

Small Business, Enterprise and Employment Bill
as at July 2014 (pre second reading at House of Commons)

Part 1 - Access to Finance

- 1 Power to make regs to make contract term prohibiting assignment of receivables not effective

Part 7 - Companies: Transparency

- 70 Register of people with significant control ("PSC")
Ties to Schedule 3 amendments to the CA06
- 76 Requirement for all company directors to be natural persons
12 months after enactment, all non-natural person directors cease unless excepted
- 78 Application of directors' general duties to shadow directors
- 79 Definition of shadow director
Amendment of CA06 to provide more exceptions

Part 8 - Company Filing Requirements

- 80 Duty to deliver confirmation statement instead of annual return
14 days after each period end
Period is 12 months from last confirmation date... so can drift up to 14 days each year!
- 82 Company can opt to keep information on RoC instead of its own register
- 83 Can prescribe that kept up to date
Ties to Schedule 5 amendments to the CA06
- 84 Dates of birth not available for public inspection
Date only, not month and year
Applies to directors and PSCs
- 85 Schedule 6 amends CA06 re statements of capital
- 87 SoS can require RoC to change company's reg'd office if satisfied that "not authorised" to use address
- 89 RoC must notify other directors and new director of any notice received by it of new director appointment
- 91 Reduced period to strike off companies
Generally, Ss 1000, 1001, 1003 of CA06 reduced from 3 to 2 months

Part 9 - Disqualification

- 92 Convictions abroad
Relevant if SoS considers it expedient in public interest to disqualify
Includes offences in connection with liquidation, receivership
- 93 "Persons instructing unfit director"
Can disqual person who exercises "requisite amount of" influence over main transgressor
Excludes dir acting on advice of person acting in professional capacity
Can be order or undertaking
- 94 Matters to be taken into account
CDDA Schedule 1 - completely changed
- 95 Office holder's report on conduct of directors
Remains re dirs in previous 3 yrs
S7(3) of CDDA repealed (D-report)
Presumably then Insolvent Companies (Reports on Conduct of Directors) Rules 1996 fall away?
Must send conduct report within 3 months or such longer time as SoS considers appropriate
Report must describe any conduct which may assist SoS in deciding whether to exercise power
New information (i.e. anything that would have been in report) to SoS asap
Only applies to first oh where "there is" more than one oh because more than one insolvency process
If co is "at different times insolvent", doesn't apply if report has already been sent [hmm...]
- 96 Extension of disqual order application period
From 2 to 3 years
- 97 Application no longer just on unfitness from "investigative material"
Just if it appears to SoS expedient in public interest
- 98 Compensation orders and undertakings

SoS may apply for compensation order within 2 years of disqual order or u/t
 Can be to SoS for a creditor/s specified in order or class/es of creditor specified
 Or can be as contribution to assets of co
 Have regard to loss caused, nature of conduct, whether made financial recompense
 Provable as bankruptcy debt

- 99 Schedule 7 consequential amends to CDDA
- 100 Comparative amends to NI Act
- 101 Amends to S11 CDDA to apply to Scot, NI bankrupts etc.
- 102 Amends to CDDA (NI) to recognise bankrupts etc. across UK
- 103 Amends to S390 IA re no UK Bkt or DRO can be IP
- 104 Similar amends to NI Order 1989

Part 10 - Insolvency

- 105 Extend fraudulent & wrongful trading to administrators
- 106 Power for liq/admin to assign causes of action
 Fraudulent, wrongful trading; preferences; t at u/v; gratuitous alienation; extortionate credit trans
- 107 Proceeds of antecedent trans claims and assignments not for floating charge crs
- 108 All liqs to exercise any Schedule 4 powers without sanction
- 109 Trustees to exercise any Schedule 5 powers without sanction
- 110 Decisions by deemed consent unless "prescribed proportion" object
 For any IA crs/mems decision except:
 Proposed VAs; oh fees; oh removal; as court or Rules direct
 "creditors decision procedures" to be reg'd - indication mtgs not inc'd, but crs can request mtg
- 111 Similar for personal insol
- 112 Creditors to opt out of receiving certain notices
 Result is no "requirement" to send notices (but not prohibited from sending)
 Excludes notices of (proposed) "distribution"
- 113 Similar for personal insol
- 114 Enabling Scottish Ministers & SoS to remove IA requirements for meetings
- 115 Administration may be extended by consent for up to 1 year
- 116 Administrators may pay dividend to unsecured - but only if it is a prescribed part dividend
 Restricts para 83 move to CVL to where Admin thinks there will be a non-prescribed part dividend!
- 117 Reserve power to prohibit or impose conditions on connected party sales (or hires, disposals)
 No ref to pre-packs, so for all connected trans
 In particular, provide regs for approval of crs, court, or a person described
 "Connected" defined; excludes employees
 5 year sunset clause
- 118 Timing of floating charge crystallisation - Scotland only
- 119 Creditors with small debts (amount to be prescribed) not required to prove
- 120 Similar for personal insol
- 121 OR becomes trustee on bky order (unless court orders IVA Supervisor appointed)
- 122 Fixes time limit for challenging IVAs as from date of approval or report to court, where required
- 123 Abolition of fast-track IVAs
- 124 Delete ref to progress reports required only for w-ups more than 1 year
 to fix anomaly where oh changes in first year
- 125 Allows RPBs to issue partial licences (still called IPs)
 And requires RPBs' rules and practices to be "designed to ensure that the regulatory objectives are met"
 SoS can refuse RPB application if considers unnecessary given existence of other RPBs
- 126 Regulatory objectives
 "Value for money" dropped in favour of "provide high quality services at a cost to the recipient
 which is fair and reasonable"
 "Delivers consistent outcomes" (per consult draft) is now "ensures consistent outcomes"
 Otherwise, pretty-much all the same as the consultation drafts
 With a catch-all "any other principle appearing to the RPB or SoS to lead to best regulatory practice"
- 127 Oversight of RPBs

SoS may direct RPB if considers act/omission "has had, or is likely to have, adverse impact on achievement of one or more regulatory objectives"

Can impose financial penalty on RPB

RPB can appeal financial penalty at court

Can reprimand RPB for similar acts/omissions as directions above

128 Revocation of RPB

No ref to appeals, just RPB can make written representations to SoS following >28 days notice

129 Court sanction of IPs in public interest cases

Can remove licence; direct to contribute to one or more crs of case; comply with any such req
"Relevant RPB must take all necessary steps to give effect to order"

Cannot be made against DETINI-recognised IPs

IP contribution limited to rem drawn

Also make court direction on similar bases

Must be in public interest & certain other conditions met, e.g. failed to comply with RPB/Ethics/standards

130 Power for SoS to obtain info

SoS require info from RPB, IP or anyone connected with IP

131 On failure to deliver info, SoS can apply to court to secure compliance

132 Reserve power for SoS to designate a single regulator

133 Reserve power to designate an existing body as the sole regulator

134 7 year sunset clause for 132 and 133

Part 11 - Employment

136 Financial penalty for failure to pay tribunal sums

Insolvent cos seem just as exposed [but, if ordered post-insolv, not provable..?]

Penalty = 50% of unpaid amount to £5,000 max

Part 12 - General

148 Most of Part 10 (Insolvency), but not RPB items, comes into force 2 months after Act in force

Part 9 (disqual) not given timescale - subject to further regs

Schedule 3 - Register of people with significant control

Schedule 5 - Option to keep information on central register

Schedule 7 - Consequential amendments to CDDA etc.

Schedule 8 - Consequential amendments: NI

Schedule 9 - Consequential amendments: BKY

Schedule 10 - Single regulator