



# House of Commons

Thursday 5 July 2012

## PUBLIC BILL COMMITTEE

*New Amendments handed in are marked thus ★*

☆ *Amendments which will comply with the required notice period at their next appearance*

### ENTERPRISE AND REGULATORY REFORM BILL

#### NOTE

The Amendments have been arranged in accordance with the Order of the Committee [19 June 2012]

Mr Iain Wright  
Ian Murray  
Chi Onwurah

Clause 18, page 12, line 38, after ‘the’, insert ‘long-term’.

70

Mr Iain Wright  
Ian Murray  
Chi Onwurah

Schedule 4, page 60, line 22, at end insert—

‘(1A) The Chair shall be subject to approval by a Select Committee of Parliament.’

73

Mr Iain Wright  
Ian Murray  
Chi Onwurah

Schedule 4, page 60, line 27, after ‘one’, insert ‘and no more than three’.

71

---

**Enterprise and Regulatory Reform Bill, *continued***

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

72

Schedule 4, page 60, line 35, at end insert—

- ‘(8) Of the persons appointed to membership of the CMA Board under sub-paragraph (1)(b) at least one must be a member of the Consumer Focus board or other representative of consumers as designated by the Secretary of State.’

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

74

Schedule 4, page 61, line 26, at end insert—

- ‘(4) No member of the CMA shall receive remuneration that is more than 20 times that of another member of the CMA.
- (5) No person shall hold any position set out in sub-paragraph 1(1) and sub-paragraph 9(1) (the “chief executive”) for longer than a period of six months without being in the direct employment of the CMA.’

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

75

Schedule 4, page 62, line 11, at end insert—

- ‘(2A) The Chief Executive shall be subject to approval by a Select Committee of Parliament.’

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

78

Schedule 4, page 62, line 31, at end insert—

- ‘11A The CMA is to have a unit dedicated to matters affecting competition issues amongst small and medium-sized enterprises.’

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

76

Schedule 4, page 62, line 38, after ‘financial’, insert ‘and human’.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

77

Schedule 4, page 62, line 39, at end insert—

- ‘(c) set out the consumer benefit which will be achieved as a result of the objectives and priorities as set out in 2(a).’

Enterprise and Regulatory Reform Bill, *continued*

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

79

Schedule 4, page 62, line 40, at end add ‘and brought to the attention of the relevant select committee.’.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

80

Schedule 4, page 63, line 23, after ‘financial’, insert ‘and human’.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

81

Schedule 4, page 63, line 26, at end insert—  
 (f) an assessment of the consumer benefit realised during the year;  
 (g) an assessment of the level of organisational separation between first and second phase activities in the CMA;  
 (h) an assessment of the performance of each of the sector regulators in using their competition powers to address competition issues in their sector and any barriers identified.’.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

82

Schedule 4, page 63, line 26, at end insert—  
 (i) an assessment of the adequacy of staff skills in relation to the performance of the CMA’s functions;  
 (j) an estimate of the resource needed adequately to perform its functions for the two financial years following the year in which the annual report in 14(1) refers.’.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

84

Schedule 4, page 63, line 26, at end insert—  
 ‘(2A) The first annual report of the CMA following Royal Assent must include an assessment of transition costs in both financial and competition terms.’.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

83

Schedule 4, page 64, line 27, at end insert—

*‘Consumer research*

16A (1) The CMA must make arrangements for ascertaining—

**Enterprise and Regulatory Reform Bill, *continued***

- (a) the state of public opinion about the manner in which financial services are provided to consumers;
  - (b) the experiences of consumers in relation to the provision of financial services;
  - (c) the experiences of such consumers in relation to the handling, by institutions within the financial services sector, of complaints made to them by such consumers;
  - (d) the experiences of such consumers in relation to the resolution of disputes with institutions within the financial services sector; and
  - (e) the interests and experiences of such consumers in relation to other matters that are incidental to, or are otherwise connected with, their experiences of the provision of financial services or of the availability of associated facilities.
- (2) The CMA shall consult with concurrent regulators where necessary.
- (3) The CMA shall publish the conclusions from research carried out under section (1) every two years.
- (4) The CMA shall produce a report stating its conclusions and any recommendations from section (1) to the Secretary of State every 2 years.
- (5) The Secretary of State shall publish a response to the report within 60 days.
- (6) Arrangements made by the CMA for the purposes of this section may include arrangements for the carrying out of research in one or more of the following ways—
- (a) by members or employees of the CMA;
  - (b) by persons who are neither members nor employees of the CMA.
- (7) This section does not restrict the CMA's power to make any arrangements they consider to be incidental or conducive to the carrying out of any of their functions.
- 16B (1) The CMA must make arrangements for ascertaining—
- (a) the level of competition in the financial services sector; and
  - (b) the effects of the competition environment in the financial services sector on
    - (i) the availability of finance to small and medium-sized enterprises;
    - (ii) the availability of finance to high growth businesses;
    - (iii) the availability of finance to businesses in general.
- (2) The CMA shall consult with concurrent regulators where necessary.
- (3) The CMA shall publish the conclusions from research carried out under section (1) every two years.
- (4) The CMA shall produce a report stating its conclusions and any recommendations from section (1) to the Secretary of State every two years.
- (5) The Secretary of State shall publish a response to the report within 60 days.
- (6) Arrangements made by the CMA for the purposes of this section may include arrangements for the carrying out of research in one or more of the following ways—
- (a) by members or employees of the CMA;
  - (b) by persons who are neither members nor employees of the CMA.
- (7) This section does not restrict the CMA's power to make any arrangements they consider to be incidental or conducive to the carrying out of any of their functions.'

---

**Enterprise and Regulatory Reform Bill, *continued***

Mr Iain Wright  
Ian Murray  
Chi Onwurah

90

Schedule 4, page 67, line 24, at end insert—

- ‘(2A) No person who participated in the CMA Board’s consideration of whether to refer the matter to the chair shall form part of a group selected by the chair to investigate the matter.’

Mr Iain Wright  
Ian Murray  
Chi Onwurah

85

Schedule 4, page 68, line 19, at end insert—

- ‘(f) at least three persons (“specialist consumer competition panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out specialist consumer competition welfare functions on behalf of the CMA;
- (g) at least three persons (“specialist financial competition panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out specialist financial services competition functions on behalf of the CMA.’
- 

Norman Lamb

21

Schedule 5, page 79, line 39, leave out paragraph 32 and insert—

- ‘32 (1) Section 52 (advice and information) is amended as follows.
- (2) In subsection (1), for the words from the beginning to “the Director” substitute “The CMA”.
- (3) In subsection (1A), for the words from the beginning to “the OFT” substitute “The CMA”.
- (4) In subsections (2) to (6) and (8), for “OFT” (in each place where it occurs) substitute “CMA”.’

Norman Lamb

22

Schedule 5, page 81, line 29, at end insert—

- ‘In Schedule 2 (exclusions: other competition scrutiny), in Part 3, in paragraph 5(3)(a), for “Director” substitute “CMA”.’

Norman Lamb

23

Schedule 5, page 87, leave out line 28.

---

**Enterprise and Regulatory Reform Bill, *continued***

- Norman Lamb 24
- Schedule 5, page 89, line 12, at end insert—  
 ‘() after “(6)” insert “—  
 (a) ”.’.
- Norman Lamb 25
- Schedule 5, page 89, line 13, at end insert ‘, and  
 () at the end insert “; and  
 (b) for the purposes of section 34C, the group constituted  
 in consequence of the reference under section 45 is to  
 be treated as if it were constituted in consequence of  
 a reference under section 22 or (as the case may be)  
 33.”’.
- 
- Mr Iain Wright  
 Ian Murray  
 Chi Onwurah 88
- Clause 21, page 17, line 38, at end insert—  
 ‘(13) No member involved in the decision making process shall have taken any part in  
 the phase one investigation.’.
- 
- Mr Iain Wright  
 Ian Murray  
 Chi Onwurah 61
- Schedule 12, page 188, line 4, at end insert—  
 ‘(d) the resources which will be assigned to the market study.’.
- Mr Iain Wright  
 Ian Murray  
 Chi Onwurah 62
- Schedule 12, page 188, line 35, leave out ‘6’ and insert ‘3’.
- Mr Iain Wright  
 Ian Murray  
 Chi Onwurah 65
- Schedule 12, page 188, line 35, leave out ‘6’ and insert ‘12’.

---

**Enterprise and Regulatory Reform Bill, *continued***

- Mr Iain Wright  
Ian Murray  
Chi Onwurah **63**
- Schedule 12, page 189, line 32, leave out ‘6’ and insert ‘3’.
- Mr Iain Wright  
Ian Murray  
Chi Onwurah **66**
- Schedule 12, page 189, line 32, leave out ‘6’ and insert ‘12’.
- Mr Iain Wright  
Ian Murray  
Chi Onwurah **64**
- Schedule 12, page 189, line 41, leave out ‘6’ and insert ‘3’.
- Mr Iain Wright  
Ian Murray  
Chi Onwurah **67**
- Schedule 12, page 189, line 41, leave out ‘6’ and insert ‘12’.
- Norman Lamb **26**
- Schedule 12, page 193, line 15, after ‘if’, insert ‘the CMA has accepted an undertaking or group of undertakings under section 154 and’.
- Norman Lamb **27**
- Schedule 12, page 193, line 33, at end insert—  
‘() In subsection (1), after paragraph (a) insert—  
    “(aa) any decision not to make a reference under section 131 following a consultation in relation to the matter concerned under section 169;”’.
- Norman Lamb **28**
- Schedule 12, page 194, line 3, at end insert—  
‘  
    In section 179 (review of decisions under Part 4), in subsection (2), before paragraph (a) insert—  
    “(za) does not include a decision whether to carry out functions under section 5 in a case where the CMA is, or would have been, required to publish a market study notice (see section 130A(1));”’.
-

---

**Enterprise and Regulatory Reform Bill, *continued***

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

Schedule 11, page 183, leave out lines 18 to 21. 86

Norman Lamb

Schedule 11, page 184, line 42, after '140A(2)', insert '(b)'. 29

Norman Lamb

Schedule 11, page 184, line 46, after '140A(2)', insert '(b)'. 30

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

Schedule 11, page 186, line 12, leave out from 'exceeding' to end of line 17 and insert— 87

'10 per cent. of the company's revenues for the previous year, or £30,000 whichever is the higher;

- (b) in the case of any amount calculated by reference to a daily rate, an amount per day exceeding 10 per cent. of the company's revenues for the previous year, or £15,000 whichever is the higher; and
- (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 or 10 per cent. of the company's revenues for the previous year whichever is the higher, and an amount per day exceeding £15,000 or 10 per cent. of the company's revenues for the previous year whichever is the higher.'

---

Norman Lamb

Clause 27, page 21, line 24, after 'where', insert '—  
 (a) '. 31

Norman Lamb

Clause 27, page 21, line 25, at end insert '; or  
 (b) the CMA has begun the process of consultation under section 169 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section.'. 32

Norman Lamb

Clause 27, page 21, line 30, after 'permitted period', insert ', in a case to which this section applies by virtue of paragraph (a) of subsection (A1)'. 33



---

**Enterprise and Regulatory Reform Bill, *continued***

Norman Lamb

34

Clause 27, page 21, line 42, after 'period.' insert—

- (1B) For the purposes of subsection (1), the permitted period, in a case to which this section applies by virtue of paragraph (b) of subsection (A1), is the period beginning with the date on which the CMA begins the process of consultation concerned and ending with—
- (a) the acceptance by the CMA of an undertaking under section 154 instead of the making of a reference under section 131 in relation to the matter concerned;
  - (b) the publication of notice of the fact that the CMA has otherwise decided not to make such a reference in relation to the matter; or
  - (c) the making of such a reference in relation to the matter.'

Norman Lamb

35

Clause 27, page 22, line 28, leave out 'In subsection (1A)(a), the' and insert 'In this section, a'.

Norman Lamb

36

Clause 27, page 22, line 33, leave out 'subsection (1A)(a)' and insert 'this section'.

Norman Lamb

37

Clause 27, page 22, line 44, at end insert—

- (1A) This section also applies where—
- (a) the CMA has conducted a consultation under section 169 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section;
  - (b) the CMA has decided that it should make an ordinary reference or a cross-market reference in relation to the matter concerned under section 131; and
  - (c) an intervention notice under section 139(1) is in force in relation to the matter at the time when the CMA makes that decision.'

Norman Lamb

38

Clause 27, page 23, leave out lines 3 to 6 and insert—

- (b) in a case falling within subsection (1), shall not publish the market study report under section 131B(4) and shall instead, within the period mentioned in section 131B(4), give the report to the Secretary of State; and
- (c) in a case falling within subsection (1A), shall give to the Secretary of State a document containing—
- (i) its decision and the reasons for its decision; and
  - (ii) such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for its decision.'

Norman Lamb

39

Clause 27, page 23, line 13, leave out 'contained in the market study report concerned'.

---

**Enterprise and Regulatory Reform Bill, *continued***

- Norman Lamb 40  
 Clause 27, page 23, line 20, leave out ‘section 131B’ and insert ‘this Part’.
- Norman Lamb 41  
 Clause 27, page 23, line 23, leave out ‘contained in the market study report’.
- Norman Lamb 42  
 Clause 27, page 23, line 37, leave out ‘market study report concerned contains the decision of the CMA’ and insert ‘decision of the CMA was’.
- Norman Lamb 43  
 Clause 27, page 23, line 40, leave out ‘report contains the decision of the CMA’ and insert ‘decision of the CMA was’.
- Norman Lamb 44  
 Clause 27, page 23, line 43, at beginning insert ‘In a case falling within subsection (1),’.
- Norman Lamb 45  
 Clause 27, page 23, line 45, at end insert—  
 ‘( ) In a case falling within subsection (1A), the Secretary of State shall publish the document given to the Secretary of State by the CMA under subsection (2)(c), at the same time as the Secretary of State makes a reference under this section.’
- 
- Norman Lamb 46  
 Schedule 10, page 172, line 8, after ‘notice’, insert ‘or (as the case may be) the consultation under section 169’.
- Norman Lamb 47  
 Schedule 10, page 172, line 10, after ‘notice’, insert ‘or (as the case may be) on which the process of consultation began’.
- Norman Lamb 48  
 Schedule 10, page 172, line 38, after 140A(2)’ insert ‘(b)’.
- Norman Lamb 49  
 Schedule 10, page 172, line 41, at end insert—  
 ‘(4BA) Subsection (4C) also applies in a case where—

**Enterprise and Regulatory Reform Bill, *continued***

- (a) an intervention notice ceases to be in force in accordance with subsection (4A); and
- (b) the CMA has, before the time at which the notice ceases to be in force—
  - (i) decided that it should make an ordinary reference or a cross-market reference under section 131 in relation to the matter concerned; and
  - (ii) given a document containing its decision, the reasons for it and such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for its decision to the Secretary of State in accordance with section 140A(2)(c).’.

Norman Lamb		<b>50</b>
	Schedule 10, page 172, line 47, leave out ‘section 131B’ and insert ‘this Part’.	
Norman Lamb		<b>51</b>
	Schedule 10, page 178, line 22, leave out ‘section 131B’ and insert ‘this Part’.	
Norman Lamb		<b>52</b>
	Schedule 10, page 179, line 33, leave out ‘section 131B’ and insert ‘this Part’.	
Norman Lamb		<b>53</b>
	Schedule 10, page 179, line 38, leave out ‘section 131B’ and insert ‘this Part’.	
Norman Lamb		<b>54</b>
	Schedule 10, page 181, line 9, at end insert— ‘() In subsection (7), omit “or (2)(d)”.’.	

---

Mr Iain Wright Ian Murray Chi Onwurah		<b>57</b>
	Clause 29, page 28, line 11, at end insert— ‘(2BA) When subsection (2B) is applied, the relevant authority must publish a cost benefit assessment for the measures applied.’.	

---

Mr Iain Wright Ian Murray Chi Onwurah		<b>58</b>
	Clause 34, page 32, line 45, at end insert— ‘(5A) After sub-paragraph 2(4) insert—	

---

**Enterprise and Regulatory Reform Bill, *continued***

“(5) No member involved in the decision making process shall have taken any part in the investigation.”’.

---

Mr Iain Wright  
Ian Murray  
Chi Onwurah

Clause 39, page 35, line 6, at end insert—

‘(2A) In subsection (1), after “at least two undertakings (A and B)”, insert—  
“with the intention of substantially reducing competition.”’.

89

Mr Iain Wright  
Ian Murray  
Chi Onwurah

Clause 39, page 35, line 35, at end insert—

‘(2A) All “relevant information” must be made available on the undertakings website under the title “commercial arrangements”’.

59

---

Norman Lamb

Schedule 15, page 203, line 29, leave out paragraph (a) and insert—

‘(a) omit “to the Competition Commission” (in each place where it occurs), and’.

---

55

Mr Iain Wright  
Ian Murray  
Chi Onwurah

Clause 48, page 41, line 16, at end add—

““consumers” includes small businesses, up to 50 employees in size.”’.

---

60

Norman Lamb

Page 46, line 34, leave out Clause 57.

---

56

**Enterprise and Regulatory Reform Bill, continued**

Caroline Lucas

1

Clause 62, page 49, line 5, at end add—

- (5) Section [*Permission to borrow from the capital markets*] comes into force on the day on which this Act is passed.’.

**NEW CLAUSES***Confidentiality of negotiations before termination of employment*

Norman Lamb

NC2

To move the following Clause:—

‘After section 111 of the Employment Rights Act 1996 insert—

**“111A Confidentiality of negotiations before termination of employment**

- 5 (1) In determining any matter arising on a complaint under section 111, an employment tribunal may not take account of any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee.  
This is subject to the following provisions of this section.
- 10 (2) Subsection (1) does not apply where, according to the complainant’s case, the circumstances are such that a provision (whenever made) contained in, or made under, this or any other Act requires the complainant to be regarded for the purposes of this Part as unfairly dismissed.
- 15 (3) In relation to anything said or done which in the tribunal’s opinion was improper, or was connected with improper behaviour, subsection (1) applies only to the extent that the tribunal considers just.
- 20 (4) The reference in subsection (1) to a matter arising on a complaint under section 111 includes any question as to costs, except in relation to an offer made on the basis that the right to refer to it on any such question is reserved.
- (5) Subsection (1) does not prevent the tribunal from taking account of a determination made in any other proceedings between the employer and the employee in which account was taken of an offer or discussions of the kind mentioned in that subsection.”’.

**Enterprise and Regulatory Reform Bill, continued**

As Amendments to Norman Lamb's proposed New Clause (*Confidentiality of negotiations before termination of employment*) (NC2):—

Mr Iain Wright  
Ian Murray  
Chi Onwurah

- (a)
- Line 7, leave out 'the employee' and insert ' , the employee or either one of the following chosen employee representatives—
- (a) a trade union official;
  - (b) a workplace representative; or
  - (c) a legal representative.'

Mr Iain Wright  
Ian Murray  
Chi Onwurah

- (b)
- Line 24, at end add—
- '(6) The Secretary of State shall review the operation of Clause 111A [Confidentiality of negotiations before termination of employment] after 12 months and shall confirm its continuation through an affirmative resolution of both Houses of Parliament.'

---

*Payments to directors: members' approval of directors' remuneration policy*

Norman Lamb

NC5

To move the following Clause:—

- (1) In section 421 of the Companies Act 2006 (contents of directors' remuneration report) after subsection (2) insert—
  - “(2A) The regulations must provide that any information required to be included in the report as to the policy of the company with respect to the making of remuneration payments and payments for loss of office (within the meaning of Chapter 4A of Part 10) is to be set out in a separate part of the report.”
- (2) After section 422 of that Act (approval and signing of directors' remuneration report) insert—

**“422A Revisions to directors' remuneration policy**

- (1) The directors' remuneration policy contained in a company's directors' remuneration report may be revised.
- (2) Any such revision must be approved by the board of directors.
- (3) The policy as so revised must be set out in a document signed on behalf of the board by a director or the secretary of the company.
- (4) Regulations under section 421(1) may make provision as to—

**Enterprise and Regulatory Reform Bill, continued**

- (a) the information that must be contained in a document setting out a revised directors' remuneration policy, and
  - (b) how information is to be set out in the document.
- (5) Sections 422(2) and (3), 454, 456 and 463 apply in relation to such a document as they apply in relation to a directors' remuneration report.
- (6) In this section, "directors' remuneration policy" means the policy of a company with respect to the matters mentioned in section 421(2A)."
- (3) In section 439 of that Act (quoted companies: members' approval of directors' remuneration report), in subsection (1), at the end insert "other than the part containing the directors' remuneration policy (as to which see section 439A)."
- (4) After that section insert—

**"439A Quoted companies: members' approval of directors' remuneration policy**

- (1) A quoted company must give notice of the intention to move, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy—
- (a) at the accounts meeting held in the first financial year which begins after the coming into force of section (*Payments to directors: members' approval of directors' remuneration policy*) of the Enterprise and Regulatory Reform Act 2012 or at an earlier general meeting, and
  - (b) at an accounts or other general meeting held no later than the end of the period of three financial years beginning with the first financial year after the last accounts or other general meeting in relation to which notice is given under this subsection.
- (2) A quoted company must give notice of the intention to move at an accounts meeting, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy if—
- (a) a resolution required to be put to the vote under section 439 was not passed at the last accounts meeting of the company, and
  - (b) no notice under this section was given in relation to that meeting or any other general meeting held before the next accounts meeting.
- (3) A notice given under subsection (2) is to be treated as given under subsection (1) for the purpose of determining the period within which the next notice under subsection (1) must be given.
- (4) Notice of the intention to move a resolution to which this section applies must be given, prior to the meeting in question, to the members of the company entitled to be sent notice of the meeting.
- (5) Subsections (2) to (4) of section 439 apply for the purposes of a resolution to which this section applies as they apply for the purposes of a resolution to which section 439 applies, with the modification that, for the purposes of a resolution relating to a general meeting other than an accounts meeting, subsection (3) applies as if for "accounts meeting" there were substituted "general meeting".
- (6) For the purposes of this section, the relevant directors' remuneration policy is—
- (a) in a case where notice is given in relation to an accounts meeting, the remuneration policy contained in the directors' remuneration

**Enterprise and Regulatory Reform Bill, *continued***

report in respect of which a resolution under section 439 is required to be put to the vote at that accounts meeting;

- (b) in a case where notice is given in relation to a general meeting other than an accounts meeting—
    - (i) the remuneration policy contained in the directors' remuneration report in respect of which such a resolution was required to be put to the vote at the last accounts meeting to be held before that other general meeting, or
    - (ii) where that policy has been revised in accordance with section 422A, the policy as so revised.
- (7) In this section—
- (a) “accounts meeting” means a general meeting of the company before which the company's annual accounts for a financial year are to be laid;
  - (b) “directors' remuneration policy” means the policy of the company with respect to the matters mentioned in section 421(2A).”.

*Payments to directors of quoted companies*

Norman Lamb

NC6

To move the following Clause:—

‘After section 226 of the Companies Act 2006 insert—

## “CHAPTER 4A

## DIRECTORS OF QUOTED COMPANIES: SPECIAL PROVISION

*Interpretation***226A Key definitions**

- (1) In this Chapter—
  - “directors' remuneration policy” means the policy of a quoted company with respect to the making of remuneration payments and payments for loss of office;
  - “remuneration payment” means any form of payment or other benefit made to or otherwise conferred on a person as consideration for the person being, or agreeing to become, a director of a company, other than a payment for loss of office;
  - “payment for loss of office” has the same meaning as in Chapter 4 of this Part.
- (2) Subsection (3) applies where, in connection with a relevant transfer, a director of a quoted company is—
  - (a) to cease to hold office as director, or
  - (b) to cease to be the holder of—



---

**Enterprise and Regulatory Reform Bill, *continued***

- (i) any other office or employment in connection with the management of the affairs of the company, or
  - (ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.
- (3) If in connection with the transfer—
  - (a) the price to be paid to the director for any shares in the company held by the director is in excess of the price which could at the time have been obtained by other holders of like shares, or
  - (b) any valuable consideration is given to the director by a person other than the company,the excess or, as the case may be, the money value of the consideration is taken for the purposes of section 226C to have been a payment for loss of office.
- (4) In subsection (2), “relevant transfer” means—
  - (a) a transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company;
  - (b) a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid.
- (5) References in this Chapter to the making of a remuneration payment or to the making of a payment for loss of office are to be read in accordance with this section.
- (6) References in this Chapter to a payment by a company include a payment by another person at the direction of, or on behalf of, the company.
- (7) References in this Chapter to a payment to a person (“B”) who is, has been or is to be a director of a company include—
  - (a) a payment to a person connected with B, or
  - (b) a payment to a person at the direction of, or for the benefit of, B or a person connected with B.
- (8) Section 252 applies for the purposes of determining whether a person is connected with a person who has been, or is to be, a director of a company as it applies for the purposes of determining whether a person is connected with a director.
- (9) References in this Chapter to a director include a shadow director but references to loss of office as a director do not include loss of a person’s status as a shadow director.

*Restrictions relating to remuneration or loss of office payments***226B Remuneration payments**

- (1) A quoted company may not make a remuneration payment to a person who is, or is to be, a director of the company unless—
  - (a) the payment is consistent with the approved directors’ remuneration policy, or
  - (b) the payment is approved by resolution of the members of the company.

**Enterprise and Regulatory Reform Bill, *continued***

- (2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

**226C Loss of office payments**

- (1) No payment for loss of office may be made by any person to a person who is, or has been, a director of a quoted company unless—
  - (a) the payment is consistent with the approved directors' remuneration policy, or
  - (b) the payment is approved by resolution of the members of the company.
- (2) The approved directors' remuneration policy is the most recent remuneration policy to have been approved by a resolution passed by the members of the company in general meeting.

**226D Sections 226B and 226C: supplementary**

- (1) A resolution approving a payment for the purposes of section 226B(1)(b) or 226C(1)(b) must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available for inspection by the members of the company—
  - (a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is to be considered, and
  - (b) at that meeting itself.
- (2) The memorandum must explain the ways in which the payment is inconsistent with the approved directors' remuneration policy (within the meaning of the section in question).
- (3) The company must ensure that the memorandum is made available on the company's website from the first day on which the memorandum is made available for inspection under subsection (1) until its next accounts meeting.
- (4) Failure to comply with subsection (3) does not affect the validity of the meeting at which a resolution is passed approving a payment to which the memorandum relates or the validity of anything done at the meeting.
- (5) Nothing in section 226B or 226C authorises the making of a remuneration payment or payment for loss of office in contravention of the articles of the company concerned.
- (6) In this section the "company's website" is the website on which the company makes material available under section 430.

**226E Payments made without approval: civil consequences**

- (1) An obligation (however arising) to make a payment which would be in contravention of section 226B or 226C has no effect.
- (2) Subject to subsections (3) and (4), if a payment is made in contravention of section 226B or 226C—
  - (a) it is held by the recipient on trust for the company or other person making the payment, and
  - (b) in the case of a payment by a company, any director who authorised the payment is jointly and severally liable to

**Enterprise and Regulatory Reform Bill, *continued***

indemnify the company that made the payment for any loss resulting from it.

- (3) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with the transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company, it is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.
- (4) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid—
  - (a) it is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and
  - (b) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by the recipient and not retained out of that sum.

**226F Relationship with requirements under Chapter 4**

- (1) This Chapter does not affect any requirement for approval by a resolution of the members of a company which applies in relation to the company under Chapter 4.
- (2) Where the making of a payment to which section 226B or 226C applies requires approval by a resolution of the members of the company concerned under Chapter 4, approval obtained for the purposes of that Chapter is to be treated as satisfying the requirements of section 226B(1)(b) or (as the case may be) 226C(1)(b).’.

*Payments to directors: minor and consequential amendments*

Norman Lamb

NC7

To move the following Clause:—

- (1) The Companies Act 2006 is amended as follows.
- (2) In section 180 (consent, approval or authorisation by members)—
  - (a) in subsection (2), in the words before paragraph (a)—
    - (i) after “Chapter 4” insert “or 4A”, and
    - (ii) for “that Chapter” substitute “either of those Chapters”,
  - (b) in that subsection, in paragraph (a), for “that Chapter” substitute “the Chapter concerned”, and
  - (c) in subsection (3), after “Chapter 4” insert “or 4A”.
- (3) In section 190 (substantial property transactions: requirement of members’ approval), in subsection (6)(b), for the words in brackets substitute “(payments to which the requirements of Chapter 4 or 4A apply)”.
- (4) In section 215 (payments for loss of office), after subsection (4) insert—

**Enterprise and Regulatory Reform Bill, *continued***

- “(5) Nothing in this section or sections 216 to 222 applies in relation to a payment for loss of office to a director of a quoted company.”
- (5) Section 430 (quoted companies: annual accounts and reports to be made available on website) is amended as follows.
- (6) After subsection (2) insert—
- “(2A) If the directors’ remuneration policy of a quoted company is revised in accordance with section 422A, the company must ensure that the revised policy is made available on the website on which its annual accounts and reports are made available.
- (2B) If a person ceases to be a director of a quoted company, the company must ensure that the following information is made available on the website on which its annual accounts and reports are made available—
- (a) the name of the person concerned, and
- (b) particulars of any payment for loss of office (within the meaning of Chapter 4A of Part 10) made to the person, including its amount and how it was calculated.”
- (7) In subsection (3) —
- (a) for “the annual accounts and reports on the website” substitute “the material made available on the website under subsections (1) to (2B)”, and
- (b) for “the annual accounts and reports from” substitute “such material from”.
- (8) After subsection (4) insert—
- “(4A) Where subsection (2A) or (2B) applies, the material in question—
- (a) must be made available as soon as reasonably practicable, and
- (b) must be kept available until the next directors’ remuneration report of the company is made available on the website.”
- (9) In subsection (5)—
- (a) in the words before paragraph (a), for the words from “the annual accounts and reports” to “that period” substitute “material available on a website throughout the period mentioned in subsection (4) or (as the case may be) (4A)”, and
- (b) in paragraph (a) for “the annual accounts and reports are” substitute “the material is”.
- (10) In section 440 (quoted companies: offences in connection with procedure for approval)—
- (a) in subsection (1) —
- (i) after “section 439(1)” insert “or 439A(1) or (2)”, and
- (ii) in the words in brackets, after “report” insert “or policy”,
- (b) in subsection (2), for “the accounts meeting” substitute “the meeting to which it relates”, and
- (c) in subsection (5), omit the definition of “the accounts meeting”.
- (11) In Schedule 8 (in the index of defined expressions), at the appropriate places insert—

“directors’ remuneration policy (in Chapter 4A of Part 10)	section 226A(1)”
---	------------------

---

 Enterprise and Regulatory Reform Bill, *continued*

“payment for loss of office (in Chapter 4A of Part 10)	section 226A(1)”
--	------------------

“remuneration payment (in Chapter 4A of Part 10)	section 226A(1)”.
--	-------------------

---

*Directors’ remuneration reports and payments to directors: transitional provision*

Norman Lamb

NC8

To move the following Clause:—

- (1) Subsection (2) of section 439A of the Companies Act 2006 (as inserted by section (*Payments to directors: members’ approval of directors’ remuneration policy*)(4) of this Act) does not apply in relation to a company prior to the holding of the meeting mentioned in subsection (1)(a) of that section of that Act of 2006.
  - (2) Chapter 4A of Part 10 of the Companies Act 2006 (as inserted by section (*Payments to directors of quoted companies*)) does not apply in relation to remuneration payments or payments for loss of office made by a company before the earlier of—
    - (a) the end of the first financial year of the company to begin after the coming into force of that section of this Act, and
    - (b) the date from which the first directors’ remuneration policy to be approved under section 439A of the Companies Act 2006 (as inserted by section (*Payments to directors: members’ approval of directors’ remuneration policy*)(4) of this Act) takes effect.
  - (3) Chapter 4A of Part 10 of the Companies Act 2006 does not apply in relation to remuneration payments or payments for loss of office that are required to be made under an agreement entered into before 27 June 2012 or in consequence of any other obligation arising before that date.
  - (4) An agreement entered into, or any other obligation arising, before 27 June 2012 that is modified or renewed on or after that date is to be treated for the purposes of subsection (3) as having been entered into or (as the case may be) as having arisen on the date on which it was modified or renewed.
  - (5) The amendment made by section (*Payments to directors: minor and consequential amendments*)(4) does not apply in relation to a payment for loss of office to which subsection (2) or (3) of this section applies.’.
-

---

**Enterprise and Regulatory Reform Bill, *continued****Permission to borrow from the capital markets*

Caroline Lucas

NC1

To move the following Clause:—

- (1) The Green Investment Bank may borrow funds on the capital markets.
  - (2) There shall be a duty on HM Treasury to provide such assistance and take such steps as required to allow the Green Investment Bank to carry out functions under subsection (1).’.
- 

*General disclosure requirements*Mr Iain Wright  
Ian Murray  
Chi Onwurah

NC4

To move the following Clause:—

‘The Freedom of Information Act 2000 (c.36) is amended as follows—  
In Part VI of Schedule 1, after the words “The Great Britain China Centre”,  
insert—  
“The UK Green Investment Bank”.’.

---

*Small business super complainants*Mr Iain Wright  
Ian Murray  
Chi Onwurah

NC9

To move the following Clause:—

- (1) Section 183 of the 2002 Act is amended as follows:
  - (2) For subsection (1)(b), after “him”, insert “except for any business with fewer than 50 employees or a number to be set out in an order by the Secretary of State.”’.
-

---

**Enterprise and Regulatory Reform Bill, *continued***

*Mergers: duty to take account of longer-term competitiveness in considering whether to make references*

Mr Iain Wright  
Ian Murray  
Chi Onwurah

NC10

★ To move the following Clause:—

- (1) Section 33 of the Enterprise Act 2002 is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) When considering whether or not a situation results in a substantial lessening of competition for the purposes of (1) above, the CMA shall take into account the longer-term ability of the merged entity to compete effectively.”.
- (3) Section 22 of the Enterprise Act 2002 is amended as follows.
- (4) After subsection (1) insert—
  - “(1A) When considering whether or not a situation results in a substantial lessening of competition for the purposes of (1) above, the CMA shall take into account the longer-term ability of the merged entity to compete effectively.”.

---

**ORDER OF THE HOUSE [11 JUNE 2012]**

That the following provisions shall apply to the Enterprise and Regulatory Reform Bill—

*Committal*

1. The Bill shall be committed to a Public Bill Committee.

*Proceedings in Public Bill Committee*

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Tuesday 17 July 2012.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

*Consideration and Third Reading*

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and Third Reading.

---

**Enterprise and Regulatory Reform Bill, *continued***
*Other proceedings*

7. Any other proceedings on the Bill (including any proceedings on consideration of Lords Amendments or on any further messages from the Lords) may be programmed.
- 

## ORDER OF THE COMMITTEE [19 JUNE 2012]

That—

- (1) the Committee shall (in addition to its first meeting at 10.30 am on Tuesday 19 June) meet—
- (a) at 4.00 pm on Tuesday 19 June;
  - (b) at 9.00 am on Thursday 21 June;
  - (c) at 10.30 am and 4.00 pm on Tuesday 26 June;
  - (d) at 9.00 am and 1.00 pm on Thursday 28 June;
  - (e) at 10.30 am and 4.00 pm on Tuesday 3 July;
  - (f) at 9.00 am and 1.00 pm on Thursday 5 July;
  - (g) at 10.30 am and 4.00 pm on Tuesday 10 July;
  - (h) at 9.00 am and 1.00 pm on Thursday 12 July;
  - (i) at 10.30 am and 4.00 pm on Tuesday 17 July;
- (2) the Committee shall hear oral evidence in accordance with the following Table:

**TABLE**

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Tuesday 19 June	Until no later than 11.15 am	Confederation of British Industry; EEF; Institute of Directors
Tuesday 19 June	Until no later than 11.45 am	British Chambers of Commerce; Federation of Small Businesses
Tuesday 19 June	Until no later than 1.00 pm	Trades Union Congress; Unite; GMB
Tuesday 19 June	Until no later than 4.45 pm	Association of British Insurers; Hermes Equity Ownership Services Ltd.; National Association of Pension Funds
Tuesday 19 June	Until no later than 5.45 pm	Chartered Institute of Personnel and Development; Free Representation Unit; Public Concern at Work; Advisory, Conciliation and Arbitration Service
Tuesday 19 June	Until no later than 6.15 pm	Equality and Human Rights Commission
Thursday 21 June	Until no later than 9.30 am	Citizens Advice; Professor Sir John Vickers (Warden, All Souls College, Oxford)
Thursday 21 June	Until no later than 10.25 am	Law Society; Law Society of Scotland; Allen & Overy LLP; Simpson Millar LLP



---

**Enterprise and Regulatory Reform Bill, *continued***

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Thursday 21 June	Until no later than 11.25 am	Malcolm Nicholson (Reporting Panel Member, Competition Commission); City of London Law Society; Professor Catherine Waddams (Professor of Regulation, University of East Anglia)
Thursday 21 June	Until no later than 12 noon	RenewableUK; E3G; Friends of the Earth
Thursday 21 June	Until no later than 1.15 pm	Local Government Association; Trading Standards Institute; West Yorkshire Joint Services; British Retail Consortium
Thursday 21 June	Until no later than 2.15 pm	Sir David Walker (author of 'Walker Review of Corporate Governance of UK Banking Industry'); High Pay Centre; Adrian Beecroft (author of Beecroft report on employment law)

- (3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 7; Schedule 1; Clause 8; Schedule 2; Clauses 9 to 13; Schedule 3; Clauses 14 to 18; Schedule 4; Clause 19; Schedules 5 and 6; Clause 20; Clause 24; Schedule 8; Clauses 21 and 22; Schedule 7; Clause 23; Clauses 25 and 26; Schedule 9; Clause 30; Schedule 12; Clause 28; Schedule 11; Clause 27; Schedule 10; Clause 29; Clauses 31 to 33; Schedule 13; Clauses 34 to 43; Schedule 14; Clauses 44 to 47; Schedule 15; Clauses 48 to 50; Schedule 16; Clauses 51 to 54; Schedule 17; Clauses 55 to 63; new Clauses, new Schedules; remaining proceedings on the Bill;
- (4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 8.00 pm on Tuesday 17 July.
-