

**DELEGATED POWERS AND REGULATORY REFORM COMMITTEE
SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL**

Supplementary Memorandum by the Department for Business, Innovation and Skills

Introduction

1. This Supplementary Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Business, Innovation and Skills.
2. It identifies amendments to delegated powers in the Government amendments tabled in the House of Lords on 7 January 2015 and should be read in conjunction with the Delegated Powers Memorandum submitted to the Delegated Powers and Regulatory Reform Committee on 20 November 2014, and the Supplementary Memorandum submitted on 19 December 2014.

Part 10: Insolvency: Regulation of insolvency practitioners: amendments to existing regime, and power to establish single regulator of insolvency practitioners

Clause 136(2): Fee in connection with maintenance of recognition as a recognised professional body

Power conferred on: the Secretary of State

Power exercised by: Order (amendment to existing order-making power)

Parliamentary procedure: Negative resolution

Context and purpose

3. Part 13 of the Insolvency Act 1986 provides for the authorisation and regulation of insolvency practitioners by recognised professional bodies; these bodies having been recognised and declared as such by the Secretary of State. Clauses 133 to 139 of the Bill will amend Part 13 to strengthen the regulatory regime for insolvency practitioners.
4. Section 415A(1) of the Insolvency Act 1986 allows the Secretary of State, by order, to require a body to pay a fee in connection with the grant or maintenance of the body's recognition as a recognised professional body.
5. The amendment tabled provides a new clause 136(2), which will insert section 415A(1B) to the Insolvency Act. This will provide that in setting a fee under section 415A(1) in connection with the maintenance of a body's recognition as a recognised professional body the matters to which the Secretary of State may have regard include, in particular, the costs of the Secretary of State in connection with any of the new functions under:
 - i) section 391D (directions by the Secretary of State to a recognised professional body),
 - ii) section 391E (the procedure in relation to the giving of such a direction),

- iii) section 391J (the publishing of a reprimand by the Secretary of State of a recognised professional body),
 - iv) section 391K (the procedure in relation to publishing such a reprimand), and
 - v) section 391N (revocation of recognition at request of the recognised professional body).
6. By virtue of section 419 of the Insolvency Act 1986, an order under section 415A will be subject to the negative procedure.

Justification for delegation

7. The aim of this provision is to clarify that in setting the fee the Secretary of State can take into account the costs of the Secretary of State in connection with the exercise of the new powers contained in sections 391D, 391E, 391J, 391K and 391N.
8. The Government considers that this order making power should continue to be delegated. It provides the Secretary of State with flexibility to amend the fee if necessary.

Justification for procedure selected

9. The Government considers that this is a measure providing clarification of an existing power, without representing a significant change of the provision. The Government considers that therefore, there are no grounds for departing from the current procedure. The Government considers that the negative procedure will provide sufficient scrutiny and is, therefore, the appropriate procedure to be adopted.

Schedule 9: abolition of requirements to hold meetings in insolvency proceedings

10. Clauses 119 and 120 and Schedule 9 amend the Insolvency Act 1986 so that a face-to-face meeting of creditors or contributories will not be the default mechanism for seeking the approval of either creditors or contributories to proposals in insolvency proceedings. They confer a power to make Rules under sections 411 and 412 of the Insolvency Act 1986. These are made in England by the Lord Chancellor with the concurrence of the Secretary of State (and in respect of court rules the concurrence of the Lord Chief Justice) and in relation to Scotland by the Secretary of State. Before making such Rules the Lord Chancellor is required by section 413 to consult the Insolvency Rules Committee. These Rules are subject to annulment by either House.
11. Schedule 9 was introduced at Commons Committee stage to replace a Henry VIII power to amend the Insolvency Act 1986 further to Clauses 119 to 122. Amendments being tabled for Lords Committee make minor and technical changes to this Schedule.
12. While no new powers are being taken through these amendments, the Delegated Powers and Regulatory Reform Committee should note that these changes remove certain policy detail from the face of the Bill and are instead being left to the Rules under the powers already being taken in Clauses 119 of, and Schedule 9 to, the Bill, and the existing rule-making powers in the Insolvency Act 1986.

13. The provisions being removed from the Bill are: the initial deadline for directors (or the liquidator where there is a conversion from a members' voluntary liquidation) to seek a decision from creditors to appoint a liquidator, and the offence for directors' failure to comply. These were previously included in Schedule 9 by way of a recasting of section 100 of the Insolvency Act 1986 (appointment of a liquidator in a creditors' voluntary winding up). Instead, timings within which creditors can nominate a liquidator in a creditors' voluntary winding up, and the penalty for directors failing to seek a decision, will be set out in Rules.
14. These amendments, which have come out of further engagement with stakeholders since Schedule 9 was inserted into the Bill, are required to ensure that unnecessary delays in the appointment of a liquidator do not occur in creditors' voluntary liquidation proceedings. If there is a delay before creditors' views are sought, the liquidator proposed by a company can only act in a limited capacity without court sanction. These changes mean that the process of seeking a decision from creditors will be able to start before the company has formally entered into liquidation. This means that creditors' views on the choice of liquidator will be able to be sought by various different procedures, including in writing and via the new deemed consent procedure, without delaying the appointment process.
15. Given that the various ways of seeking decisions from creditors are being left to the Rules, it is considered appropriate that timings for these processes, and failure to comply, should also be in the Rules. This will avoid adding unnecessary complication to the Act to cater for different ways of gaining a nomination of a liquidator, to replace the current nomination process, which has to be through a creditor meeting. Flexibility is also needed to cater for cases where a face-to-face meeting is requested by creditors to make their nomination, and to cater for the different ways decisions might be taken as technology develops.

Part 11: Employment: Public sector exit payments: amendments to clauses to establish a regulation-making power for the Scottish Ministers

Clauses 149 to 151: Public sector exit payments

Power conferred on: the Scottish Ministers

Power exercised by: Regulations (change to existing regulation -making power)

Parliamentary procedure: Negative resolution

Context and purpose

16. At the time of the introduction of the clauses, the Government was still consulting on the measures and was clear that it had not yet concluded discussions with the devolved administrations about the extent to which the proposed repayment regime would apply to public sector exit payments that fell within their devolved competence. The Government was also clear that the preferred position would be for a single, UK-wide regime, but would be prepared to make any necessary amendments to respect the wishes of the devolved administrations.

17. The Scottish Government have indicated that they are not content with the proposal for a single UK-wide regime, and would instead like to proceed in a different manner. They would like to be able to establish their own repayment regime in respect of those public sector bodies and workforces that come within their competence. The Government has agreed to amend the Bill to make this change, and to work with the Scottish Government toward the introduction of a Legislative Consent Motion into the Scottish Parliament.
18. The amendments are to clauses 149, 150, 151 and some other consequential amendments, to establish a power for the Scottish Ministers to make regulations in respect of public sector exit payments made by public bodies and offices carrying out mixed or wholly devolved functions in Scotland. The power is identical to that one which is currently vested in the Treasury, which will now be used in a slightly more narrow way to create a repayment regime for the rest of the UK (including non-devolved bodies and offices in Scotland).
19. Accordingly, the Government considers that these amendments do not extend the power already contained in the clauses in any way, they simply provide for that power to be used in a different way in relation to public sector exit payments made by public bodies and offices carrying out mixed or wholly devolved functions in Scotland. Any new power vested in the Scottish Ministers is equally matched by the reduction in the extent of the Treasury's regulation-making power. They also enable the Government to uphold the devolution settlement and make good upon their promise to respect the wishes of the devolved administrations.

Justification for delegation

20. The regulation-making power now vested in the Scottish Ministers has exactly the same extent and limitations as the power originally conferred upon the Treasury. Regulations made by the Scottish Ministers can contain exactly the same provisions as those that can be included in Treasury regulations, the only difference being which public sector exit payments they can apply to. Accordingly, the Government considers that the same reasons given for the extent of the original regulation-making power apply equally to the new regulation-making power vested in the Scottish Ministers.

Justification for procedure selected

21. The regulation-making power now vested in the Scottish Ministers is identical to that which was originally conferred upon the Treasury to make provisions for repayment of public sector exit payments made by public bodies and offices carrying out mixed or wholly devolved functions in Scotland. Accordingly, the Government considers that the same reasons given for the power as originally drafted to be exercised by the negative procedure apply equally to the new regulation-making power vested in the Scottish Ministers.