GROCERIES CODE ADJUDICATOR BILL [LORDS]

Clause 2, page 1, line 11, at end add—

'(3) Where the adjudicator is appointing an arbitrator the following must be taken into account—

(a) the location of the arbitration considering the convenience of the supplier;

(b) the qualifications of the arbitrator;

(c) the experience of the arbitrator; and

(d) the awareness which the arbitrator has of

(i) the laws applying in—

(a) England and Wales;

(b) Scotland; and

(c) Northern Ireland; and

(ii) the market and economic conditions applying in—

(a) England and Wales;

(b) Scotland; and

(c) Northern Ireland.’.
Clawse 4, page 2, line 5, leave out subsection (1) and insert—

'(1) The Adjudicator may carry out an investigation where there are reasonable grounds to suspect that a large retailer has—

(a) broken the Groceries Code; or
(b) failed to follow a recommendation made under section 7; or
(c) failed to incorporate the Groceries Code into a supply agreement, as required under Article 5 of the Groceries Supply Order.'.

Andrew George

Clause 4, page 2, line 7, after ‘Code’, insert ‘since the Code since came into force.’.

Ian Murray
Huw Irranca-Davies

Clause 4, page 2, line 10, at end insert—

‘(2A) The powers to require provision of information as set out in Schedule 2 shall be exercisable from the day on which this Act is passed.’.

Andrew George

Clause 4, page 2, line 12, at end add—

‘(4) The Adjudicator will have authority to review compliance and to undertake one or more investigations if the Adjudicator suspects that there has been any breach of the Groceries Code since that Code came into force on 4 February 2010.’.

Ian Murray
Huw Irranca-Davies

Clause 5, page 2, line 21, at end insert—

‘(d) any finding that an investigation should be referred to the Office of Fair Trading on the basis that a large retailer is believed to have engaged in anti-competitive practices.’.

Andrew George

Clause 6, page 2, line 26, leave out from ‘that’ to end of line 28 and insert ‘any of the grounds for launching an investigation under section 4(1) has in fact occurred, the Adjudicator may take one or more of the following enforcement measures—’.
Andrew George

Clause 7, page 2, line 33, leave out subsection (1) and insert—

‘(1) If the Adjudicator chooses to enforce through making recommendations, that means—

(a) in the case that a retailer has been found to have broken the Groceries Code, or has failed to follow a previous recommendation made under this section, recommending what the large retailer should do in order to comply with the Groceries Code; and

(b) in the case that a retailer has been found to have failed to incorporate the Groceries Code into a Supply Agreement, as required under Article 5 of the Groceries Supply Order, recommending what the large retailer should do in order to comply with Article 5 of the Groceries Supply Order.’.

Andrew George

☆ Clause 7, page 2, line 36, at end insert—

‘(2A) If the Adjudicator determines that a recommendation has not been, or is not being, followed, the Adjudicator may issue a requirement notice to the large retailer in which the Adjudicator may set out one or more recommendations with which the large retailer must comply. Such requirement notice may in the Adjudicator’s discretion contain a time period for compliance and an indication of which other form of enforcement the Adjudicator envisages might be imposed in the event of continued non-compliance.’.

Ian Murray
Huw Irranca-Davies

☆ Clause 8, page 3, line 9, at end insert—

‘(d) where it is to be published.’.

Ian Murray
Huw Irranca-Davies

☆ Clause 9, page 3, line 17, leave out from ‘penalties’ to end of subsection (1).

Jo Swinson

Clause 9, page 3, line 17, leave out subsection (1).

Jo Swinson

Clause 9, page 3, line 20, leave out from ‘to’ to end of line 21 and insert ‘enforce through imposing financial penalties, that means imposing a penalty on the large retailer of an amount not exceeding the amount of the permitted maximum (see subsection (7)).’.
Jo Swinson

Clause 9, page 3, line 25, leave out ‘and’.

Ian Murray
Huw Irranca-Davies

☆ Clause 9, page 3, line 26, leave out from subsection (c) and insert—
‘(c) that it shall be paid within 28 days.’.

Jo Swinson

Clause 9, page 3, line 26, at end insert ‘; and
( ) how it must be paid.’.

Jo Swinson

Clause 9, page 3, line 34, at end insert—
‘(7) The Secretary of State must make an order—
(a) specifying the amount of the permitted maximum, or
(b) specifying how that amount is to be determined.

(8) The Adjudicator must, within 6 months beginning with the day on which
section 1 comes into force, make a recommendation as to the amount that should
be specified in the first order under subsection (7) or the method for determining
the amount.

(9) Before making a recommendation the Adjudicator must consult any person he or
she thinks appropriate.

(10) The Secretary of State—
(a) must have regard to the Adjudicator’s recommendation when making the
first order under subsection (7);
(b) may amend or replace an order under subsection (7) only if the Secretary
of State has considered whether to do so as part of a review under
section 15.

(11) The Adjudicator may not impose a financial penalty in respect of a breach of the
Groceries Code that occurs before the first order under subsection (7) comes into
force.’.

As Amendments to Jo Swinson’s proposed Amendment (No. 6):—

Andrew George

(a)

Line 3, at end insert—
‘(7A) The Secretary of State must make the order referred to in subsection (7) within 3
months of the Adjudicator making the recommendation referred to in subsection
(8).’.

Andrew George

(b)

☆ Line 7, leave out ‘or’ and insert ‘and’.
Groceries Code Adjudicator Bill [Lords], continued

Andrew George

(c) Line 9, leave out ‘must’ and insert ‘may’.

Andrew George

(d) Line 19, at end add ‘unless the breach started before, and continues after, that date.’.

Ian Murray
Huw Irranca-Davies

46

Clause 10, page 4, line 10, at end insert—
‘(6) Costs do not form part of financial penalties as described in section 9.’.

Ian Murray
Huw Irranca-Davies

23

Clause 11, page 4, line 14, after ‘to’, insert ‘the public’.

Jo Swinson

Clause 12, page 4, line 20, leave out ‘and’.

Jo Swinson

Clause 12, page 4, line 22, at end insert ‘; and’
(d) the criteria that the Adjudicator intends to adopt in deciding the amount of any financial penalty under section 9.’.

Ian Murray
Huw Irranca-Davies

47

Clause 12, page 4, line 22, at end insert—
‘(d) the criteria that the Adjudicator intends to adopt in deciding whether to impose financial penalties under section 9 together with maximum penalty that may be imposed and how the maximum penalty is to be calculated.’.
Groceries Code Adjudicator Bill [Lords], continued

Andrew George
Huw Irranca-Davies
Ian Murray

☆ Clause 12, page 4, line 25, at end insert ‘including monitoring compliance with the Groceries Code.’.

Jo Swinson

Clause 12, page 4, line 31, leave out subsection (4).

Ian Murray
Huw Irranca-Davies

☆ Clause 12, page 4, line 31, leave out from beginning to ‘penalties’ in line 32.

Ian Murray
Huw Irranca-Davies

☆ Clause 12, page 4, line 37, at end insert ‘including appropriate Ministers from the Devolved Administrations.’.

Ian Murray
Huw Irranca-Davies

☆ Clause 12, page 4, line 39, leave out ‘6’ and insert ‘3’.

Jo Swinson

Clause 12, page 4, line 39, leave out ‘and (c)’ and insert ‘, (c) and (d)’.

Andrew George

☆ Clause 13, page 5, line 3, after ‘Code’, insert ‘or the Groceries Supply Order.’.

Andrew George

Clause 13, page 5, line 3, at end add—
‘(2) In considering such changes, the Adjudicator shall review the territorial extent of the Groceries Code, especially in relation to the activities of large retailers outside the United Kingdom, such activities to include supplier trading practices and activities undertaken by the subsidiaries of large retailers.’.
Claire Perry
Huw Irranca-Davies
Ian Murray
Andrew George
Huw Irranca-Davies
Ian Murray

Claire Perry
Huw Irranca-Davies
Ian Murray

Claire Perry
Huw Irranca-Davies
Ian Murray

Claire Perry
Huw Irranca-Davies
Ian Murray

Claire Perry
Huw Irranca-Davies
Ian Murray
Groceries Code Adjudicator Bill [Lords], continued

Ian Murray
Huw Irranca-Davies

☆ Clause 15, page 5, line 28, at end add—
‘( ) The Independent Review Panel shall be chaired by a judge of the High Court or the Court of Session and comprise—
(a) a representative of the retail sector;
(b) a representative of the supply sector; and
(c) a consumer representative.’.

Ian Murray
Huw Irranca-Davies

☆ Clause 15, page 5, line 37, after ‘under’, insert ‘section 9 or’.

Ian Murray
Huw Irranca-Davies

☆ Clause 15, page 5, line 38, leave out ‘that’ and insert ‘the relevant’.

Jo Swinson

Clause 15, page 5, line 38, at end insert—
‘( ) A review may consider whether it would be desirable to amend or replace the order for the time being in force under section 9(7).’.

Ian Murray
Huw Irranca-Davies

☆ Clause 15, page 6, line 14, at end insert—
‘(h) the relevant Ministers of the Devolved Administrations.’.

Ian Murray
Huw Irranca-Davies

☆ Clause 15, page 6, line 18, leave out subsection (10).

Ian Murray
Huw Irranca-Davies

☆ Clause 18, page 7, line 30, after ‘Adjudicator’, insert ‘or the Deputy Adjudicator or any person acting on the Adjudicator’s behalf’.

Ian Murray
Huw Irranca-Davies

☆ Clause 18, page 7, line 30, leave out ‘may’ and insert ‘must’.
Groceries Code Adjudicator Bill [Lords], continued

Ian Murray
Huw Irranca-Davies

28

 Clause 18, page 7, line 36, after ‘Adjudicator’, insert ‘or the Deputy Adjudicator or any person acting on the Adjudicator’s behalf’.

Ian Murray
Huw Irranca-Davies

29

 Clause 18, page 7, line 36, leave out ‘may’ and insert ‘must’.

Ian Murray
Huw Irranca-Davies

59

 Clause 18, page 7, line 37, leave out from ‘Adjudicator’ to end and insert ‘should reasonably believe could cause the identity of the complainant to be revealed’.

Ian Murray
Huw Irranca-Davies

30

 Clause 18, page 7, line 42, after ‘Adjudicator’, insert ‘or the Deputy Adjudicator or any person acting on the Adjudicator’s behalf’.

Andrew George

Clause 18, page 8, line 43, leave out paragraphs (b) and (c).

Andrew George

17

 Clause 18, page 8, line 2, at end insert—

(3A) Notwithstanding subsection (3), the Adjudicator shall, before permitting any disclosure of the identity of any complainant or provider of information to the Adjudicator, take all practical steps to protect the identity of that person by redacting, anonymising and where appropriate otherwise limiting the disclosure of identifying information to any third party and further by obtaining binding undertakings of non-disclosure from any person to whom identifying information is disclosed.’.

Ian Murray
Huw Irranca-Davies

31

 Clause 18, page 8, line 9, at end add—

( ) Any person who, in contravention of this section knowingly discloses any information obtained when employed by, or acting on behalf of, the Adjudicator is guilty of an offence and liable on summary conviction to a fine.’.

________________________
Groceries Code Adjudicator Bill [Lords], continued

Ian Murray
Huw Irranca-Davies

☆ Clause 19, page 8, line 23, at end insert—
   ‘(5A) Notwithstanding section 25, the Adjudicator must publish the criteria as set out
   in subsection (5) within three months of this Act coming into force’.

Jo Swinson

Clause 23, page 10, line 21, leave out ‘9(1) or’.

Jo Swinson

Clause 26, page 11, line 3, leave out subsection (2).

Mr Adrian Bailey
Mr Robin Walker

Schedule 1, page 12, line 8, at end insert ‘following a pre-appointment hearing by
   the Business, Innovation and Skills Committee of the House of Commons.’.

Ian Murray
Huw Irranca-Davies

☆ Schedule 1, page 12, line 8, at end insert—
   ‘(4) The Adjudicator’s appointment will also be subject to approval by—
   (a) the Business, Innovation and Skills Select Committee; and
   (b) the Environment, Food and Rural Affairs Select Committee; or
   (c) their respective successor committees from time to time.’.

Ian Murray
Huw Irranca-Davies

☆ Schedule 1, page 13, line 1, leave out from ‘with’ to end of line 2 and insert ‘for the
   appointment of staff’.

Ian Murray
Huw Irranca-Davies

☆ Schedule 1, page 13, line 16, leave out ‘Secretary of State’ and insert ‘Adjudicator’.
Groceries Code Adjudicator Bill [Lords], continued

Ian Murray
Huw Irranca-Davies

Schedule 1, page 13, line 17, leave out ‘if asked to do so by the Adjudicator’.

Ian Murray
Huw Irranca-Davies

Page 15, line 36, leave out Schedule 3.

Ian Murray
Huw Irranca-Davies

Schedule 3, page 15, line 39, leave out ‘if’ and insert—
‘(1) If the Secretary of State thinks that the Adjudicator’s other powers are inadequate; and
(2) has given due regard to the relevant Ministers in the Devolved Administrations.’.

Ian Murray
Huw Irranca-Davies

Schedule 3, page 16, line 14, at end insert—
‘(h) consult with the relevant Minister in the Devolved Administrations.’.

Jo Swinson

Page 15, line 36, leave out Schedule 3.

NEW CLAUSES

Victimisation

Andrew George

To move the following Clause:—

‘(1) A large retailer (A) which is alleged to have broken the Groceries Code victimises another person (B) if A subjects B to a detriment because:
(a) B does a protected act; or
(b) A believes that B has done, may have done, or may do, a protected act.
(2) Each of the following is a protected act:
Groceries Code Adjudicator Bill [Lords], continued

(a) giving evidence of information in connection with proceedings under this Act;
(b) doing any other thing for the purposes of or in connection with this Act;
(c) making an allegation (whether or not express) that A or another person has broken the Groceries Code or contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies regardless of whether the person subjected to a detriment is an individual or a company.

(5) A county court or, in Scotland, the sheriff, has jurisdiction to determine a claim relating to an alleged claim of victimisation as defined in this section.

(6) Civil proceedings on a claim alleging victimisation may not be brought after the end of:
   (a) six months starting with the date of the act to which the claim relates; or
   (b) such other period as the county court or sheriff thinks just and equitable.

(7) On proceedings under this section the county court and the sheriff have power to grant any remedy which could be granted by the High Court:
   (a) in proceedings in tort;
   (b) on a claim for judicial review.

(8) An award of damages under this section may include compensation for injured feelings (whether or not it includes compensation on any other basis) and for loss of revenue.

(9) Victimisation under this section shall also be a criminal offence.

(10) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding £1,000,000 or such other amount as the Secretary of State shall determine by order in statutory instrument of which a draft shall be laid before and approved by resolution of both Houses of Parliament.

Extension of groceries code

Ian Murray
Huw Irranca-Davies

☆ To move the following Clause:—

‘(1) In advance of each annual report prepared under section 14, the Adjudicator shall consider any information received in the preceding year concerning supply relations between suppliers and third parties (intermediaries) who on onward suppliers to large retailers;

(2) If under subsection (1), the Adjudicator has information of incidents that, were they to have occurred between a supplier and a large retailer, would have constituted a breach of the Groceries Code, the Adjudicator shall consider and make recommendations on whether the pattern of such incidents merits an extension of the Groceries Code to such intermediaries and therefore a redefinition of “direct supplier” in the Groceries Code;

(3) In advance of every third annual report prepared under section 14, the Adjudicator shall consider any information received in the preceding three-year
period concerning supply relations between suppliers and third party onward suppliers not covered by subsection (2);

(4) If under subsection (3) the Adjudicator has information of incidents that, were they to have occurred between a supplier and a large retailer, would have constituted a breach of the Groceries Code, the Adjudicator shall consider and make recommendations on whether the pattern of such incidents merits an extension of the Groceries Code to such intermediaries.’.

Sunsetting provisions and replacement of current code on statutory footing

Ian Murray
Huw Irranca-Davies

To move the following Clause:—

‘(1) Within three years of this Act coming into force, the Competition Commission shall conduct a review of the effectiveness of the Act’s provisions with regard to levels of compliance with the Groceries Code.

(2) If the review finds that the levels of compliance are unsatisfactory, the Secretary of State shall prepare and lay before Parliament regulations containing analogous provisions to those in the Groceries Code, thereby giving statutory effect to the Code.

(3) “Levels of compliance” as referred to in section (1) shall be deemed unsatisfactory if (without limitation) they have not improved since the bringing into force of the Act.

(4) The Groceries Supply Code of Practice shall thereby be revoked.

(5) Where the Secretary of State proposes to issue or revise a code of practice under subsection (2), he shall prepare a draft of the code (or revised code).

(6) The Secretary of State shall consult the following about the draft—

(a) The Competition Commission;
(b) The Office of Fair Trading;
(c) The retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order;
(d) one or more persons appearing to the Secretary of State to represent the interests of suppliers;
(e) one or more persons appearing to the Secretary of State to represent the interests of consumers; and
(f) any other person the Secretary of State thinks appropriate.

(7) If the Secretary of State determines to proceed with the draft (either in its original form or with modifications) he shall lay the draft before Parliament in the form of regulations.

(8) Such regulations shall be made by Statutory Instrument and may only be made if a draft of them has been laid before and approved by resolution of both Houses of Parliament.
(9) A code (or revised code) issued under subsection (6) shall come into force on such date as the Secretary of State may by order made by statutory instrument appoint.’.

Andrew George
Huw Irranca-Davies
Ian Murray

Title, line 2, after ‘Code’, insert ‘monitoring it’.

ORDER OF THE HOUSE [19 NOVEMBER 2012]
That the following provisions shall apply to the Groceries Code Adjudicator Bill [Lords]:

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 Thursday 6 December 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.

Other proceedings
7. Any other proceedings on the Bill (including any proceedings on consideration of any message from the Lords) may be programmed.

GROCERIES CODE ADJUDICATOR BILL [LORDS] (PROGRAMME) (NO. 2)
That the Order of 19 November 2012 (Groceries Code Adjudicator Bill [Lords] (Programme)) be varied as follows:

In paragraph 2 (conclusion of proceedings in Public Bill Committee), for “Thursday 6 December”, substitute “Tuesday 18 December”.

NOTICES WITHDRAWN

The following Notices were withdrawn on 7 December 2012:

Amendment 38.