for “forms” substitute “ form ”;
  - (b) for “subsections (4) and (5)” substitute “ subsection (5) ”.

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**Commencement Information**

**I60** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

- 5 In the heading of section 43, after “work” insert “ : opting-out notices ”.

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**Commencement Information**

**I61** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

- 6 After section 43 (in Part 4) insert—

**“43ZA Contractual requirements relating to working additional hours on Sundays: objection notices**

- (1) Where a shop worker gives to his or her employer an objection notice, any agreement entered into between the shop worker and the employer becomes unenforceable to the extent that—

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- (a) it requires the shop worker to do shop work for additional hours on Sunday after the end of the relevant period, or
    - (b) it requires the employer to provide the shop worker with shop work for additional hours on Sunday after the end of that period.
  - (2) The “relevant period” is—
    - (a) in the case of a shop worker who is or may be required to do shop work in or about a large shop, the period of one month beginning with the day on which the objection notice is given;
    - (b) in any other case, the period of three months beginning with that day.
- This subsection is subject to section 41D(3).
- (3) A shop worker who has given an objection notice may revoke the notice by giving a further written notice to the employer.
  - (4) Where—
    - (a) a shop worker gives to the employer a notice under subsection (3), and
    - (b) after giving the notice the shop worker expressly agrees with the employer to do shop work for additional hours on Sunday (whether on Sundays generally or on a particular Sunday),the contract of employment between the shop worker and the employer is to be taken to be varied to the extent necessary to give effect to the terms of the agreement.
  - (5) The reference in subsection (1) to any agreement—
    - (a) includes the contract of employment under which the shop worker is employed immediately before giving the objection notice;
    - (b) includes an agreement of a kind mentioned in subsection (4), or a contract of employment as taken to be varied under that subsection, only if an objection notice is given in relation to the working of additional hours under that agreement or contract as varied.

### **43ZB Interpretation**

- (1) In this Part—
  - “additional hours” has the meaning given in section 41A(2);
  - “large shop” means a shop which has a relevant floor area exceeding 280 square metres;
  - “objection notice” has the meaning given in section 41A(2);
  - “regulations” means regulations made by the Secretary of State.
- (2) In the definition of “large shop” in subsection (1)—
  - (a) “shop” means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods;
  - (b) “relevant floor area” means the internal floor area of so much of the large shop in question as consists of or is comprised in a building.
- (3) For the purposes of subsection (2), any part of the shop which is not used for the serving of customers in connection with the sale or display of goods is to be disregarded.

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- (4) The references in subsections (2) and (3) to the sale of goods does not include—
- (a) the sale of meals, refreshments or alcohol (within the meaning of the Licensing Act 2003 or, in relation to Scotland, the Licensing (Scotland) Act 2005 (asp 16)) for consumption on the premises on which they are sold, or
  - (b) the sale of meals or refreshments prepared to order for immediate consumption off those premises.”

#### Commencement Information

**I62** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

7 After section 45 insert—

#### “45ZA Sunday working for shop workers: additional hours

- (1) Subsection (2) applies where a shop worker has given an objection notice to his or her employer and the notice has not been withdrawn.
- (2) The shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employer done on the ground that the shop worker refused (or proposed to refuse) to do shop work for additional hours on Sunday or on a particular Sunday.
- (3) Subsection (2) does not apply to anything done on the ground that the shop worker refused (or proposed to refuse) to do shop work for additional hours on any Sunday or Sundays falling before the end of the relevant period.
- (4) A shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer on the ground that the shop worker gave (or proposed to give) an objection notice to the employer.
- (5) Subsections (2) and (4) do not apply where the detriment in question amounts to dismissal (within the meaning of Part 10).
- (6) For the purposes of this section, a shop worker who does not do shop work for additional hours on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—
  - (a) a failure to pay remuneration in respect of doing shop work for additional hours on Sunday which the shop worker has not done, or
  - (b) a failure to provide any other benefit where the failure results from the application (in relation to a Sunday on which the shop worker has not done shop work for additional hours) of a contractual term under which the extent of the benefit varies according to the number of hours worked by, or the remuneration paid to, the shop worker.
- (7) Subsections (8) and (9) apply where—
  - (a) an employer offers to pay a sum specified in the offer to a shop worker if he or she agrees to do shop work for additional hours on Sunday or on a particular Sunday, and
  - (b) the shop worker—



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- (i) has given an objection notice to the employer that has not been withdrawn, or
  - (ii) is not obliged under a contract of employment to do shop work for additional hours on Sunday.
- (8) A shop worker to whom the offer is not made is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure—
  - (a) to make the offer to the shop worker, or
  - (b) to pay the shop worker the sum specified in the offer.
- (9) A shop worker who does not accept the offer is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to pay the shop worker the sum specified in the offer.
- (10) In this section—
  - “additional hours” and “objection notice” have the meanings given by section 41A(2);
  - “relevant period” means the period determined by section 43ZA(2) (but subject to section 41D(3)).”

#### Commencement Information

**I63** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

- 8 In section 48 (complaints to employment tribunals), after subsection (1) insert—
- “(1YA) A shop worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of section 45ZA.”

#### Commencement Information

**I64** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

- 9 After section 101 insert—

#### “101ZA Shop workers who refuse to work additional hours on Sunday

- (1) Subsection (2) applies where a shop worker has given an objection notice that has not been withdrawn and he or she is dismissed.
- (2) The shop worker is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or the principal reason) for the dismissal is that he or she refused, or proposed to refuse, to do shop work for additional hours on Sunday or on a particular Sunday.
- (3) Subsection (2) does not apply where the reason (or principal reason) for the dismissal is that the shop worker refused (or proposed to refuse) to do shop work for additional hours on any Sunday or Sundays falling before the end of the relevant period.
- (4) A shop worker who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or principal reason) for the dismissal

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is that the worker gave (or proposed to give) an objection notice to the employer.

(5) In this section—

“additional hours” and “objection notice” have the meanings given by section 41A(2);

“relevant period” means the period determined by section 43ZA(2) (but subject to section 41D(3)).”

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**Commencement Information**

**I65** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

10 In section 108 (qualifying period of employment), in subsection (3) after paragraph (d) insert—

“(da) subsection (2) of section 101ZA applies (read with subsection (3) of that section) or subsection (4) of that section applies.”.

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**Commencement Information**

**I66** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

11 In section 236 (orders and regulations), in subsection (3) after “27B,” insert “ 41A that include provision under subsection (4)(c) of that section, ”.

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**Commencement Information**

**I67** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

*Employment Act 2002*

12 In section 38 of the Employment Act 2002 (failure to give statement of employment particulars etc)—

(a) in subsection (2)(b), after “change)” insert “ or under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday) ”;

(b) in subsection (3)(b), after “1996” insert “ or under section 41B or 41C of that Act ”.

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**Commencement Information**

**I68** Sch. 5 in force at Royal Assent for specified purposes, see s. 44(1)(d)

*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

## SCHEDULE 6

Section 41

### RESTRICTION ON PUBLIC SECTOR EXIT PAYMENTS: CONSEQUENTIAL AND RELATED PROVISION

#### *Small Business, Enterprise and Employment Act 2015*

- 1 In section 154 of the Small Business, Enterprise and Employment Act 2015 (regulations in connection with repayment of public sector exit payments)—
- (a) in subsection (4)(c), after “retirement” insert “ or in respect of the cost to a pension scheme of such a reduction not being made ”,
  - (b) after subsection (6), insert—

“(7) In this section a reference to a payment made to a person includes a reference to a payment made in respect of that person to another person.”, and
  - (c) in the heading, after “with” insert “ repayment of ”.

#### Commencement Information

**I69** Sch. 6 para. 1 in force at 1.2.2017 by S.I. 2017/70, reg. 2(c)

- 2 In section 156 of that Act (power to make regulations exercisable by the Treasury or Scottish Ministers)—
- (a) for subsection (4) substitute—

“(4) The first regulations made by the Treasury under section 154(1) are subject to the affirmative resolution procedure.

(4A) The first regulations made by the Scottish Ministers under section 154(1) are subject to the affirmative procedure.”, and
  - (b) in the heading, after “regulations” insert “ under section 154(1) ”.

#### Commencement Information

**I70** Sch. 6 para. 2 in force at 1.2.2017 by S.I. 2017/70, reg. 2(c)

- 3 In section 161 of that Act (supplementary provision about regulations), in subsection (1), after “section 1” insert “ , 153A ”.

#### Commencement Information

**I71** Sch. 6 para. 3 in force at 1.2.2017 by S.I. 2017/70, reg. 2(c)

#### *Power to amend public sector schemes*

- 4 (1) Regulations may amend any relevant public sector scheme to ensure that if any exit payment restriction would have effect to prevent retirement benefits becoming immediately payable under the scheme without reduction—
- (a) the retirement benefits may become immediately payable under the scheme subject to the appropriate early payment deduction, and

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- (b) the member may opt to buy out all or part of that deduction.
- (2) Regulations may also amend any relevant public sector scheme to ensure that if any exit payment restriction has effect to prevent a payment being made by the employer under the scheme in respect of the whole or any part of an extra charge arising to the scheme as a result of retirement benefits becoming immediately payable to a member without reduction—
  - (a) the retirement benefits become payable immediately subject to the appropriate early payment deduction except to the extent that the extra charge arising to the scheme as a result of not making that deduction has been met by a payment made by the employer under the scheme, but
  - (b) the member may opt to buy out all or part of that early payment deduction.
- (3) Regulations under this paragraph may be made—
  - (a) in relation to exit payments made by a relevant Scottish authority (other than exit payments to which section 153B(2) of the Small Business, Enterprise and Employment Act 2015 applies), by the Scottish Ministers, and
  - (b) in any other case, by—
    - (i) the Treasury, or
    - (ii) another Minister of the Crown with the consent of the Treasury.
- (4) Regulations under this paragraph may make—
  - (a) consequential, incidental or supplemental provision;
  - (b) transitional or transitory provision, or savings;
  - (c) different provision for different purposes.
- (5) Regulations under this paragraph (other than regulations made by the Scottish Ministers) are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Regulations under this paragraph made by the Scottish Ministers are subject to the negative procedure.
- (8) In this paragraph—
  - “the appropriate early payment deduction” means such adjustment as is shown as appropriate in actuarial guidance issued by the Secretary of State;
  - “exit payment restriction” means a restriction imposed by regulations under section 153A of the Small Business, Enterprise and Employment Act 2015;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
  - “relevant public sector scheme” has the same meaning as in section 153A of the Small Business, Enterprise and Employment Act 2015;
  - “relevant Scottish authority” has the meaning given by section 153B of that Act.

#### Commencement Information

**I72** Sch. 6 para. 4 in force at 1.2.2017 by S.I. 2017/70, reg. 2(c)

*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

## PROSPECTIVE

*Local Government Pension Scheme Regulations 2013 (S.I. 2013/2356)*

- 5 (1) In the Local Government Pension Scheme Regulations 2013 (S.I. 2013/2356)—
- (a) in regulation 30 (which provides for active members aged 55 or over, on redundancy, to take immediate payment of certain pension amounts without an actuarial reduction), at the end insert—
 

“(13) This regulation is subject to regulation 68A (effect of restrictions on public sector exit payments).”, and
  - (b) after regulation 68 insert—

**Effect of restrictions on public sector exit payments**

“68A(1) This regulation applies where the effect of the Exit Payment Regulations is to prevent all or part of a payment being required to be made under regulation 68(2) in respect of any extra charge on the fund resulting from retirement benefits which, in the absence of this regulation, would become immediately payable, without reduction, under regulation 30(7)(b) or as a result of a waiver under regulation 30(8).

(2) The member may elect to pay to the appropriate fund an amount in respect of all or part of that extra charge.

(3) Regulation 30(7) (which provides for active members aged 55 or over, on redundancy, to take immediate payment of certain pension amounts) has effect as if for paragraph (b) there were substituted—

“(b) any other retirement pension relating to that employment payable under these Regulations, adjusted by so much of the amount shown as appropriate in actuarial guidance issued by the Secretary of State as does not represent an adjustment relating to an extra charge on the appropriate fund—

(i) in respect of which the Scheme employer may be required to make an additional payment under regulation 68(2), or

(ii) in respect of which the member has made a payment under regulation 68A(2).”

(4) Regulation 30(8) does not authorise the waiver of any reduction except to the extent that an additional payment may be required under regulation 68(2), or a payment has been made to the appropriate fund by the member under paragraph (2), in respect of any extra charge on the fund resulting from not making the reduction.

(5) In determining the effect of the Exit Payment Regulations for the purposes of paragraph (1) account is to be taken of any provision made under section 153C of the Small Business, Enterprise and

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**Changes to legislation:** There are currently no known outstanding effects for the Enterprise Act 2016. (See end of Document for details)

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Employment Act 2015 (power to relax exit payment restrictions in certain cases).

(6) The restriction specified in paragraph (4) applies to Scheme employers which have power under section 1 of the Localism Act 2011 (local authority's general power of competence) or section 5A(1) of the Fire and Rescue Services Act 2004 (powers of fire and rescue authorities) in the exercise of those powers.

(7) In this regulation “Exit Payment Regulations” means regulations under section 153A(1) of the Small Business, Enterprise and Employment Act 2015 (regulations to restrict public sector exit payments).”

(2) The provision made by sub-paragraph (1) may be amended or revoked as if it had been made under section 1 of the Public Service Pensions Act 2013.

(3) The provision made by this paragraph is without prejudice to the generality of the powers conferred by paragraph 4.

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2016.