

DRAFT STATUTORY INSTRUMENTS

2017 No.

CONTRACTS

**The Business Contract Terms (Assignment of Receivables)
Regulations 2017**

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by section 1 of the Small Business, Enterprise and Employment Act 2015(a), makes the following Regulations:

In accordance with section 161(4) of the Small Business, Enterprise and Employment Act 2015, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Business Contract Terms (Assignment of Receivables) Regulations 2017 and shall come into force on the day after the day on which they are made.

(2) In these Regulations—

“excluded contract” means-

- (a) a contract for prescribed financial services;
- (b) a contract which concerns any interest in land;
- (c) a contract where one or more of the parties to the contract is acting for purposes which are outside a trade, business or profession;
- (d) a contract the law applicable to which is the law of England and Wales or the law of Northern Ireland only by choice of the parties (and apart from that choice would be the law of Scotland or some country outside the United Kingdom);
- (e) a contract which concerns national security interests (and a certificate provided by the Secretary of State to the effect that a contract concerns national security interests shall be conclusive evidence of that fact);
- (f) a contract where one or more parties to the contract is a person designated as a CFD counterparty under section 7 of the Energy Act 2013(b) and who has entered into the contract by virtue of that Act;

(a) 2015 c. 26.

(b) 2013 c. 32.

- (g) a petroleum licence;
- (h) a contract where one or more parties to the contract is the licensee in respect of a petroleum licence whose terms would prohibit or restrict the assignment of receivables under that contract;

“intangible assets” includes electricity and data which are produced and supplied in digital form;

“licensee”, in respect of a petroleum licence, means the person to whom a petroleum licence is granted, their personal representatives and any person to whom the rights conferred by that licence may lawfully have been assigned;

“petroleum licence” means a licence granted under section 2 of the Petroleum (Production) Act 1934^(a) or under section 3 of the Petroleum Act 1998^(b);

“prescribed financial services” means a regulated agreement within the meaning of the Consumer Credit Act 1974^(c) or any financial service within the meaning of section 2 of the Small Business, Enterprise and Employment Act 2015; and

“receivable” is a right (whether or not earned by performance) to be paid any amount under a contract (other than an excluded contract) for the supply of goods, services or intangible assets.

(3) These Regulations have effect notwithstanding any contract term which applies or purports to apply the law of Scotland or some country outside the United Kingdom, where the term appears to the court, or arbitrator or arbiter to have been imposed wholly or mainly for the purpose of enabling the party imposing it to evade the operation of these Regulations.

Effect of a non-assignment of receivables term

2. A term in a contract has no effect to the extent that it—

- (a) prohibits the assignment of a receivable arising under that contract or any other contract,
- (b) prevents a person to whom a receivable is assigned (“the assignee”) from determining its validity or value (including determining their ability to enforce the receivable), or
- (c) hinders the assignee’s ability to enforce the receivable.

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations deal with contractual terms which prohibit or restrict the assignment of receivables. A receivable is a right to be paid under a contract, but various types of contract are excluded from the scope of the Regulations. The Regulations provide that terms prohibiting the assignment of a receivable or preventing the assignee from determining the validity or value of a receivable or hindering their ability to enforce a receivable have no effect.

A full regulatory impact assessment of the effect of these Regulations on the costs of business and the voluntary sector is available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET or from www.gov.uk/beis.

(a) 1934 c. 36.

(b) 1998 c. 17.

(c) 1974 c. 39. “Regulated agreement” is defined in section 189(1).

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