

Get in on the Act

The Small Business,
Enterprise and Employment
Act 2015

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Background

The Small Business, Enterprise and Employment Bill was introduced in the House of Commons on 25 June 2014. After scrutiny in both Houses of Parliament it was granted Royal Assent on 26 March 2015, to become the Small Business, Enterprise and Employment Act 2015.

The Act brings forward government commitments to improve access to finance and contracts, and to reduce regulation for small businesses and entrepreneurs. It makes provisions on public procurement, childcare registration, and public sector redundancy payments.

The Act is divided into 12 parts:

1. **Access to finance**
2. **Regulatory reform**
3. **Public sector procurement**
4. **The pubs code adjudicator and the pubs code**
5. **Childcare and schools**
6. **Education evaluation**
7. **Companies: transparencies**
8. **Company filing requirements**
9. **Directors' disqualification**
10. **Insolvency**
11. **Employment**
12. **General**

The provisions of the Act extend to England and Wales, Scotland and Northern Ireland, with two exceptions: Part 4 extends to England and Wales only; Part 10 extends to England and Wales and Scotland only.

Only those sections of relevance to local government are referenced here. For information on all sections, please visit: legislation.gov.uk

The role of the Local Government Association in influencing the legislation

We worked with LGA Vice-Presidents, ministers, Members of Parliament and peers and civil servants to influence the Act. During the passage of the Act through Parliament the LGA:

- Worked with parliamentarians to table amendments to Section 39 to uphold the principle that decisions should be devolved to the most local level possible and that local government is best-placed to deliver efficient local services in collaboration with SMEs and voluntary organisations. This secured assurances on the record from government ministers that the legislation would not be used counter to the Localism Act 2011 and the Public Services Act 2012, and that subsequent regulations would reference that legislation.
- Worked with peers to table additional amendments to Section 39 to recognise local authorities' pre-existing duty of best value.
- Met with government advisers and officials to discuss detail of concerns and secured an agreement to work jointly with local government on the subsequent regulations. This led to coordinated work with officials to highlight examples of local government best practice in the Government's announcements on regulations.

Key features of the Act for local government

Part 3

Section 39 in Part 3 of the Act allows the Government to implement further measures beyond Public Contract Regulations 2015, relating to public procurement in the future. The Government may use the power to make regulations which require procuring authorities to run an efficient and timely procurement process, accept electronic invoices and make available, free of charge, information or documents necessary for any potential supplier to apply for a contract.

Section 40 gives central government powers to investigate the exercise by a contracting authority of relevant functions relating to procurement, putting the Cabinet Office's existing 'Mystery Shopper' service on a statutory footing.

Part 5

As part of the Government's wider childcare reform, this Part of the Act contains provisions which exempt schools from having to register separately with Ofsted before admitting two-year-olds. It allows providers to register multiple premises in a single registration process. Section 76 allows childminders to operate on non-domestic premises as well as domestic premises.

Section 74 allows disclosure of tax credit and social security information to the Secretary of State and English local authorities for the purpose of determining eligibility for funding related to free early years childcare provision. This measure supports the introduction of the Early Years Pupil Premium for disadvantaged three and four-year-olds in April 2015, allowing the Eligibility Checking Service to be used for this purpose.

Part 6

Sections 78 to 80 are intended to make the sharing of information between government departments and schools, colleges and other assessment centres easier. This is expected to make tracking destination outcomes and evaluating the effectiveness easier.

Part 11

Section 149 provides protection for workers who blow the whistle on malpractices by their employers or third parties. The section makes provisions to protect both the identity of the individual who has made the disclosure and the employer or organisation to which the disclosure relates. It also gives the Secretary of State the power to require certain bodies listed on the Public Interest Disclosure Order to report annually on disclosures by workers.

Part 11 also includes provisions (section 153) which render unenforceable any exclusivity sections in a zero-hours contract prohibiting the worker from doing work under another arrangement.

Sections 154 to 157 would give a power to the Treasury to regulate to require the repayment of some or all of an exit payment made to a public sector employee following the employee leaving employment. This includes redundancy payments, payments on voluntary exit or payments in lieu of compensation under a contract.

Implications for local government

The Small Business, Enterprise and Employment Act has the potential to have a significant impact on local government.

Part 3: Public sector procurement

The LGA supports the principle that councils should run efficient and timely procurement processes. However, throughout the passage of this legislation, the LGA has opposed the provisions in Part 3 giving the Secretary of State wide-ranging powers to determine public procurement standards for local government. On average, half of local government procurement spending is with SMEs, compared to less than 14 per cent for central government in the same period. Amendments tabled to raise these issues secured assurances that the section would not be used counter to the Localism Act 2011 or the Public Services (Social Value) Act 2012.

Part 5: Childcare and schools

School-led nurseries are being encouraged to offer more nursery provision, particularly for disadvantaged two-year-olds who, along with all three- and four-year olds, are entitled to 15 hours a week of free early education. The provisions in Part 5 mean that schools do not have to register separately nursery provision in order to admit two-year-olds. School-led nurseries are being encouraged to offer more nursery provision and this change means that schools do not have to register separately to admit two-year-olds. But this does not address the issue of capacity, at a time when schools in different across England are already struggling to provide sufficient places for primary school-aged children.

Without the change to enable the Eligibility Checking Service to be extended to eligibility criteria for the two-year-old entitlement councils would have had to carry out complicated paper checks instead. Allowing registered childminders to operate from non-domestic properties may make it easier for schools and other providers to offer out-of-hours or holiday childcare.

Part 6: Education evaluation

Part 6 has the potential to improve the evidence base for the outcomes of different training courses and qualifications. The provisions will make it easier to track the destinations of young people after they leave school or college, in order to understand and improve different types of skills provision. Schools, colleges and councils all play a role in contributing to the future destinations of young people and so sharing data will allow for collectively accountability in improving young people's outcomes at a local level.

Part 11: Employment

Evidence suggests that, in a small number of cases, when senior staff leave employment and receive exit payments, they then swiftly return to similar work. Great care needs to be taken to ensure that there are no unforeseen and unfair consequences in permitting the Treasury to regulate exit payments in the way set out in Part 11 and that the measures taken are proportionate to the problem. For example, staff who have been made redundant through no fault of their own should not be penalised as exit payments are meant to bridge the gap before finding new employment.

A note of thanks

The LGA would like to thank all of its Vice-Presidents for their assistance during the passage of the Act, and also all other parliamentarians who we worked with and who spoke on behalf of local government.



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