

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT ENTERPRISE AND REGULATORY
REFORM ACT 2013 (CONSEQUENTIAL
AMENDMENTS) (BANKRUPTCY) AND THE
SMALL BUSINESS, ENTERPRISE AND
EMPLOYMENT ACT 2015 (CONSEQUENTIAL
AMENDMENTS) REGULATIONS 2016

Monday 21 March 2016

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Friday 25 March 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
FACILITATE THE PROMPT PUBLICATION OF
THE BOUND VOLUMES OF PROCEEDINGS
IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: MR DAVID HANSON

- | | |
|---|---|
| † Barclay, Stephen (<i>North East Cambridgeshire</i>) (Con) | † Kennedy, Seema (<i>South Ribble</i>) (Con) |
| † Bardell, Hannah (<i>Livingston</i>) (SNP) | † Kinnock, Stephen (<i>Aberavon</i>) (Lab) |
| Blenkinsop, Tom (<i>Middlesbrough South and East Cleveland</i>) (Lab) | Leslie, Chris (<i>Nottingham East</i>) (Lab/Co-op) |
| † Cox, Mr Geoffrey (<i>Torridge and West Devon</i>) (Con) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Davies, Byron (<i>Gower</i>) (Con) | † Morris, Anne Marie (<i>Newton Abbot</i>) (Con) |
| † Esterson, Bill (<i>Sefton Central</i>) (Lab) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Evans, Chris (<i>Ishwyn</i>) (Lab/Co-op) | † Tugendhat, Tom (<i>Tonbridge and Malling</i>) (Con) |
| † Fernandes, Suella (<i>Fareham</i>) (Con) | † Williams, Craig (<i>Cardiff North</i>) (Con) |
| † Johnson, Joseph (<i>Minister for Universities and Science</i>) | Gail Bartlett, Jonathan Whiffing, <i>Committee Clerks</i> |
| | † attended the Committee |

Seventh Delegated Legislation Committee

Monday 21 March 2016

[MR DAVID HANSON *in the Chair*]

Draft Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016

4.30 pm

The Minister for Universities and Science (Joseph Johnson): I beg to move,

That the Committee has considered the draft Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016.

It is a pleasure to appear under your chairmanship, Mr Hanson. The regulations simply make necessary changes to primary and secondary legislation that will be affected by the introduction of the new bankruptcy application process and changes made to the requirements for the reporting on the conduct of directors of insolvent companies. Both those new digital processes were introduced through the House with widespread support.

Currently, when an individual wishes to take the option of making themselves bankrupt, they must complete a paper petition and present it to their local court. From 6 April 2016, instead of going to court, individuals will be able to apply online via the central Government website, gov.uk. The new digital process will be easier to access than the current paper-based court process, although we recognise that applying for bankruptcy is still a big step and should be contemplated only when no other options are appropriate.

Applications for bankruptcy will be determined by the adjudicator, a new post in the Insolvency Service. Once the order has been made, the case will transfer to the official receiver in the same way as it does now for administration and, if appropriate, investigation.

There is also the issue of reporting on a director's conduct. When a company goes into insolvency, the office holder appointed is required to report to the Secretary of State on the conduct of the directors. Reports indicating misconduct are investigated and may lead to disqualification proceedings against the directors. Currently, reports must be sent within six months of the insolvency. Shortening that period to three months was part of the package of measures introduced by the Small Business, Enterprise and Employment Act 2015. In addition, in support of the Government's digital agenda, we are introducing an online reporting system. That means that office holders will be able to submit reports electronically and upload new information as soon as it comes to their attention.

The regulations simply make consequential amendments to other legislation as a result of those changes.

4.32 pm

Bill Esterson (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Hanson. This is the first time that I have seen you chair a Committee. I can remember serving with you in Committee when I was first elected—that is nearly six years ago now—and it is great to see you working your way through to the position of Chair.

My interest in this subject was stimulated somewhat when I remembered that I had, in an earlier life, served for about 18 months in an insolvency practitioner's office. I recognised some of the content of the explanatory notes. I found both measures quite attractive, so the Minister will be pleased to learn, and some Committee members who have served on Committees with me recently will be even more pleased and relieved to know, that I will not be taking quite as long as I did on the last occasion when I was in Committee.

Mr Geoffrey Cox (Torrige and West Devon) (Con): You've taken long enough already.

Bill Esterson: But I can take longer if hon. Members so wish.

I have a series of questions. As the Minister said, these are procedural amendments, consequential on previous legislation. In relation to the measure about personal bankruptcies, there is merit in enabling people to apply online to speed up and simplify the process. That point was well made by the Minister. However, it prompts some questions, because some people prefer to go through the court system. With regard to complex cases, will the Minister explain just what happens for those debtors who feel that they need the full and more robust process and who do not initially get the support that they are looking for when they apply? What is the process of appeal? Perhaps the Minister will set out how someone might appeal if they are not content initially with the way the process goes. Will there be an opportunity for them to go to court if they are not satisfied with the response they get through the digital route?

One aspect that the process is designed to achieve is to free up court time. Will the Minister set out the Government's estimate of how much court time will be saved and the financial savings of the change? The process will be cheaper than going through the courts—I believe it will be £50 cheaper—so why is the saving so small and not greater?

There is an opportunity here—I checked this with the House of Commons Library—for people who might have been put off bankruptcy because of the cost and stigma in the past. Given the worrying situation that far too many people sadly find themselves in with rising personal debt, why are the savings not greater? What assessment have the Government made of what improvement there might be in helping people to apply for bankruptcy? Does the Minister see this as helping people to overcome some of that stigma by not having to go through the court process?

During consultation, the Government did not include creditor-initiated bankruptcy and, having read some of the responses, I think that was right. Will the Minister rule out now the possibility of the Government adding creditor-petitioned bankruptcies to this process and confirm that they will remain with the courts?

My other question on the first half of the regulations is about the involvement of financial intermediaries. For some people, the digital process will be a challenge. Some do not have online and technical skills, so how will the use of a financial intermediary work and, perhaps more to the point, who will pay for the use of that financial intermediary? Will the cost fall on the debtor and be greater than the current system of court fees? If so, the change may turn out to be self-defeating and see a reduction in the number of people coming forward rather than make it easier for those needing to take advantage of the online process.

Those are my questions about procedure under the Enterprise and Regulatory Reform Act 2013 regulations. Moving on briefly to the Small Business, Enterprise and Employment Act 2015, the regulations will reduce the reporting period to three months under the requirement for insolvency practitioners or the official receiver to report on the conduct of directors. When I was working in insolvency practice, one concern in the profession was that it was difficult to demonstrate evidence of misconduct among directors and therefore to prevent people from closing down a business one day and starting up a new one under a new name the next day, having avoided their debts. Will the Minister explain how the procedure will help with that process of improving identification of misconduct and reducing directors' ability to start up again having misused their role as a director of a company?

Will the Minister also give an assessment of how the reduction in the reporting period will help creditors to recover assets? The recovery of assets by creditors is a large part of why our insolvency legislation is the way it is. On the face of it, both measures are improvements on our employment legislation, but perhaps the Minister can deal with the questions I have raised—if his officials are ready. We can then see if we can improve the measures further.

4.40 pm

Joseph Johnson: Let me start by passing on the apologies of the Minister for Small Business, Industry and Enterprise, who is in Redcar this afternoon and would otherwise want to be here. She is attending to long-scheduled business up there relating to situations of which Members are well aware.

On personal bankruptcies, the estimated cost savings are in the range of £7.3 million to £15.3 million and are dependent on the overall level of debtor applications. The immediate cost savings to the courts will be made on staff, administration and court hearing times. Depending on the case loads, savings to the courts have been estimated at between £8.3 million and £16.6 million.

Bill Esterson: I understood the Minister's second point about court savings, but will he clarify exactly who will accrue the first set of savings—the £7.3 million to £15.3 million?

Joseph Johnson: To clarify, let us settle on £8.3 million to £16.6 million as the ballpark estimated savings to the courts from the measures.

If the online application is unsuccessful, the adjudicator must give the debtor a reason for refusing to make a bankruptcy order. The debtor can then appeal or reapply

if they wish—on first appeal, to the adjudicator, and on second appeal the matter is referred to a court. That route will be available on second appeal.

Those who do not have access to the internet will be able to apply for bankruptcy with the assistance of third parties such as a friend, relative or approved debt adviser. The system is designed to allow screens to be populated on the applicant's behalf, with the applicant's approval. The applicant must check that the application data are accurate and is responsible for submitting the application themselves. Financial intermediaries can be used as a last resort—for example, a debt adviser might be used in a complex case. Insolvency Service officials can provide assistance by telephone in filling in online forms.

On the Small Business, Enterprise and Employment Act 2015 measures, the hon. Gentleman asked how insolvency practitioners will be affected by the tighter reporting timeframe. There was a mixed response to the consultation on reducing the reporting period from six to three months. Concerns expressed included—

Mr Cox: Before my hon. Friend the Minister moves on to the second subject, the hon. Member for Sefton Central asked a question in which I am quite interested: whether the Government intend to extend this process to creditor applications, and not only for the person applying for his own bankruptcy. I wonder if the Minister might answer that.

Joseph Johnson: I am able to tell the Committee that the adjudicator's role is not a judicial one. It is a role specifically created for determining applications for debtors applying for their own bankruptcy. All other routes into bankruptcy where judicial input is required will continue to be heard in court. I will happily furnish my hon. and learned Friend and, indeed, the Committee, with any further information needed to answer that question.

Bill Esterson: Will the Minister give way?

Joseph Johnson: I will not be able to give the hon. Gentleman any further information on that point but I will happily write to hon. Members with additional information.

Bill Esterson: It would be helpful to ensure that the Minister is able to answer the question in full. Just to clarify, have the Government now accepted that creditors will not be included? Will he confirm that the Government have no intention to extend the provisions? That would be very helpful. Before the Minister moves on, I asked a question about reducing the stigma of bankruptcy. Are the measures seen as a way of doing that, and does the Minister feel that they are a way of avoiding an increasing use of payday loan companies and other high-cost forms of credit?

Joseph Johnson: In answer to my hon. and learned Friend's question and the hon. Gentleman's question: yes, that is the Government's intention. We do not intend to extend the measures to other forms of bankruptcy. The consultation responses that we received showed support for other routes into bankruptcy, such as creditor petitions, to remain within the court system. The hon. Gentleman made a point about reducing the stigma of

[Joseph Johnson]

bankruptcy. That is a long-standing objective of this Government and previous Administrations, and the measures will support that goal.

On the rest of the questions, insolvency practitioners will be affected by the tight reporting timeframe. There was a mixed response from the consultation on reducing the reporting period from six months to three months. Concerns expressed included that insufficient information would be available to office holders in the time available and that that would lead to less misconduct being reported. However, earlier reporting will enable earlier investigation, and the online reporting system allows further information to be submitted in the minority of cases where new information comes to light after three months.

On the question about the savings for insolvency practitioners, we estimate the net benefit to insolvency practitioners at about £3.4 million per annum. That benefit is calculated from expected time savings and completing online forms instead of paper forms, which will enable more money to be returned to creditors. We have had a useful debate and I ask the Committee to support the changes required to the affected primary and secondary legislation. I commend the regulations to the Committee.

Question put and agreed to.

4.48 pm

Committee rose.