

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT SMALL BUSINESS COMMISSIONER  
(SCOPE AND SCHEME) REGULATIONS 2017

*Tuesday 21 November 2017*

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**The Committee consisted of the following Members:**

*Chair:* MR VIRENDRA SHARMA

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|--|--|
| † Docherty-Hughes, Martin ( <i>West Dunbartonshire</i> ) (SNP)   | † Murray, Ian ( <i>Edinburgh South</i> ) (Lab)           |
| † Esterson, Bill ( <i>Sefton Central</i> ) (Lab)   | † Nandy, Lisa ( <i>Wigan</i> ) (Lab)                     |
| † Fletcher, Colleen ( <i>Coventry North East</i> ) (Lab)   | † Perkins, Toby ( <i>Chesterfield</i> ) (Lab)            |
| † Freeman, George ( <i>Mid Norfolk</i> ) (Con)   | † Prisk, Mr Mark ( <i>Hertford and Stortford</i> ) (Con) |
| † Fysh, Mr Marcus ( <i>Yeovil</i> ) (Con)  | † Rashid, Faisal ( <i>Warrington South</i> ) (Lab)       |
| † Green, Kate ( <i>Stretford and Urmston</i> ) (Lab)   | † Sunak, Rishi ( <i>Richmond (Yorks)</i> ) (Con)         |
| † Harris, Rebecca ( <i>Castle Point</i> ) (Con)  | † Vickers, Martin ( <i>Cleethorpes</i> ) (Con)           |
| † James, Margot ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) | † Wragg, Mr William ( <i>Hazel Grove</i> ) (Con)         |
| † Maclean, Rachel ( <i>Redditch</i> ) (Con)  | Joanna Welham, Mike Everett, <i>Committee Clerks</i>     |
|  | † <b>attended the Committee</b>                          |

# Sixth Delegated Legislation Committee

Tuesday 21 November 2017

[MR VIRENDRA SHARMA *in the Chair*]

## Small Business Commissioner (Scope and Scheme) Regulations 2017

2.30 pm

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Margot James):** I beg to move,

That the Committee has considered the Small Business Commissioner (Scope and Scheme) Regulations 2017.

It is a pleasure to serve under your chairmanship, Mr Sharma. The regulations set out further detail on which small businesses qualify for the Small Business Commissioner's services, including the complaints scheme. Late payment remains a significant issue; according to Bacs Direct Credit figures, the overall debt owed to small and medium-sized businesses in July 2017 as a result of late payments was £14.2 billion. We all rely on the UK's 5.5 million small and medium-sized businesses for jobs, goods and services. An unfair payment culture that hurts them has no place in a well-functioning economy, so the Government are taking several steps to tackle late payments. As well as the regulations before the Committee, these steps include the prompt payment code—an industry-led code of conduct that sets out best payment practice—and the payment practices reporting requirement, a statutory transparency measure for large companies.

The Enterprise Act 2016 established the Small Business Commissioner, whose role will be to support small businesses to resolve payment disputes and avoid future issues by encouraging a culture change in the way businesses deal with one another. The commissioner will provide general information and advice; direct small businesses to existing services; consider complaints from small business suppliers about payment issues with their larger business clients; and make relevant recommendations. The Act provides that he can consider only complaints that concern matters that occurred after his appointed start date. We set that date at 6 April 2017 to enable him to accept complaints relating to matters that occurred between 6 April and the formal launch of the complaints service, which will broaden access to the complaints service and help him to build momentum as soon as his office is formally opened. The complaints service will launch as soon as possible after Parliament's approval of the regulations.

**Mr Mark Prisk (Hertford and Stortford) (Con):** One challenge relating to late payments that I often see—as do other hon. Members, I suspect—is large companies disputing a payment so that it is put to one side. The dispute is often over a minor matter, but it allows those companies to get away with avoiding payment within 30 or 60 days. Will such abuse on the margins be part of the commissioner's remit?

**Margot James:** I thank my hon. Friend for that observation; he has considerable experience in these matters, and I would not be a bit surprised if what he

says were the case. I will ask the commissioner to consider that practice and other known dodges—for want of a better word—in the course of his work.

The 2016 Act sets out the broad framework for the Small Business Commissioner. The regulations define “small business” for the purpose of qualification for the commissioner's services, including the complaints scheme; they also provide further detail about the scheme.

**Toby Perkins (Chesterfield) (Lab):** Further to the point made by the hon. Member for Hertford and Stortford, a major issue faced by small businesses is that if they challenge late payments, their customers may simply cease trading with them. Small businesses therefore have to decide between waiting 90 or 120 days to be paid or getting no business at all. Changing the culture so that businesses can make complaints without customers knowing who they are will be crucial to solving this problem, which we have wrestled with for many years.

**Margot James:** I agree that confidentiality is often a requirement and that the lack thereof is a disincentive for small businesses to challenge the late payment practices that have been a part of business culture. There is provision for the commissioner to respect the confidentiality of complainants and, indeed, it is his duty to do so unless the complainant gives permission for his or her name, or the company name, to be disclosed. We can discuss that further later in the debate because it is important. I am well aware that in a system that provides for confidentiality, there are occasions when it is impossible to conceal the true identity of the complainant company in reality. The hon. Gentleman raises a difficult issue.

The regulations set out: that a business must have a headcount of fewer than 50 staff on one of the assessment dates or during one of the assessment periods to qualify to use the commissioner's services; the requirements that must be met before presenting a complaint; the requirements for the form and content of the complaint; the time limit for presenting a complaint; the power for the commissioner to fix and extend time limits and to dismiss complaints; the matters that the commissioner must take into consideration when determining whether an act or omission complained about was fair and reasonable; and factors to be taken into account when deciding whether to identify a respondent in any report of any complaint. They apply to the whole of the United Kingdom.

We consulted between 13 October and 7 December 2016 on how the Small Business Commissioner would handle complaints. We published draft regulations in February and interested parties were invited to comment on them between 24 February and 9 March. The key message from respondents to that consultation was that the regulations should be simple so that the Small Business Commissioner's services would be as efficient and effective as possible. The regulations will enable the Small Business Commissioner to accept complaints on payment matters from small business suppliers about their larger clients. That is an important part of the Small Business Commissioner's role in supporting small businesses.

Although the debate is limited to the regulations, I take the opportunity to welcome Mr Paul Uppal to his post as the UK's first Small Business Commissioner. He competed against many other well-qualified candidates to secure the role. I thank all those who applied for the role and who engaged with the consultations and policy development inside and outside the House.

2.38 pm

**Bill Esterson** (Sefton Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma. I, too, welcome the appointment of the commissioner. I know Paul Uppal from his time in the House. He has a strong business background. Having been a member of the governing party may have helped him, of course, in securing the post—I could not possibly comment on whether there is any truth in that scurrilous accusation.

The Minister pointed out that there are £26.3 billion-worth of late payments in the private sector according to the latest figures from Bacs, but she did not mention that the time businesses wait is 72 days on average. Members on both sides of the Committee have mentioned the sadly all-too-common game playing by larger companies in dealing with their smaller suppliers. It is fair to say that a reduction in that kind of game playing is one of the many things that I would like to see Mr Uppal and his team address. If he is to repay the faith that has been shown in him, perhaps that is something he can take on board and investigate, to see what recommendations he can come back with on how to address some of those endemic problems.

The relationship damage done when a small supplier challenges a larger customer is a serious block in challenging late payments. It is one of the reasons why, in the Enterprise Bill Committee, we pushed the Government extremely hard on alternatives to the very mild voluntary system that has been set up, which the Small Business Commissioner has before him and his team. The Australian system of binding arbitration, with proper fines behind it, appears from the evidence we discussed in Committee to have been a significant success in bringing down the number of days that small companies waited to be paid. I again urge the Minister not to rule out moving to such a system over a period of time, and urge the commissioner to consider whether that is the sort of system we should consider in this country as well at some stage.

I have previously raised concerns that the system is restricted to the private sector, and I raise them again. The public sector is a source of significant late payment concerns for smaller businesses. The Minister mentioned the prompt payment code; signatories to the code tend to be in the public sector, with some larger private sector firms, but they do not cover the entire public sector and it is too early to say how effective they have been in reducing the time that small companies must wait to be paid.

There are examples of Governments in other parts of the world—the United States is one that springs to mind—using the procurement system to ensure prompt payment. The rules in the United States are that if a company trades with the federal Government, it has to pay its suppliers promptly. I wonder whether that is something the Minister would take on board. Again, that is something we said in the Bill Committee during the passage of the Enterprise Act 2016 that created the post. All too often in this country, companies that procure from Government are paid within 30 days, often as quickly as five days, and then delay their own payments. That is an opportunity within the commissioner's terms of reference and something else for him to investigate, because those are private sector companies potentially using their position to improve their own cash flow at the expense of their smaller suppliers, and using Government money to do so. That is a particular area

where the Government should be interested and could act. As I say, if it is part of the agreement in America, why not in this country?

**Mr Prisk:** I am grateful to the hon. Gentleman for raising an important point. My understanding is that most transactions in America are for payment on receipt of goods or services, so there are no 30-day or 60-day terms in most common business practice. Is that something he recognises? It would change the nature of his question.

**Bill Esterson:** The hon. Gentleman is more familiar with what goes on in America than I am in that case. Certainly, the evidence that we were presented with when we discussed the matter in the Bill Committee suggested that that was not true of every contractual relationship in America. Perhaps we could discuss that outside and look further at the evidence. Payment on delivery is one way of addressing the point we have just been discussing.

Some questions emerge from the regulations before us. My understanding is that the commissioner, as constituted, has the power to name and shame. I wonder whether the Minister can shed some light on what the intention is for the use of those powers, and how quickly she feels the commissioner should look to set up some kind of naming and shaming system.

How many complaints does the Minister envisage the commissioner will be investigating every year? How many complaints does she expect him to receive every year? How many complaints could his office deal with every year? That relates to how many staff he has and what his budget is, which the Minister could perhaps address.

From some of the representations I have received, it appears there is a question mark over whether the construction sector will be included in the Small Business Commissioner's work. Given that a significant number of the problems of late payment lie in the construction sector, can the Minister clarify whether that is true? The concerns around retentions of 5% or even 10% over a number of years are a very important part of why construction should be included.

**Faisal Rashid** (Warrington South) (Lab): My hon. Friend mentions the construction industry. Does he agree that small businesses in the construction industry are more vulnerable to late payments because they do not qualify for some of the services available to alleviate them, such as invoice finance and invoice discounting?

**Bill Esterson:** Yes, there are opportunities, as there are in other sectors, to use other forms of invoice finance. One of the big concerns is retention, and I should have thought the commissioner would want to look at concerns about the very lengthy delays that often happen with retentions.

One of the questions we raised in the Bill Committee is how to raise awareness of the commissioner's existence and the services his office can provide. One way is through a website, but not every small business uses a website; actually, quite a lot of them do not use the internet. What proposals does the Minister have to ensure that all small businesses know that this facility exists? One route is through advisers, including accountants, but that is not an answer for everybody. We will have to

[*Bill Esterson*]

wait to see how effective the commissioner is after a period, but can the Minister tell us the process for review of the commissioner's effectiveness and how that will be carried out?

The regulations talk about a limit of businesses with a headcount of fewer than 50. How many businesses does the Minister's Department estimate will be covered by the regulations, and how many businesses will not be covered? While I recognise that 50 is a figure for a small business, a business with 51 members of staff is still not particularly big, and when it trades with a larger customer, there is still a power imbalance. Will she give some thought to support for the next grade of businesses above those covered by the regulations? One of the reasons these regulations come in is the cost of going to court. For a business with 51 or even 101 members of staff, it is still an exceedingly big expense to take somebody to court.

I want the Small Business Commissioner to be effective in tackling the scourge of late payments. The success of small businesses is crucial for the overall economy. We do not have enough small businesses that are able to grow and become larger businesses—it is one of the structural weaknesses of our economy—and the delay in payment is one of the reasons that businesses find it difficult to do so. In fact, talking to the accountancy and insolvency professions, the main reason for business failure is cash flow, and late payment in particular, so anything that can be done to improve that situation must help individual businesses, those who own them, those who work in them and the wider economy.

However, the commissioner has to be effective if those goals are to be achieved. The title of commissioner suggests a responsibility and a scope that goes beyond the single goal of tackling late payment in the private sector. At the moment, a small business late payments signposting service is being created. I hope that it becomes a commissioner in time and can achieve far more as a support for small business. I look forward to the Minister's answers and assurances that, in a very short time, that support, advice and guidance, as well as the single role of tackling the scourge of late payments, is where the Small Business Commissioner can and will end up.

2.51 pm

**Margot James:** I thank the shadow Minister for his thoughtful comments and I am grateful for his encouraging words about the choice of Paul Uppal to take up the post. I will do my best to answer the questions he posed about some of the details.

He mentions that the average late payment is 72 days, which was also part of the figures that I gave from Bacs' data. That is quite unacceptable; it is effectively two and a half months, and if it is the average, we have a lot of work to do. On a more positive note, and as testimony to some of the voluntary work that has already been established through the prompt payment code, there has been a substantial improvement in Bacs' data. The latest figures show an average of what is owed to small businesses at any one time of around the £14.2 billion mark, as opposed to £26.3 billion the year before. I have chaired roundtables of small businesses around the country and found some enthusiasm for the prompt payment code, and some companies reporting that they have been able to deploy accounts staff in more productive

functions than simply chasing up late payment all the time as a result of the improvement that they have seen. As I say, there is clearly still a long way to go, but I think the prompt payment code and other measures the Government have introduced have started a change in culture.

The hon. Gentleman mentioned the Australian model and a more punitive function, and asked me to comment on whether that might be an end point for what we are setting up here today. I do not see it as a logical extension. The business support landscape in Australia is very different from that of the United Kingdom and I think that we can achieve more by trying to bring about a cultural change, rather than introducing hard-hitting measures and fines and going down that route straight away. I would not rule out such an approach if that does not work, but I am quite optimistic that, given the progress we have already made—as well as the progress of interventions in other sectors, such as the Groceries Code Adjudicator—we can achieve more with an approach that tries to take business with us. However, as I say, I would not rule out in the long run something of the sort that the hon. Gentleman described if it became clear that it was needed.

The hon. Gentleman asked about the public sector. There is perhaps a difference between what is required and what is seen as standard, by way of the letter of the law, and what is actually carried out in practice. Under the letter of the law, all public sector contractors are mandated to pay within 30 days and ensure that the 30-day policy applies all the way through the supply chain. I am sceptical about whether that always happens in reality, but that is the goal. The public sector is therefore not incorporated in the regulations.

**Bill Esterson:** The Minister says that payment within 30 days is mandated all the way through the supply chain, but that she is sceptical about whether that is really happening. What are she and her colleagues doing to enforce it?

**Margot James:** I became aware of the issue only a few months ago, and I have not decided yet whether we need to do more than we are doing already. We fund a mystery shopper service that checks how public sector contracts are complied with, particularly in respect of late payment, and I will look closely at its findings. It is encouraging that payment within 30 days throughout the supply chain is the standard, but I will need to satisfy myself that it is being complied with and adhered to. The mystery shopper service may inform that process.

**Bill Esterson:** If the Minister finds that there is still a widespread problem with payment not being passed down the supply chain, is she prepared to take enforcement action? The mystery shopper service may identify the problem, but I am not convinced that it will stop it.

**Margot James:** I shall have to return to that question once I have investigated what the service has identified. I cannot prejudge what we will do based on what we find out, so I hope the hon. Gentleman will bear with me to that extent. In answer to his question about the number of complaints on which the system is predicated and the resources at its disposal, the establishment cost of the Small Business Commissioner's office is £1.1 million and the anticipated running costs are £1.4 million a year,

based on an estimate of 70,000 companies referring just under 400,000 disputes, of which 500 result in full-blown complaints.

The hon. Gentleman also asked about construction. Construction is certainly included in the commissioner's remit, but I would like to go further, because I recognise that there are special problems with late payment in the sector. Two weeks ago, we announced a consultation on the culture of late payment and payment retention in the construction sector. I urge individuals and companies to respond to that consultation, because there is widespread anecdotal evidence of a big problem of unfair treatment of small businesses in the construction sector.

I think I have answered the hon. Gentleman's questions, so I thank hon. Members for their time and commend the regulations to the Committee.

**Bill Esterson** *rose—*

**Margot James:** In a spirit of generosity, and since Mr Sharma has not called time, I give way.

**Bill Esterson:** It was only that I asked the Minister how she would raise awareness of the service.

**Margot James:** The hon. Gentleman did ask that, and I failed to answer. We will promote the service's launch heavily through all media, including traditional media—as he mentioned, a lot of businesses are not online. We will also use the routine communications of other Government agencies with businesses to alert them to the importance of this new development.

*Question put and agreed to.*

3 pm

*Committee rose.*

