



# House of Commons

Tuesday 17 July 2012

## PUBLIC BILL COMMITTEE PROCEEDINGS

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### ENTERPRISE AND REGULATORY REFORM BILL

*[SIXTEENTH AND SEVENTEENTH SITTINGS]*

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Norman Lamb

*Not selected* 56

Page 46, line 34, leave out Clause 57.

*Clause agreed to.*

*Clauses 58 to 61 agreed to.*

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Caroline Lucas

*Not selected* 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.’

*Clause agreed to.*

*Clause 63 agreed to.*

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### NEW CLAUSES

#### *Confidentiality of negotiations before termination of employment*

Norman Lamb

*Read a second time on division, and added* NC2

To move the following Clause:—

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

**Enterprise and Regulatory Reform Bill, *continued*****“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.”.

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

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Negated on division (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

*Negated on division (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.’.

**Enterprise and Regulatory Reform Bill, continued***Payments to directors: members' approval of directors' remuneration policy*

Norman Lamb

Added NC5

To move the following Clause:—

- (1) In section 421 of the Companies Act 2006 (contents of directors' remuneration report) after subsection (2) insert—

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“(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—

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**“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.

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- (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—

- (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.

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- (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).”

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- (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**

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- (1) A quoted company must give notice of the intention to move, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy—

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- (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

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- (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.

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

- (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—
- 45 (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.
- 50 (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
- 55 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
- 60 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—
- 65 (a) in a case where notice is given in relation to an accounts meeting, the remuneration policy contained in the directors' remuneration 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—
- 70 (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
- 75 (ii) where that policy has been revised in accordance with section 422A, the policy as so revised.
- (7) In this section—
- 80 (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).".

As Amendments to Norman Lamb's proposed New Clause (*Payments to directors: members' approval of directors' remuneration policy*) (NC5):—

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

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

*Not called* (a)

Line 7, at end insert—

‘(2B) The regulations must include information regarding the 10 highest paid employees in the company outside of the board and executive committee’.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

*Negated on division* (b)

Leave out lines 33 to 41.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

*Not called* (c)

Leave out lines 42 to 52.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

*Not called* (d)

Leave out lines 56 to 61.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

*Not called* (e)

Leave out lines 68 to 76 and insert—

‘(6A) The resolution under subsection (1) in respect of directors’ remuneration policy must obtain the approval of 75 per cent. of members on the share register of the quoted company.’

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

*Not called* (g)

Line 83, at end add—

‘(5) In section 412 of the Companies Act 2006 (Information about directors’ benefit: remuneration), after subsection (2)(e) insert—

“(2) (f) disclosure of fees paid to recruitment consultants in respect of recruitment consultancy work and non-recruitment consultancy work for the company in the last year.”.

Mr Iain Wright  
 Ian Murray  
 Chi Onwurah

*Not called* (i)

☆ Line 83, at end add—

‘(6) The Secretary of State shall, within three months of the passing of this Act, make provision by regulations under section 1277 of the Companies Act 2006 requiring

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

the provision of information about the exercise of voting rights in respect of directors' remuneration policy.'

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Negatived on division (j)*

☆ Line 83, at end add—

'(7) After section 227 of the Companies Act 2006 (Directors' service contracts), insert the following new section—

**"227A Appointment of remuneration consultants of public company**

- (1) Remuneration consultants may be appointed for each financial year of the company.
- (2) For each financial year for which a remuneration consultant or consultants is or are to be appointed (other than the company's first financial year), the appointment must be made before the end of the accounts meeting of the company at which the company's annual accounts and reports for the previous financial year are laid.
- (3) The directors may appoint a remuneration consultant or consultants of the company—
  - (a) at any time before the company's first accounts meeting;
  - (b) to fill a casual vacancy in the office of remuneration consultant.
- (4) The members may appoint a remuneration consultant or consultants by ordinary resolution—
  - (a) at an accounts meeting;
  - (b) if the company should have appointed a remuneration consultant or consultants at an accounts meeting but failed to do so;
  - (c) where the directors had power to appoint under subsection (3) but have failed to make an appointment.
- (5) A remuneration consultant or consultants of a public company may only be appointed in accordance with this section.
- (6) In this section a "remuneration consultant" means a person who is appointed to advise on the terms of directors' service contracts.'.

*Payments to directors of quoted companies*

Norman Lamb

*Added NC6*

To move the following Clause:—

'After section 226 of the Companies Act 2006 insert—

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

## “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—
    - (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

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

- (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.
- (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



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

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 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

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

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

*Added 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—
 

“(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

**Enterprise and Regulatory Reform Bill, continued**

- (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)"
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"payment for loss of office (in Chapter 4A of Part 10)	section 226A(1)"
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"remuneration payment (in Chapter 4A of Part 10)	section 226A(1)".
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*Directors' remuneration reports and payments to directors: transitional provision*

Norman Lamb

*Added 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

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

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.'.

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*Power to reduce duration of copyright in transitional cases*

Norman Lamb

*Added NC11*

To move the following Clause:—

- '(1) Section 170 of the Copyright, Designs and Patents Act 1988 (transitional provisions and savings) is amended as follows.
- (2) At the beginning insert "(1)".
- (3) At the end insert—
  - “(2) The Secretary of State may by regulations amend Schedule 1 to reduce the duration of copyright in existing works which are—
    - (a) unpublished, or
    - (b) published but anonymous or pseudonymous.
  - (3) The regulations may provide for the copyright to expire on the commencement of the regulations or at any later time.
  - (4) “Existing works” has the same meaning as in Schedule 1.
  - (5) Regulations under subsection (2) may—
    - (a) make supplementary or transitional provision;
    - (b) make consequential provision, including provision amending any enactment or subordinate legislation passed or made before that subsection comes into force.
  - (6) The power to make regulations under subsection (2) is exercisable by statutory instrument.

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

- (7) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.”’.

*Penalties under provision implementing Directive on term of protection*

Norman Lamb

*Added NC12*

To move the following Clause:—

5 ‘Paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 (limitation on criminal penalties) does not apply for the purposes of provision under section 2(2) of that Act implementing Directive 2011/77/EU amending Directive 2006/116/EC on the term of protection of copyright and certain related rights.’.

As an Amendment to Norman Lamb’s proposed New Clause (*Penalties under provision implementing Directive on term of protection*) (NC12):—

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Withdrawn (a)*

Line 3, leave out from ‘implementing’ to end and insert ‘acts which may be done in relation to copyright works notwithstanding the subsistence of copyright.’.

*Licensing of copyright and performers’ rights*

Norman Lamb

*Added NC13*

To move the following Clause:—

- ‘(1) The Copyright, Designs and Patents Act 1988 is amended as follows.  
(2) In section 116 (licensing schemes and licensing bodies) after subsection (4) insert—  
“(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.”  
(3) After section 116 insert—

*“Orphan works licensing and extended collective licensing***116A Power to provide for licensing of orphan works**

- (1) The Secretary of State may by regulations provide for the grant of licences in respect of works that qualify as orphan works under the regulations.

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

- (2) The regulations may—
  - (a) specify a person or a description of persons authorised to grant licences, or
  - (b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences
- (3) The regulations must provide that, for a work to qualify as an orphan work, it is a requirement that the owner of copyright in it has not been found after a diligent search made in accordance with the regulations.
- (4) The regulations may provide for the granting of licences to do, or authorise the doing of, any act restricted by copyright that would otherwise require the consent of the missing owner.
- (5) The regulations must provide for any licence—
  - (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (6) The regulations may apply to a work although it is not known whether copyright subsists in it, and references to a missing owner and a right or interest of a missing owner are to be read as including references to a supposed owner and a supposed right or interest.

**116B Extended collective licensing**

- (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant copyright licences in respect of works in which copyright is not owned by the body or a person on whose behalf the body acts.
- (2) An authorisation must specify—
  - (a) the types of work to which it applies, and
  - (b) the acts restricted by copyright that the licensing body is authorised to license.
- (3) The regulations must provide for the copyright owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.
- (5) In this section “copyright licences” has the same meaning as in section 116.
- (6) Nothing in this section applies in relation to Crown copyright or Parliamentary copyright.

**116C General provision about licensing under sections 116A and 116B**

- (1) This section and section 116D apply to regulations under sections 116A and 116B.
- (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.

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

- (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.
- (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—
  - (a) the deduction of administrative costs;
  - (b) the period for which sums must be held;
  - (c) the treatment of sums after that period (as *bona vacantia* or otherwise).
- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
- (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—
  - (a) for determining the rights and obligations of any person if a work ceases to qualify as an orphan work (or ceases to qualify by reference to any copyright owner), or if a rights owner exercises the right referred to in section 116B(3), while a licence is in force;
  - (b) about maintenance of registers and access to them;
  - (c) permitting the use of a work for incidental purposes including an application or search;
  - (d) for a right conferred by section 77 to be treated as having been asserted in accordance with section 78;
  - (e) for the payment of fees to cover administrative expenses.

**116D Regulations under sections 116A and 116B**

- (1) The power to make regulations includes power—
    - (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
    - (b) to make transitional, transitory or saving provision;
    - (c) to make different provision for different purposes.
  - (2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
  - (3) Regulations may make provision by reference to guidance issued from time to time by any person.
  - (4) The power to make regulations is exercisable by statutory instrument.
  - (5) A statutory instrument containing regulations that amend an enactment may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
  - (6) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (4) Schedule [*Licensing of copyright and performers' rights*] (which inserts Schedule A1 to the Copyright, Designs and Patents Act 1988 and makes

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

provision in relation to performers' rights corresponding to provision made by this section in relation to copyright) has effect.'.

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*Permission to borrow from the capital markets*

Caroline Lucas

*Not selected* **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).'
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*General disclosure requirements*

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Not called* **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".'

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*Small business super complainants*

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Not called* **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."'
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**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

*Not called* 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.”.

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*Commission for Equality and Human Rights—Independence from Government*

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Not called* NC14

To move the following Clause:—

‘Schedule [Commission for Equality and Human Rights—independence from Government] has effect in order to improve the effectiveness of the Commission in exercising its functions under Part 1 of the Equality Act 2006.’.

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*Sharing and viewing on the internet*

Fiona O’Donnell

*Not called* NC15

To move the following Clause:—

- (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In Part 1 (copyright) after section 30 (in the general provisions) insert the following new section—

**Enterprise and Regulatory Reform Bill, *continued*****“30A Sharing and viewing on the internet**

Where work is made available to the public at a particular web address with the permission of the owner of the copyright in that work, copyright shall not be infringed by—

- (a) any circulation of that web address, or of its title, or of another web address that redirects to that web address;
- (b) the downloading of any data required to display that work at that address, and any subsequent processing of that data, including processing for display, provided that it does not result in any publication elsewhere of the work or an adaptation of the work.”’.

*Material available to the public under freedom of information*

Fiona O’Donnell

*Not called* **NC16**

To move the following Clause:—

- ‘(1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In Part 1 (copyright) after section 47 (in the provisions relating to public administration) insert the following new section—

**“47A Material available to the public under freedom of information**

- (1) Where material has been communicated to the public, pursuant to a freedom of information provision, any copyright in the material as a literary work is not infringed by the copying of so much of the material as contains factual information of any description for a purpose which does not involve the issuing of copies to the public.
- (2) Where material has been communicated to the public, pursuant to a freedom of information provision, copyright is not infringed by the copying or communicating to the public of the material, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of the right conferred by section 1 of that Act.
- (3) Where material which has been communicated to the public, pursuant to a freedom of information provision, contains information about matters of general scientific, technical, commercial or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material, for the purpose of disseminating that information.
- (4) The Secretary of State may by order provide that subsection (1), (2) or (3) shall, in such cases as may be specified in the order, apply only to copies marked in such manner as may be so specified.
- (5) In this section, “freedom of information provision” means—
  - (a) section 1 of the Freedom of Information Act 2000;
  - (b) section 1 of the Freedom of Information (Scotland) Act 2000;
 and

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

- (c) regulation 5 of the Environmental Information Regulations 2004.
- (6) The Secretary of State may by order add further provisions to subsection (5) above.
- (7) An Order under this section shall be made by Statutory Instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

*Remuneration committees and non-executive directors*

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Second reading negated on division* **NC17**

To move the following Clause:—

- ‘(1) The Secretary of State will provide for a requirement that an employee representative should be a member of the remuneration committee of a relevant body corporate.
- (2) The Secretary of State will provide for a requirement that companies must demonstrate that non-executive directors on boards and remuneration committees are drawn from a diverse background.
- (3) Companies must demonstrate that they are widening their search for non-executive committees.
- (4) Companies must report how they are widening their search for non-executive directors in their annual report.’.

*High Pay Commission*

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Second reading negated on division* **NC18**

To move the following Clause:—

- ‘(1) The Secretary of State will establish the High Pay Commission for the purposes of fulfilling subsection (2).
- (2) The High Pay Commission will assess and make recommendations to the Secretary of State and to Parliament relating to—
- (a) the level of directors’ remuneration;
  - (b) directors’ remuneration relative to the median of wages in the United Kingdom;
  - (c) the nature of remuneration packages provided to directors; and
  - (d) the relationship between directors’ remuneration and performance of companies in the United Kingdom.

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

- (3) The membership of the High Pay Commission shall be decided by the Secretary of State and subject to approval by the House of Commons.
- (4) Membership may be, but not confined to, representatives from—
  - (a) businesses;
  - (b) business representative organisations;
  - (c) trade unions; and
  - (d) civic society organisations.
- (5) The Secretary of State will provide resources as required to enable the High Pay Commission to fulfil its objects as set out in subsection 2.
- (6) The High Pay Commission will, on an annual basis, prepare and provide a report to the Secretary of State on issues affecting directors' remuneration as set out in subsection 2 and make recommendations on the effective operation and reporting of companies' legislation relating to directors' remuneration.'

*Osborne estate*

Mr Andrew Turner

*Not selected* NC19

To move the following Clause:—

- '(1) Section 1 of the Osborne Estate Act 1902 (c.37) (estate to be part of hereditary revenues of Crown etc) is amended in accordance with subsections (2) to (4).
- (2) In subsection (3) (certain land to be managed as if it had been committed to the management of the Commissioners of Works under section 22 of the Crown Lands Act 1851 (c.42) (royal parks, gardens etc)) the words "as if it had been committed to their management under section twenty-two of the Crown Lands Act 1851" shall cease to have effect.
- (3) Subsection (4)(b) (which requires part of Osborne House and grounds to be used for the benefit of officers of Her Majesty's naval or military forces or their wives, widows or family) shall cease to have effect.
- (4) Omit the following provisions (which relate to land no longer forming part of the Osborne estate)—
  - (a) in subsection (3) , the words from "and the part" to "Barton House and grounds"; and
  - (b) in subsection (4), the second sentence.
- (5) The Secretary of State accordingly—
  - (a) continues to manage Osborne House, and such other parts of the Osborne estate as are from time to time under his management, in accordance with the provisions as to management in section 1(3) of the Osborne Estate Act 1902, but
  - (b) does so in accordance with that provision as amended by this section.
- (6) In managing Osborne House as described in subsection (5), the Secretary of State must ensure that the royal apartments continue to be preserved and kept open to the public as described in section 1(4)(a) of the Osborne Estate Act 1902.
- (7) In this section "the Osborne estate" means the estate described in the plans deposited with the Clerk of the Parliaments and the Clerk of the House of Commons as described in the preamble to the Osborne Estate Act 1902 (c.37).
- (8) In consequence of the provision made by subsection (3), the Osborne Estate Act 1914 (c.36) (which makes provision for extending the descriptions of person for

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

whose benefit the part of the House and grounds there mentioned is to be used shall cease to have effect.

- (9) The enactments mentioned in the Schedule [Osborne Estate-repeals] are repealed to the extent there specified.’.

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*NEW SCHEDULES*

Norman Lamb

*Added* NS1

To move the following Schedule:—

‘LICENSING OF COPYRIGHT AND PERFORMERS’ RIGHTS

PART 1

REGULATION OF LICENSING BODIES

- 1 In the Copyright, Designs and Patents Act 1988, before Schedule 1 insert—

“SCHEDULE A1

REGULATION OF LICENSING BODIES

*Codes of practice*

- 1 (1) The Secretary of State may by regulations make provision for a licensing body to be required to adopt a code of practice that complies with criteria specified in the regulations.
- (2) In relation to a licensing body that fails to adopt a code of practice that it is required to adopt under provision within sub-paragraph (1), the regulations may provide for a code of practice approved by the Secretary of State or by a person designated by the Secretary of State under the regulations to have effect as a code of practice adopted by the body.
- 2 Regulations under paragraph 1 may make provision as to conditions that are to be satisfied, and procedures that are to be followed—
- (a) before a licensing body is required to adopt a code of practice as described in paragraph 1(1);
- (b) before a code of practice has effect as one adopted by a licensing body as described in paragraph 1(2).

*Licensing code ombudsman*

- 3 (1) The Secretary of State may by regulations make provision—
- (a) for the appointment of a person (the “licensing code ombudsman”) to investigate and determine disputes about a licensing body’s compliance with its code of practice;
- (b) for the reference of disputes to the licensing code ombudsman;
- (c) for the investigation and determination of a dispute so referred.

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

- (2) Provision made under this paragraph may in particular include provision—
- (a) about eligibility for appointment as the licensing code ombudsman;
  - (b) about the disputes to be referred to the licensing code ombudsman;
  - (c) requiring any person to provide information, documents or assistance to the licensing code ombudsman for the purposes of an investigation or determination;
  - (d) requiring a licensing body to comply with a determination of the licensing code ombudsman;
  - (e) about the payment of expenses and allowances to the licensing code ombudsman.

*Code reviewer*

- 4 (1) The Secretary of State may by regulations make provision—
- (a) for the appointment by the Secretary of State of a person (the “code reviewer”) to review and report to the Secretary of State on—
    - (i) the codes of practice adopted by licensing bodies, and
    - (ii) compliance with the codes of practice;
  - (b) for the carrying out of a review and the making of a report by that person.
- (2) The regulations must provide for the Secretary of State, before appointing a person as the code reviewer, to consult persons whom the Secretary of State considers represent the interests of licensing bodies, licensees, members of licensing bodies, and the Intellectual Property Office.
- (3) The regulations may, in particular, make provision—
- (a) requiring any person to provide information, documents or assistance to the code reviewer for the purposes of a review or report;
  - (b) about the payment of expenses and allowances to the code reviewer.
- (4) In this paragraph “member”, in relation to a licensing body, means a person on whose behalf the body is authorised to negotiate or grant licences.

*Sanctions*

- 5 (1) The Secretary of State may by regulations provide for the consequences of a failure by a licensing body to comply with—
- (a) a requirement to adopt a code of practice under provision within paragraph 1(1);
  - (b) a code of practice that has been adopted by the body in accordance with a requirement under provision within paragraph 1(1), or that has effect as one adopted by the body under provision within paragraph 1(2);

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

- (c) a requirement imposed on the body under any other provision made under this Schedule;
  - (d) an authorisation under regulations under section 116A or 116B;
  - (e) a requirement imposed by regulations under section 116A or 116B;
  - (f) an authorisation under regulations under paragraph 1A or 1B of Schedule 2A;
  - (g) a requirement imposed by regulations under paragraph 1A or 1B of that Schedule.
- (2) The regulations may in particular provide for—
- (a) the imposition of financial penalties or other sanctions;
  - (b) the imposition of sanctions on a director, manager or similar officer of a licensing body or, where the body's affairs are managed by its members, on a member.
- (3) The regulations may include provision—
- (a) for determining whether there has been a failure to comply with a requirement or code of practice for the purposes of sub-paragraph (1);
  - (b) for determining any sanction that may be imposed in respect of the failure to comply;
  - (c) for an appeal against the imposition of any such sanction.
- (4) A financial penalty imposed under sub-paragraph (2) must not be greater than £50,000.
- (5) The regulations may provide for a determination within sub-paragraph (3)(a) or (3)(b) to be made by the Secretary of State or by a person designated by the Secretary of State under the regulations.
- (6) The regulations may make provision for requiring a person to give the person by whom a determination within sub-paragraph (3)(a) falls to be made (the “adjudicator”) any information that the adjudicator reasonably requires for the purpose of making that determination.

*Fees*

- 6 (1) The Secretary of State may by regulations require a licensing body to which regulations under any other paragraph of this Schedule apply to pay fees to the Secretary of State.
- (2) The aggregate amount of fees payable under the regulations must not be more than the cost to the Secretary of State of administering the operation of regulations under this Schedule.

*General*

- 7 (1) The power to make regulations under this Schedule includes in particular power—
- (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;

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

- (b) to make provision for bodies of a particular description, or carrying out activities of a particular description, not to be treated as licensing bodies for the purposes of requirements imposed under regulations under this Schedule;
  - (c) to make provision that applies only in respect of licensing bodies of a particular description, or only in respect of activities of a particular description;
  - (d) otherwise to make different provision for different purposes.
- (2) Regulations under a paragraph of this Schedule may amend this Part or Part 2, or any other enactment or subordinate legislation passed or made before the paragraph in question comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
- (3) Regulations may impose requirements by reference to guidance issued from time to time by any person.
- (4) The power to make regulations is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations that amend an enactment may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- 8 References in this Schedule to a licensing body are to a body that is a licensing body for the purposes of this Chapter or for the purposes of Chapter 2 of Part 2, and references to licensees are to be construed accordingly.”

## PART 2

## PERFORMERS’ RIGHTS

- 1 Schedule 2A to the Copyright, Designs and Patents Act 1988 (licensing of performers’ property rights) is amended as follows.
- 2 In the heading of the Schedule omit “property”.
- 3 In paragraph 1, after sub-paragraph (4) insert—
- “(5) Schedule A1 confers powers to provide for the regulation of licensing bodies.”
- 4 After paragraph 1 insert—

*“Orphan rights licensing and extended collective licensing*

- 1A (1) The Secretary of State may by regulations provide for the grant of licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where—



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

- (a) the performer's consent would otherwise be required under that section, but
    - (b) the right to authorise or prohibit the act qualifies as an orphan right under the regulations.
  - (2) The regulations may—
    - (a) specify a person or a description of persons authorised to grant licences, or
    - (b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences.
  - (3) The regulations must provide that, for a right to qualify as an orphan right, it is a requirement that the owner of the right has not been found after a diligent search made in accordance with the regulations.
  - (4) The regulations must provide for any licence—
    - (a) to have effect as if granted by the missing owner;
    - (b) not to give exclusive rights;
    - (c) not to be granted to a person authorised to grant licences.
  - (5) The regulations may apply in a case where it is not known whether a performer's right subsists, and references to a right, to a missing owner and to an interest of a missing owner are to be read as including references to a supposed right, owner or interest.
- 1B
- (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where the right to authorise or prohibit the act is not owned by the body or a person on whose behalf the body acts.
  - (2) An authorisation must specify the acts to which any of those sections applies that the licensing body is authorised to license.
  - (3) The regulations must provide for the rights owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
  - (4) The regulations must provide for any licence not to give exclusive rights.
- 1C
- (1) This paragraph and paragraph 1D apply to regulations under paragraphs 1A and 1B.
  - (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.
  - (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.
  - (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—
    - (a) the deduction of administrative costs;

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

- (b) the period for which sums must be held;
  - (c) the treatment of sums after that period (as bona vacantia or otherwise).
- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
- (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—
- (a) for determining the rights and obligations of any person if a right ceases to qualify as an orphan right (or ceases to qualify by reference to any rights owner), or if a rights owner exercises the right referred to in paragraph 1B(3), while a licence is in force;
  - (b) about maintenance of registers and access to them;
  - (c) permitting the use of a work for incidental purposes including an application or search;
  - (d) for a right conferred by section 205C to be treated as having been asserted under section 205D;
  - (e) for the payment of fees to cover administrative expenses.
- 1D (1) The power to make regulations includes power—
- (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;
  - (b) to make transitional, transitory or saving provision;
  - (c) to make different provision for different purposes.
- (2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.
- (3) Regulations may make provision by reference to guidance issued from time to time by any person.
- (4) The power to make regulations is exercisable by statutory instrument.
- (5) A statutory instrument containing regulations that amend an enactment may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.”

**Enterprise and Regulatory Reform Bill, continued**

- 5 In section 205A of the Copyright, Designs and Patents Act 1988, and in the italic heading before that section (licensing of performers' property rights), omit "property".'

Mr Iain Wright  
Ian Murray  
Chi Onwurah

*Not called* NS2

To move the following Schedule:—

'COMMISSION FOR EQUALITY AND HUMAN RIGHTS-INDEPENDENCE FROM GOVERNMENT

- 1 Schedule 1 to the Equality Act 2006 is amended as follows.
- 2 Replace all reference to "Secretary of State" with "both Houses of Parliament".'

Mr Andrew Turner

*Not selected* NS3

To move the following Schedule:—

'OSBORNE ESTATE—REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Osborne Estate Act 1902 (c. 37)	In section 1(3)— (a) the words from "and the part" to "Barton House and grounds"; and (b) the words "as if it had been committed to their management under section twenty-two of the Crown Lands Act 1851".  In section 1(4)— (a) paragraph (b) and the word "and" immediately preceding it; and (b) the second sentence.
Osborne Estate Act 1914 (c. 36)	The whole Act.'

*Bill, as amended, to be reported.*