



# Enterprise Act 2016

## 2016 CHAPTER 12

An Act to make provision relating to the promotion of enterprise and economic growth; provision about Sunday working; and provision restricting exit payments in relation to public sector employment. [4th May 2016]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### THE SMALL BUSINESS COMMISSIONER

##### *The Commissioner*

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

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

#### **Commencement Information**

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| <b>I1</b> | <a href="#">S. 1</a> in force at Royal Assent for specified purposes, see <a href="#">s. 44(1)</a>  |
| <b>I2</b> | <a href="#">S. 1(1)(3)</a> in force at 6.4.2017 in so far as not already in force by <a href="#">S.I. 2017/473</a> , <a href="#">reg. 2</a> |

*Status: This version of this Act contains provisions that are prospective.*

*Changes to legislation: Enterprise Act 2016 is up to date with all changes known to be in force on or before 12 March 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

**I3** S. 1(2) in force at 1.10.2017 in so far as not already in force by S.I. 2017/473, reg. 3(a)

*“Small businesses”*

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

- (1) In this Part “small business” means a relevant undertaking which—
  - (a) has a headcount of staff of less than 50,
  - (b) if the business threshold condition applies to the relevant undertaking, meets that condition, and
  - (c) is not a public authority.
- (2) The Secretary of State may by regulations (“SBC scope regulations”) make further provision about the meaning of “small business” in this Part.
- (3) For the purposes of subsection (1)(b), the business threshold condition applies to a relevant undertaking if—
  - (a) SBC scope regulations provide for that condition to apply in relation to all relevant undertakings, or
  - (b) the relevant undertaking falls within a description of undertakings to which SBC scope regulations apply that condition.
- (4) A relevant undertaking meets the business threshold condition if it has a turnover, or balance sheet total, of an amount less than or equal to the small business threshold.
- (5) SBC scope regulations may (amongst other things) make provision about—
  - (a) the date (“the assessment date”) on which, or the period (“the assessment period”) for which, a relevant undertaking must meet a requirement of subsection (1)(a) or (b) in order to be a small business;
  - (b) the calculation of the headcount of staff, turnover or balance sheet total of a relevant undertaking at the assessment date or for the assessment period;
  - (c) the circumstances in which a relevant undertaking which has been established for less than a complete assessment period is to be regarded as meeting a requirement for that period.
- (6) SBC scope regulations may provide that a relevant undertaking of a specified description is not a small business even if it falls within the definition.
- (7) SBC scope regulations may—
  - (a) make transitional or transitory provision or savings;
  - (b) make different provision for different purposes.
- (8) SBC scope regulations are to be made by statutory instrument.
- (9) A statutory instrument containing SBC scope regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (10) In this section—
 

“balance sheet total”, “headcount of staff”, “turnover” and “small business threshold” have such meanings as may be specified;

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“relevant undertaking” means a person who is carrying on one or more businesses and whose registered office or principal place of business is in the United Kingdom;

“specified” means specified in SBC scope regulations.

#### Commencement Information

- I4** S. 2 in force at Royal Assent for specified purposes, see s. 44(1)  
**I5** S. 2 in force at 1.10.2017 in so far as not already in force by S.I. 2017/473, reg. 3(a)

### General advice and information

## 3 General advice and information

- (1) The Commissioner may publish, or give to small businesses, general advice or information that the Commissioner considers may be useful to small businesses in connection with their supply relationships with larger businesses.
- (2) In considering under subsection (1) what advice and information may be useful, the Commissioner must, in particular, consider how useful any advice or information would be for the purposes of encouraging small businesses to resolve disputes with larger businesses or preventing such disputes arising.
- (3) General advice or information published or given under subsection (1) may include general advice or information about—
  - (a) principles of the law of contract;
  - (b) other sources of rights or obligations in relation to the supply of goods or services;
  - (c) dispute resolution.
- (4) General advice or information published or given under subsection (1) may also include general advice or information about—
  - (a) complaint-handling bodies, ombudsmen, regulators or other persons (other than courts or tribunals) who, in connection with small businesses' supply relationships with larger businesses, may be able—
    - (i) to resolve or facilitate the resolution of disputes, or
    - (ii) to give other advice or assistance to small businesses;
  - (b) statutory rights to refer disputes in connection with such relationships for adjudication by a person other than a court or tribunal.
- (5) The Commissioner may publish, or give to small businesses, general advice or information about—
  - (a) complaint-handling bodies, ombudsmen, regulators or public authorities (other than courts or tribunals) who, in connection with the supply relationships of small businesses with public authorities, may be able—
    - (i) to resolve or facilitate the resolution of disputes, or
    - (ii) to give other advice or assistance to small businesses;
  - (b) statutory rights to refer disputes in connection with such relationships for adjudication by a person other than a court or tribunal.

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- (6) Advice published or given under this section must be impartial, and information published or given under this section must be presented in an impartial manner.
- (7) The powers conferred on the Commissioner by this section to publish or give general advice or information may be exercised by making arrangements with any other person in accordance with which that person publishes or provides that advice or information.
- (8) The Commissioner may make recommendations to the Secretary of State about the publication, or provision to small businesses, by the Secretary of State of advice or information of a kind which the Commissioner is authorised to publish or give under this section.
- (9) Where a recommendation is made under subsection (8), the Secretary of State must inform the Commissioner whether anything is to be done in response to the recommendation and, if it is, give details of the action to be taken.
- (10) For the purposes of this section a small business has a “supply relationship” with a larger business or public authority if—
- (a) the small business has an agreement to supply, has supplied or may supply, goods or services to the larger business or public authority, or
  - (b) the larger business or public authority has an agreement to supply, has supplied or may supply, goods or services to the small business.
- (11) In this section—
- “dispute” includes any difference;
- “larger business” means a person carrying on one or more businesses who—
- (a) is not a small business,
  - (b) has a place of business in the United Kingdom, and
  - (c) is not a public authority.

#### Commencement Information

**I6** S. 3 in force at Royal Assent for specified purposes, see s. 44(1)

**I7** S. 3 in force at 1.10.2017 in so far as not already in force by S.I. 2017/473, reg. 3(a)

### Complaints scheme

#### 4 The SBC complaints scheme

- (1) The Commissioner must establish, maintain and administer a scheme (in this Part referred to as “the SBC complaints scheme”) under which the Commissioner—
- (a) enquires into, considers and determines relevant complaints, and
  - (b) may make recommendations as to how the issues raised by those complaints may be remedied, resolved or mitigated or how similar issues may be prevented from arising in future.
- (2) The Commissioner must establish, maintain and administer the SBC complaints scheme in accordance with regulations made by the Secretary of State under section 7 (scheme regulations).

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- (3) “Relevant complaint” means a complaint which—
- (a) is made by a small business (“the complainant”) which has an agreement to supply, or has supplied or may supply, goods or services to a larger business (“the respondent”),
  - (b) relates to a payment matter (see subsection (4)), and
  - (c) is not excluded from the scheme (see subsection (5)).
- (4) A complaint relates to a payment matter if it relates to—
- (a) a request or other act, or a failure to pay or other omission, in relation to a payment—
    - (i) for or in connection with the supply of goods or services, or
    - (ii) in connection with the relationship or possible relationship between the small business and the larger business so far as relevant to the supply, or
  - (b) any provision made or proposed to be made in connection with the supply or that relationship which restricts, or purports to restrict, any right of the small business to make a complaint under the SBC complaints scheme or to have a complaint enquired into, considered or determined under the scheme.
- (5) A complaint is excluded from the scheme if—
- (a) it relates to the appropriateness of the price payable or proposed to be payable under a contract for the goods or services supplied or to be supplied by the small business under the contract by comparison with those goods or services,
  - (b) it concerns matters which are currently the subject of legal proceedings or adjudication proceedings,
  - (c) it falls within the jurisdiction of an ombudsman, regulator or public authority (other than the Commissioner, a court or a tribunal),
  - (d) the complainant has a statutory right to refer the complaint for adjudication by a person other than a court or tribunal,
  - (e) the complaint relates to—
    - (i) an act or omission which occurred before the appointed start date, or
    - (ii) an act or omission in accordance with a term of a contract entered into before that date, where that term has not been varied on or after that date, or
  - (f) it is of a description specified by regulations made by the Secretary of State.
- (6) For the purposes of paragraph (e) of subsection (5), “the appointed start date” means the date appointed by the Secretary of State by regulations.
- (7) Regulations under this section may—
- (a) make transitory or transitional provision or savings;
  - (b) make different provision for different purposes.
- (8) Regulations under subsection (6) may appoint different dates for different areas.
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this section (other than regulations under subsection (6)) must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) In this section “larger business” has the meaning given by section 3(11).