

Wednesday, 11 March 2015

Small Business, Enterprise and Employment Bill

Report (3rd Day)

3.38 pm

Relevant documents: 11th, 13th and 19th Reports from the Delegated Powers Committee.

Clause 122: Abolition of requirements to hold meetings: company insolvency

Amendment 57B

*Moved by **Baroness Neville-Rolfe***

57B: Clause 122, page 98, line 31, leave out “prescribed proportion of the” and insert “minimum number of”

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Neville-Rolfe) (Con): My Lords, these amendments relate to Clauses 122 and 123 which remove the requirement for face-to-face meetings in insolvency proceedings.

I am grateful to the noble Lord, Lord Stevenson, and my noble friends Lord Flight and Lord Leigh for their questions about when face-to-face meetings should be held and the position of small creditors. I have also met R3, the trade body representing insolvency practitioners, as I promised to do in Committee, and am grateful to it for the valuable insight that it provided.

After further consideration, the Government intend to expand the thresholds so that a face-to-face meeting may be requested by 10% of the total number of creditors or contributories, as well as 10% by the value of their claims, which was, of course, the Government’s original proposal. This would mean that on average three or four creditors could trigger a meeting in a liquidation case. Moreover, to account for the larger insolvency cases with lots of small creditors, a further threshold of an absolute number of 10 or more creditors or contributories—a third 10—has also been introduced.

I thank the Delegated Powers and Regulatory Reform Committee for its recommendations on this part of the Bill. We have listened to its concerns and moved the various thresholds to the face of the Bill so that they will appear in the Insolvency Act as amended. Any changes to these thresholds will also now be subject to the affirmative resolution procedure.

Before I sit down, I should like to comment on another insolvency issue raised in Committee by my noble friend Lord Flight. This was the temporary exemption from the scope of the no-win no-fee reforms in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 for insolvency officeholders to bring civil proceedings. The Government have listened to the concerns raised in this House and elsewhere. As a result, we announced on 26 February that we

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would defer commencing the no-win no-fee reforms for proceedings brought by insolvency officeholders beyond April 2015.

I am most grateful for the input of noble Lords on all sides of the House and I hope they will agree that we have found a sensible solution on all these issues. I beg to move.

Lord Flight (Con): My Lords, I thank the Minister for listening to the various concerns in this territory and for the government amendments. I am aware that the insolvency industry is comfortable with the legislation as it now stands. It understandably has the view that it hopes creditor meetings will not disappear as they can be extremely useful. However, a most satisfactory compromise has been achieved, for which I thank the Minister.

Lord Stevenson of Balmacara (Lab): My Lords, as the Minister said, in Committee we were concerned that, rather than increase creditor engagement, the original clauses in the Bill would reduce it. We reported that the Federation of Small Businesses believed that the proposal would be detrimental, the British Property Federation had concerns and that R3, to which the Minister referred, wanted the Government to think again about the issues.

We take the view that creditor engagement is a core part of a strong, transparent, fair and trusted insolvency regime. Indeed, we have such a regime in our country. Creditor meetings are an essential part of that and build trust and confidence in that regime. Although the clauses also included proposals on virtual meetings—we are not against that—we wondered whether it was a bit previous to suggest that they might entirely replace face-to-face meetings. I am delighted that the Government have listened to the arguments from all around the House and have agreed to come forward with these amendments, which we support. The noble Lord, Lord Flight, has been assiduous in his attendance and has pressed amendments without number. There were so many, it was hard to keep track of them. I think that only one has landed, but I am glad it is this one on no-win no-fee conditions, which will make a big difference. I am grateful to him for his support for this.

Amendment 57B agreed.

Amendments 57C to 57J

*Moved by **Baroness Neville-Rolfe***

57C: Clause 122, page 98, line 32, leave out “of the”

57D: Clause 122, page 99, line 7, at end insert—

“(6A) For the purposes of subsection (3) the “minimum number” of creditors or contributories is any of the following—

- (a) 10% in value of the creditors or contributories;
- (b) 10% in number of the creditors or contributories;
- (c) 10 creditors or contributories.

(6B) The references in subsection (6A) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.”

57E: Clause 122, page 99, line 12, leave out “In this section references” and insert “Except as provided by subsection (6B), references in this section”

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57F: Clause 122, page 99, line 36, leave out “prescribed proportion of the” and insert “appropriate number of”

57G: Clause 122, page 99, line 37, leave out first “the”

57H: Clause 122, page 99, line 47, at end insert—

“() For the purposes of subsection (4) the “appropriate number” of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.”

57J: Clause 122, page 100, line 10, at end insert—

“246ZG Power to amend sections 246ZE and 246ZF

(1) The Secretary of State may by regulations amend section 246ZE so as to change the definition of—

- (a) the minimum number of creditors;
- (b) the minimum number of contributories.

(2) The Secretary of State may by regulations amend section 246ZF so as to change the definition of—

- (a) the appropriate number of relevant creditors;
- (b) the appropriate number of relevant contributories.

(3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—

- (a) a proportion in value,
- (b) a proportion in number,
- (c) an absolute number,

and the definition may include alternative, cumulative or relative requirements.

(4) Regulations under subsection (1) may define the minimum number of creditors or contributories by reference to all creditors or contributories, or by reference to creditors or contributories of a particular description.

(5) Regulations under this section may make provision that will result in section 246ZE or 246ZF having different definitions for different cases, including—

- (a) for creditors and for contributories,
- (b) for different kinds of decisions.

(6) Regulations under this section may make transitional provision.

(7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.””

Amendments 57C to 57J agreed.

Clause 123: Abolition of Requirements to hold meetings: individual solvency

Amendments 57K to 57Q

*Moved by **Baroness Neville-Rolfe***

57K: Clause 123, page 101, line 10, leave out “prescribed proportion of the” and insert “minimum number of”

57L: Clause 123, page 101, line 22, at end insert—

“(6A) For the purposes of subsection (3) the “minimum number” of creditors is any of the following—

- (a) 10% in value of the creditors;
- (b) 10% in number of the creditors;
- (c) 10 creditors.

(6B) The references in subsection (6A) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.”

57M: Clause 123, page 101, line 27, leave out “In this section references” and insert “Except as provided by subsection (6B), references in this section”

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57N: Clause 123, page 102, line 8, leave out “prescribed proportion of the” and insert “appropriate number of”

57P: Clause 123, page 102, line 17, at end insert—

“() For the purposes of subsection (4) the “appropriate number” of relevant creditors is 10% in value of those creditors.”

57Q: Clause 123, page 102, line 24, at end insert—

“379ZC Power to amend sections 379ZA and 379ZB

(1) The Secretary of State may by regulations amend section 379ZA so as to change the definition of the minimum number of creditors.

(2) The Secretary of State may by regulations amend section 379ZB so as to change the definition of the appropriate number of relevant creditors.

(3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—

(a) a proportion in value,

(b) a proportion in number,

(c) an absolute number,

and the definition may include alternative, cumulative or relative requirements.

(4) Regulations under subsection (1) may define the minimum number of creditors by reference to all creditors, or by reference to creditors of a particular description.

(5) Regulations under this section may make provision that will result in section 379ZA or 379ZB having different definitions for different cases, including for different kinds of decisions.

(6) Regulations under this section may make transitional provision.

(7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.””

Amendments 57K to 57Q agreed.

3.45 pm