STATUTORY INSTRUMENTS

2017 No. 1273

ENTERPRISE

The Small Business Commissioner (Scope and Scheme) Regulations 2017

Made - - - - 13th December 2017

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2), (5)(a), (5)(b), (7)(b) and section 7(1) to (3), (5), (7), (8)(a) and (8)(c) of the Enterprise Act 2016(**1**).

In accordance with section 7(9) of that Act, before making these Regulations, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

In accordance with sections 2(9) and 7(11) of that Act, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Small Business Commissioner (Scope and Scheme) Regulations 2017.

(2) These Regulations come into force on the day after the day on which they are made.

(3) In these Regulations "the 2016 Act" means the Enterprise Act 2016.

Further provision about the meaning of "small business"

2.—(1) For the purpose of Part 1 of the 2016 Act, a relevant undertaking(**2**) is a small business(**3**) if it meets any of the following criteria—

(a) it has a headcount of staff of less than 50 on Assessment Date A;

(b) where the relevant undertaking is seeking a determination of a complaint under the SBC complaints scheme(**4**), it has a headcount of staff of less than 50 on Assessment Date B; or

(c) it has an average headcount of staff of less than 50 during any assessment period.

(**1**) 2016 c.12.
(**2**) See section 2(10) of the 2016 Act for the meaning of "relevant undertaking".
(**3**) See section 2(1) of the 2016 Act for the meaning of "small business" about which this regulation makes further provision.
(**4**) See section 4(1) of the 2016 Act for the meaning of "SBC complaints scheme".

(2) Assessment Date A is the date on which the relevant undertaking makes contact with the Commissioner.

(3) Assessment Date B is the date on which the matter to which the complaint relates took place or started to take place.

(4) The assessment periods are—

(a) the last financial year of the relevant undertaking that ended prior to Assessment Date A;

(b) where the period beginning with the date on which the current financial year of the undertaking began and ending with Assessment Date A is longer than 6 months, that period; and

(c) where the period beginning with the date on which the relevant undertaking began carrying on business and ending with Assessment Date A is 6 months or less, that period.

(5) For the purposes of subparagraph (1)(c) of this regulation, the average headcount of staff is calculated by—

(a) determining the number of individuals who are members of staff on each reference date in the assessment period in question ("the reference date numbers");

(b) calculating the total of the reference date numbers by adding together all the reference date numbers; and

(c) dividing the total of the reference date numbers by the number of reference dates in the assessment period in question.

(6) For the purposes of this regulation—

"headcount of staff" means the total number of individuals who are members of staff of the relevant undertaking;

a "member of staff" means an individual who—

(a) works for the relevant undertaking under a contract of employment;

(b) does not work for the relevant undertaking under a contract of employment but is a director or other office-holder of the undertaking;

(c) where the relevant undertaking is a partnership, is a partner of that partnership (but not where the undertaking is a limited partnership, a limited partner) who does not work for the undertaking under a contract of employment;

(d) where the relevant undertaking is an LLP, is a member of that LLP who does not work for the undertaking under a contract of employment; or

(e) where the relevant undertaking is an unincorporated association other than a partnership, is a member of that association who does not work for the undertaking under a contract of employment;

"contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

"financial year" means—

(a) where the relevant undertaking is a company, within the meaning given by section 1(1) of the Companies Act 2006(**5**), its financial year determined in accordance with sections 390 to 392 of that Act;

(b) where the relevant undertaking is an LLP, its financial year determined in accordance with sections 390 to 392 of the Companies Act 2006, as applied and modified by

(**5**) 2006 c.46.

regulation 7 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(**6**); or

(c) in all other cases, a year, beginning on 6 April and ending on the following 5 April, for which the relevant undertaking is charged income tax;

"LLP" means a limited liability partnership registered under the Limited Liability Partnerships Act 2000(**7**);

"limited partner" means an individual who carries on a trade as a limited partner in a limited partnership formed under the Limited Partnerships Act 1907(**8**) ;

"partnership" means—

(a) a partnership within the Partnership Act 1890(**9**); or

(b) a limited partnership formed under the Limited Partnerships Act 1907;

"reference date" means—

(a) the last working day of a month; or

(b) where the assessment period ends before the last working day of a month, the last working day which falls before the end of the assessment period;

"working day" means a day on which a member of staff of the relevant undertaking works for the undertaking under a contract of employment.

Requirements before presenting a complaint to the Commissioner

3.—(1) Before presenting a complaint to the Commissioner, the person making the complaint must (unless the circumstances specified in paragraph (2) apply)—

(a) communicate the substance of the complaint to the person against whom the complaint is made; and

(b) give that person a reasonable opportunity to deal with it.

(2) The specified circumstances are where the Commissioner considers for this particular complaint, there is sufficient information to suggest that communicating it to the person against whom it is made would have a significant detrimental effect on the commercial interests of the person making it.

(3) Where the requirements in paragraph (1) are not complied with the Commissioner must dismiss the complaint or the part of the complaint that did not comply with paragraph (1).

Requirements as to the form and content of the complaint

4.—(1) The person making the complaint must present the complaint in writing to the Commissioner.

(2) The complaint must include the following—

(a) the date on which the matter to which the complaint relates took place or started to take place;

(b) the details of the complaint, including—

(i) whether the person making the complaint has an agreement to supply, has supplied or may supply goods or services to the person against whom the complaint is made;

(ii) whether the complaint relates to a payment matter (see paragraph (3));

(**6**) S.I. 2008/1911.
(**7**) 2000 c.12.
(**8**) 1907 c.24.
(**9**) 1890 c.39.

(iii) whether the complaint relates to a provision made or proposed to be made which restricts or purports to restrict any right of the person making the complaint to make a complaint under the SBC complaints scheme;

(iv) whether the complaint 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 person making the complaint; and

(v) whether the complaint concerns matters that are currently the subject of legal or adjudication proceedings; and

(c) a declaration—

(i) that the person making the complaint has previously communicated the substance of the complaint to the person against whom it was made; or

(ii) setting out the reasons why the substance of the complaint has not been previously communicated to that person.

(3) A complaint relates to a payment matter if it relates to a request or other act, or a failure to pay or other omission, in relation to a payment—

(a) for or in connection with the supply of goods or services; or

(b) in connection with the relationship or possible relationship between the person making the complaint and the person against whom the complaint is made so far as relevant to the supply.

Time limit for presenting a complaint

5.—(1) The person making the complaint must present the complaint to the Commissioner in accordance with regulation 4 (requirements as to the form and content of complaint) within 12 months from the date on which the matter to which the complaint relates took place (or started to take place).

(2) A complaint under these Regulations is taken to have been presented—

(a) if sent by electronic communication, on the day of transmission; and

(b) if sent by post in an envelope which is properly addressed to the Commissioner's published address for SBC complaints scheme purposes and sent by prepaid post, on the day on which it is posted.

(3) Where in the opinion of the Commissioner it is fair and reasonable to do so, the time limit set out in paragraph (1) may be extended in any of the following circumstances—

(a) where the Commissioner considers that the complaint was not made within the time limit set out in paragraph (1) because of the physical or mental incapacity of the person making the complaint or a member of staff of that person;

(b) where the person against whom the complaint is made has given consent to the extension of the time limit;

(c) where—

(i) the matter to which the complaint relates has previously been the subject of legal proceedings which have been discontinued before a determining judgment was made; or

(ii) the matter to which the complaint relates has previously been the subject of adjudication proceedings (other than where the complaint is excluded from the SBC