PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT DEREGULATION ACT 2015, THE SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015 AND THE INSOLVENCY (AMENDMENT) ACT (NORTHERN IRELAND) 2016 (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) REGULATIONS 2017

Tuesday 7 March 2017

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not later than

Saturday 11 March 2017

The Committee consisted of the following Members:

Chair: MARK PRITCHARD

Austin, Ian *(Dudley North)* (Lab)
† Barclay, Stephen *(Lord Commissioner of Her Majesty's Treasury)*
† Benyon, Richard *(Newbury)* (Con)
† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Cox, Mr Geoffrey *(Torridge and West Devon)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
† Field, Mark *(Cities of London and Westminster)* (Con)
Flello, Robert *(Stoke-on-Trent South)* (Lab)
† Fysh, Marcus *(Yeovil)* (Con)
† Ghani, Nusrat *(Wealden)* (Con)
James, Margot *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Kerevan, George *(East Lothian)* (SNP)
† Leslie, Chris *(Nottingham East)* (Lab/Co-op)
Lewis, Mr Ivan *(Bury South)* (Lab)
† Morton, Wendy *(Aldridge-Brownhills)* (Con)
Raab, Mr Dominic *(Esher and Walton)* (Con)
† Robinson, Mary *(Cheadle)* (Con)
† Smith, Jeff *(Manchester, Withington)* (Lab)

Peter Stam, *Committee Clerk*

† attended the Committee

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[Mark Pritchard *in the Chair*]

Draft Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017

2.30 pm

The Lord Commissioner of Her Majesty's Treasury (Stephen Barclay): I beg to move,

That the Committee has considered the draft Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017.

It is a pleasure to serve under your chairmanship, Mr Pritchard.

In 2015, the Government introduced a series of reforms to modernise and streamline the insolvency process. The regulations will amend the relevant special insolvency procedures for financial sector firms to take account of those reforms. The Deregulation Act 2015 separated out the authorisation of insolvency practitioners for personal and corporate insolvency to reduce the cost of training for applicants who wish to specialise. The Small Business, Enterprise and Employment Act 2015 introduced a series of changes to streamline the insolvency process, including allowing liquidators to exercise powers without court permissions and extending the maximum term for an administration. The Insolvency (Amendment) Act (Northern Ireland) 2016 made similar reforms to the insolvency legislation in Northern Ireland.

The purpose of the reforms was to reduce unnecessary regulation and therefore cost, to improve public confidence in insolvency legislation and to make the legislation clearer. The Government carried out extensive consultations before introducing the reforms to the insolvency regime, and there was broad support from the industry.

The regulations will make consequential amendments to the existing modified insolvency regimes for the financial sector. Modified insolvency regimes for the financial sector exist because general insolvency procedure is not always suitable for failed financial institutions. Such regimes apply general insolvency law with modifications designed to address the special nature of some financial institutions. For example, a bespoke bank insolvency procedure tackles the impact of insolvency on financial stability.

The special insolvency procedures for the financial sector are built on general insolvency law, so they now need to be amended to reflect the reforms. The regulations are therefore important to ensure that the benefits of the reforms to general insolvency law are extended to the financial sector. They will also ensure that the modified insolvency regimes for the financial sector are compatible with general insolvency law, thus reducing legal uncertainty. The proposal of the consequential amendments follows discussions with the regulatory authorities and the banking liaison panel.

2.33 pm

Bill Esterson (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Pritchard.

I welcome the Whip, who I understand is taking the place of the Under-Secretary of State for Business, Energy and Industrial Strategy, the hon. Member for Stourbridge because she is unable to join us for family reasons in what are sad circumstances. I am sure that he will deputise for her extremely well. He was certainly very brief in his comments. I suspect that I shall be slightly less brief, but here goes.

The Government made some significant changes to insolvency law in 2015 through the Deregulation Act and the Small Business, Enterprise and Employment Act, and in 2016 through the Insolvency (Amendment) Act (Northern Ireland). The Government's intention in making the changes was to decrease undue regulation and reduce cost. However, the primary legislation that enacted the changes was not applicable to all kinds of financial services, as the Minister said, because such organisations tend to have special insolvency regimes, given their unique position.

The Opposition will not oppose the statutory instrument today, but we have some specific concerns about the provisions, which I hope the Minister will be able to address. The regulations extend section 17 of the Deregulation Act 2015, which made changes to the licensing regime for insolvency practitioners, to financial services. Previously, practitioners were granted an insolvency licence that allowed them to act in relation to both corporate and personal insolvency cases.

My concern is that bankruptcy is very different from corporate insolvency. As some insolvency practitioners have pointed out, if someone acts only on bankruptcy, how can they understand corporate insolvency? Likewise, if someone has been doing corporate insolvencies all their life, how can they understand adequately what is involved for a sole trader or a partnership, or for personal bankruptcy as a whole? I would be interested to hear the Minister's analysis of that point.

A question was asked in the Deregulation Public Bill Committee about the impact on the quality of professional work of requiring practitioners to pass only one part of the insolvency exams. It is an extremely rigorous set of qualifications. I worked for an insolvency practitioner a very long time ago, and the qualified insolvency practitioners in the firm generally came from a cohort of which only 2% passed the professional exams, such are the high standards in the profession. There has been great concern about the impact of these changes on the profession.

Similarly, the Opposition had serious concerns about section 118 of the Small Business, Enterprise and Employment Act 2015, which is also extended to financial services through this statutory instrument. That section amended the Insolvency Act 1986 to allow a liquidator or administrator to assign causes of action that arise on a company going into liquidation or administration. Opposition Members said of the section:

"This clause would allow the office holder to assign not only the right of action but the proceeds of such action. By ensuring that the purchaser would stand to gain fully from potential

benefits arising from the action, alongside bearing all the risk and cost of pursuing the claim, the Government are assuming that a clear incentive will be created to pursue more wrongdoers. The clause may well deliver in that regard. However, there may be other, unintended consequences."—[*Official Report, Small Business, Enterprise and Employment Public Bill Committee,* 4 November 2014; c. 445.]

I would be grateful if the Minister gave us examples of how the section has been implemented thus far to help us understand its extension to financial services.

The statutory instrument includes measures to support unsecured creditors, but may I ask about the impact on staff? Staff are ring-fenced in insolvency proceedings and have been for some time, but there is a limit to how much money is recovered for redundancy payments during insolvencies. We have seen that in high-profile examples, such as BHS and Comet. I had a Comet store in my constituency, so I know how much money staff members were still owed after the Government-backed scheme was exhausted. Will the changes to the support for unsecured creditors make any difference in helping staff to recover the excess amounts not covered by the Government schemes, or is this just a more general set of changes for unsecured creditors?

Similarly, there is the opportunity for administrators to take action against directors for fraudulent or wrongful trading. Will the Minister give us examples of where the provisions that have already been approved outside financial services have been applied? That will indicate whether there will be successful additional action when they apply to financial services.

I mentioned two high-profile cases, but there are a number of others. There is great concern inside and outside Parliament about the actions of some directors. Philip Green is a notable example; we are all familiar with his having agreed a sum of £363 million out of a £571 million pension shortfall. Is that an example, or are there other examples, of where the changes in regulations will enable action to be taken against directors to ensure that they act in the way that most people would expect them to? Do the terms "fraudulent or wrongful trading" cover those sorts of examples? Can we be given some assurance that the changes, which the Opposition broadly welcomed when the original legislation was passed, have started to create the intended improvements and have been helpful in supporting creditors and ensuring that directors take a more responsible attitude to business?

With those remarks and questions, I am happy to say that we broadly support the changes that have been introduced. We were pleased that the Government introduced them at the time. Having put our concerns on record, I look forward to the answers. We will not oppose the regulations.

The Chair: Of course, this is Parliament and I want to encourage as full a debate as possible, but for the guidance of Members, we are expecting a series of votes in about nine or 10 minutes.

2.41 pm

Stephen Barclay: I am grateful to the hon. Member for Sefton Central for his broad support for the regulations, which essentially focus on tidying up measures relating to the financial services sector. He referred to Philip Green. The focus of the regulations is to target not the retail sector as a whole, but the financial sector specifically.

The hon. Gentleman raised a number of points. In the absence of the Under-Secretary of State for Business, Energy and Industrial Strategy, my hon. Friend the Member for Stourbridge, I will answer them as best I can. First, he referred to section 17 of the Deregulation Act 2015 and the difference between bankruptcy and corporate insolvency. He asked whether those who are trained to act on one will understand the other. The key point is that we intend that there will be a general paper, and that people can specialise within that. We are separating out the authorisations to allow insolvency practitioners to specialise in one or the other, but there will still be an initial general paper covering both.

I am happy to write to the hon. Gentleman to provide clarification and further detail on his points about fraudulent or wrongful activity and the extension to financial services. The key point to make to the Committee is that we have had a much wider debate on the changes that are being made to insolvency, and I do not want to revisit that wider debate today. We are here to debate the specific impact on financial stability and how we amend the legislation to fit with those wider reforms.

The hon. Gentleman asked about the impact on staff and the extent to which we ring-fence for insolvency procedures. He mentioned the Comet case specifically, which I know caused numerous concerns. The reforms are intended to benefit creditors by removing red tape. Therefore, as far as insolvency procedures are concerned, staff are often creditors and will benefit from the reforms. I hope that that reassures him that where instances like Comet arise in future, there will be some benefits from this exercise.

I am grateful to the Committee for its consideration—

Bill Esterson: The Minister kindly offered to write to me on one matter. Perhaps when he does, he could flesh out some of the other points a little more. In particular, can he give details of how staff will benefit, rather than the more general point that he just made? I appreciate that he is probably not in a position to tell me that in detail now, so perhaps that will be an opportunity to address the point more fully.

Stephen Barclay: I am happy to provide the hon. Gentleman with a much fuller example, and I commit to writing to him on that basis.

Subject to there being no further comments from Members, I am very grateful to the Committee for its consideration of the regulations today and for the points that have been made. In summary, the regulations make consequential amendments to the special insolvency procedures for financial sector firms to take account of the reforms that we have discussed. I ask the Committee to support the changes.

Question put and agreed to.

2.45 pm

Committee rose.