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GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Fifteenth Sitting

Thursday 12 July 2012

(Afternoon)

CONTENTS

SCHEDULE 16 agreed to.
CLAUSES 51 to 54 agreed to.
SCHEDULE 17 agreed to.
CLAUSES 55 and 56 agreed to.
Adjourned till Tuesday 17 July at Nine o'clock.

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Monday 16 July 2012

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Hugh Bayley, † Mr Graham Brady, Martin Caton, Mr Charles Walker

Anderson, Mr David *(Blaydon)* (Lab)
† Bingham, Andrew *(High Peak)* (Con)
Bridgen, Andrew *(North West Leicestershire)* (Con)
† Burt, Lorely *(Solihull)* (LD)
Carmichael, Neil *(Stroud)* (Con)
Cryer, John *(Leyton and Wanstead)* (Lab)
† Danczuk, Simon *(Rochdale)* (Lab)
Davies, Geraint *(Swansea West)* (Lab/Co-op)
† Evans, Graham *(Weaver Vale)* (Con)
† Johnson, Joseph *(Orpington)* (Con)
† Lamb, Norman *(Parliamentary Under-Secretary of State for Business, Innovation and Skills)*
† Morris, Anne Marie *(Newton Abbot)* (Con)
† Mowat, David *(Warrington South)* (Con)
† Murray, Ian *(Edinburgh South)* (Lab)
† O'Donnell, Fiona *(East Lothian)* (Lab)
† Ollerenshaw, Eric *(Lancaster and Fleetwood)* (Con)
† Onwurah, Chi *(Newcastle upon Tyne Central)* (Lab)
† Prisk, Mr Mark *(Minister of State, Department for Business, Innovation and Skills)*
† Ruane, Chris *(Vale of Clwyd)* (Lab)
Simpson, David *(Upper Bann)* (DUP)
† Smith, Julian *(Skipton and Ripon)* (Con)
† Wright, Mr Iain *(Hartlepool)* (Lab)
† Wright, Jeremy *(Lord Commissioner of Her Majesty's Treasury)*

James Rhys, Steven Mark, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 12 July 2012

(Afternoon)

[Mr Graham Brady *in the Chair*]

Enterprise and Regulatory Reform Bill

Schedule 16

Heritage planning regulation

1 pm

Question (this day) again proposed, That the schedule be the Sixteenth schedule to the Bill.

Mr Iain Wright (Hartlepool) (Lab): It is a pleasure to serve under your chairmanship, Mr Brady. I welcome you and the rest of the Committee back to our deliberations.

Before we ended this morning's sitting I was speaking about heritage partnership agreements, and about how I agreed with the Minister that HPAs can provide clarity, mutual understanding between the various parties, and a consistent approach, which is important across a whole range of regulation and business policy, but particularly with regard to heritage protection. I was focusing on the budget cuts of about 32% for English Heritage and, as I feel that the Minister skirted over the issue, saying that there would be priorities and economies of scale, I would like him to expand on that. Given the onerous task before English Heritage—and local planning authorities—will sufficient support and resource be available to the organisation? What, if any, financial assistance or support could his Department provide to enable English Heritage to fulfil its duties under the provisions?

The Minister of State, Department for Business, Innovation and Skills (Mr Mark Prisk): I welcome you to the Chair, Mr Brady. We are confident that English Heritage will be able to deliver the reforms in the Bill. Importantly, in our discussions before lunch, we learnt that things such as the heritage partnership agreements will really help organisations such as English Heritage to focus and better use their resource. The national heritage protection plan sets out exactly how English Heritage, with help from partners in the sector, will prioritise, and will deliver heritage protection over the next four years, including refocusing designation activities to respond to the changes set out in the Bill.

I suspect that the hon. Gentleman is all too well aware that this is not a matter on which English Heritage reports to the Department for Business, Innovation and Skills. It reports to the Department for Culture, Media and Sport, and although it might be tempting to decide on its behalf potential spending commitments, I would be wiser to reserve my remarks. We are aware of the challenges, but are confident that English Heritage will be able to implement the reforms. On that basis, and without wanting to sprint too fast to the finish, I conclude my remarks.

Question put and agreed to.

Schedule 16 accordingly agreed to.

Clause 51

Commission for Equality and Human Rights

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

New Clause 14—*Commission for Equality and Human Rights—Independence from Government—*

'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.'.

New Schedule 2—*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 Iain Wright: On the basis of what clause 51 plans to do with the Equality and Human Rights Commission, the Opposition think that the new clause and the new schedule are needed. Suffice it to say at this stage that the Government are, with a combination of legislative changes in the Bill and budgetary and staffing reductions elsewhere, emasculating the EHRC.

Julian Smith (Skipton and Ripon) (Con): Will the shadow Minister give us his perspective on the current finances and budgets of the organisation, and comment on any recent reports he has read about the mismanagement of the commission's finances?

Mr Wright: I am on my first paragraph, so let me come on to that later. I have plenty of time and opportunity to do so.

I think that everyone was shocked when they saw this clause. An Enterprise and Regulatory Reform Bill, which is apparently charged with boosting this country's competitiveness and supposedly enables businesses to be freed from burdensome and unnecessary regulation, should not contain such a clause. What a clause the purpose of which is to water down and weaken the body tasked with protecting and promoting equalities and human rights is doing in the Bill, is quite beyond me. I want to stress to the Minister—I think he agrees with me—that the promotion and protection of equality and human rights is not, and should not be seen as, regulation. The Opposition therefore no longer have confidence that the Government will be a strong supporter of the commission charged with tackling inequality and human rights, and on that basis we tabled the new clause. The issue would be better served by having the commission independent of Government and accountable to us in Parliament.

John Wadham, legal director of the EHRC, stated to us in evidence that the Bill was a missed opportunity to make the commission accountable to the House rather than to Government. He said that

"this is a missed opportunity by the Government to bring in some provisions that we would like to see. These are the harmonisation between our equality and our human rights remit; and perhaps most importantly, a process whereby we are accountable to you,

Parliament, rather than to the Government. We are a non-departmental public body, which means that we have a sponsor Department, currently the Government Equalities Office, which is part of the Home Office. Although that is a traditional approach that Government take to such bodies where they have to have some kind of arm's length independence, we believe that a better and proper independence, preferred by the United Nations when it set out the Paris principles for bodies like ourselves, is the case of the Parliamentary Ombudsman and Electoral Commission. It is easier to demonstrate our independence.—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 19 June 2012; c. 76, Q168.]

Mr Wadham referred to the Paris principles—

Lorely Burt (Solihull) (LD): Did the Labour party consider such a change when it was in government for 13 years?

Mr Wright: That is an important consideration, which we thought long and hard about. I will come on to that at length as I expand my argument, but we concluded that there was such cross-party support for the concept of a commission for equality and human rights that it could stay within government and not be tampered with—for want of a better term. Given what is going on in clause 51 and the budgetary concerns and cuts of up to about 60%, however, we now think that it needs to stand alone, which brings me back to the Paris principles.

Those principles are a set of core minimum recommendations adopted by the United Nations General Assembly relating to the status and functioning of national institutions for the protection and promotion of human rights. Paragraph 2 of article 33 of the convention on the rights of persons with disabilities requires countries to take the principles into account when designating or establishing

"mechanisms…to promote, protect and monitor implementation of the…Convention."

According to the Paris principles, such mechanisms must: be independent of the Government, with such independence guaranteed by statutory law or constitutional provision; be pluralistic in role and membership; have as broad a mandate as possible, capable in the context of the convention of collectively promoting, protecting and monitoring the implementation of all aspects of the convention through various means, including the ability to make recommendations and proposals concerning existing and proposed laws and policies; have adequate powers of investigation, with the capacity to hear complaints and to transmit them to the competent authorities; be characterised by regular and effective functioning; be adequately funded and not subject to financial control, which might affect their independence; and be accessible to the general public and, in the context of the convention, in particular to persons with disabilities, including women and children with disabilities and their representative organisations.

Those principles are, frankly, under threat given what the Government are planning for the EHRC, in particular in terms of that broad mandate to promote, protect and monitor, the need for adequate powers of investigation and the adequacy of funding. Thus, at this stage, the commission would be best served if the first Paris principle was more explicit on independence from government. That is our argument for the new clause.

I spent the weekend looking at *Hansard*, on Second Reading in the House in November 2005.

Ian Murray (Edinburgh South) (Lab): I thought you were listening to the Stone Roses.

Mr Iain Wright: I was probably listening to the Stone Roses while reading *Hansard*.

I am leading up to the point made by the hon. Member for Solihull. I was a Member at that time, and I was particularly struck by the contribution from the hon. Member for Basingstoke (Maria Miller), who is a leading figure in the Conservative party and is now the Under-Secretary of State for Work and Pensions. She said:

"In the debate in the House of Lords, the Lord Chancellor pointed out that one of the basic foundations of the Bill is ensuring that everyone can participate in this country's economy. We have to do all that we can to enhance the competitiveness of our country"—

I agree with her. She continued:

"Streamlining the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission into one commission for equality and human rights will, I hope, provide a framework for a simpler, more easily accessible and consistent approach. Indeed, many businesses have welcomed the Bill".—[*Official Report*, 21 November 2005; Vol. 439, c. 1318.]

So why in a little over five years has there been such a change in the Conservative party's position? Why are the Government doing what they are doing with the drastic reduction in funding and, via the clause, severely restricting the commission's remit? Why have we had such a change when the official Conservative party position was not to divide the House on Second Reading in November 2005? I know I am asking the wrong Minister here, but are we seeing the return of the nasty party? I hope not and that hon. Members on both sides of the Committee will agree and vote against this clause. I could not possibly say that the hon. Member for Skipton and Ripon is an example of the nasty party, but I am happy to give way to him.

Julian Smith: What does the shadow Minister think about the fact that the National Audit Office under his Government refused to pass the accounts of the commission for three years running? Does he think that is an example of a well run organisation?

Mr Wright: I do not know whether I have pointed this out, Mr Brady, but I am an accountant by profession. It is almost as bad as being a chartered surveyor or even, heaven forbid, an employment lawyer. I can be called a lot of things. A politician is one of the worst insults in modern-day society and an accountant not much better, but at least I am not an employment lawyer.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Norman Lamb): Have you talked to your boss about that?

Mr Wright: I will not be in my current position for very long if I keep talking like that. But I digress. The hon. Gentleman makes an important point. I am the first to state that having rigorous budgetary provisions and rigorous internal financial control mechanisms is vital for a well run organisation. But that does not mean that the remit of the organisation should be slashed so that it cannot promote equality and human rights. The

[Mr Iain Wright]

two things are quite separate in this regard. I would join with the hon. Gentleman in asking the auditors to make sure that this is a well run organisation with a good and comprehensive system of internal financial control, allowing it to carry out its objectives but not to use that as an excuse to do what is happening under the clause.

Julian Smith: The hon. Gentleman said that he was reading *Hansard* at the weekend. He must have been reading and drinking at the same time because John Wadham's evidence to this Committee was that this change was not an issue that he was very concerned about. Why is the hon. Gentleman creating this big hullabaloo about nothing?

Mr Wright: Is the hon. Gentleman in order to say that I was drinking while reading *Hansard*, Mr Brady? I have to seek your guidance before I answer him.

The Chair: I am happy to give my guidance. I have not taken any advice myself but my interpretation would be that to accuse you of being drunk during a sitting of the Committee would be entirely out of order but what your weekend pursuits may be is another matter.

Mr Wright: Thank you for that clarification, Mr Brady. To be fair, as the Committee has seen, being drunk while in the Committee is something that I seem to have been doing on a regular basis, given my contributions. The hon. Gentleman makes a serious and important point. He is right that Mr Wadham said that the commission could live with this. What I will say in the next few moments relates to the consultation that took place. Stakeholders have been vehemently opposed to some of the Bill, and I will come on to that.

1.15 pm

Let us summarise what is happening in clause 51. It makes significant amendments to part 1 of the Equality Act 2006, which, as hon. Members know, was the legislative vehicle that set up the Equality and Human Rights Commission. The clause repeals section 3, which sets out the general duty of the commission. It repeals section 10, which imposes a duty on the commission to promote good relations between members of different groups. It amends section 12, which requires the commission to monitor and report every three years in society to the general duty as set out in section 3. As I have already said, section 3 is also set to be repealed. In addition to the specific changes in the Bill, the budget of the EHRC will be reduced by approximately 60%, and its staff complement reduced from 371 to about 150 in the next 12 months.

Let me come on to some of the provisions contained in clause 51 one by one. On the repeal of section 3, the commission's general duty, the Government have argued, in their consultation, "Building a fairer Britain: Reform of the Equality and Human Rights Commission", that section 3

"has no specific legal purpose and does not help to clarify the precise functions EHRC is required to carry out".

As far as I can see, the main purpose of that general duty was to provide clarity on how the courts or tribunals interpret the legislation or provide guidance to other bodies. The repeal of this section will have the opposite effect to that which the Government claim. It will fail to clarify and will, in all likelihood, have the opposite effect. It will probably result in more uncertainty and more litigation. The commission will become a body largely limited to enforcing anti-discrimination legislation. Coupled with the plans to review the public sector equality duty, the Government must recognise the risk for the commission. It will be reverting to a failed and discredited model of compensation for individual victims of past discrimination, rather than being more positive and addressing the structural causes of inequality.

Norman Lamb: The hon. Gentleman suggests that that will cause great legal uncertainty. However, it was John Wadham, the general counsel for the Equality and Human Rights Commission, who said:

"This Bill reduces our powers and our remit, but not in a way that we are overly concerned about."——[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 19 June 2012; c. 79, Q176.]

Surely that completely contradicts the case that the hon. Gentleman is making.

Mr Wright: But let me retort by saying that the Government's own summary of consultation responses states:

"A minority of those who responded to this proposal, supported its repeal".

Indeed, for those who responded yes or no on this specific issue, only 14% of respondents agreed to the repeal of section 3. In contrast, the Government summary also states:

"The majority of respondents were opposed to repeal and were concerned about losing the guiding principles and values set out in the general duty, which had been debated in Parliament during the passage of the Equality Act 2006."

Norman Lamb *rose—*

Mr Wright: I am happy for the Minister to intervene; in doing so, will he respond to that point? If that is the case, and if there is such a marked wish among stakeholders and respondents to the Government consultation, why are the Government continuing to insist on a repeal of this nature?

Norman Lamb: It is clear that the responses to individual questions were rather limited. There were large numbers of responses to the consultation and they included more than half of individual respondents calling for the body to be abolished. Does the hon. Gentleman suggest that we should follow the view of more than half of the individual responses? Following his logic, that is what we should be doing.

Mr Wright: Touché. That is a good point. May I move on? *[Laughter.]* That is not a bad victory for the Minister this afternoon, I have to say.

On a similar point, clause 51 also repeals section 10 of the 2006 Act, which deals with repealing the duty to promote good relations. Again, the Government state that they believe that that duty is no longer necessary:

"The EHRC's most valuable work in this area, for example, its inquiry into disability harassment, or its 'Map of Gaps' which mapped services for women who have experienced violence, could

be done as part of its core equality or human rights work, complemented in Scotland by the work of the Scottish Human Rights Commission…We believe that scrapping these unnecessary duties will help the EHRC to develop a more integrated, and coherent work programme overall—enhancing its capacity to discharge its equality and human rights duties effectively."

In the commission's response to the consultation, however, it argued strongly for the retention of the duty:

"We agree that the current formulation of the good relations duty, which owes much to an outdated conception of how to improve race relations, is no longer as useful as it was to our predecessors. However we consider that removing the Commission's ability to use methods other than legal enforcement is a serious error, particularly in view of the government's own desire to tackle identity based inequality with 'soft law' measures."

Fiona O'Donnell (East Lothian) (Lab): I thank my hon. Friend, the former accountant, for giving way. Does he agree that, at a time of tension in many communities around issues of culture, race and faith, the Government are sending out the wrong message?

Mr Wright: I do. The proposal sends out the wrong message and it weakens what the commission can do and its status within society.

Ian Murray: I am delighted that my hon. Friend has given way, because I, too, read *Hansard*—how exciting it is. *[Interruption.]* I have even read it sober, indeed, but I wish I had not. However, the part of *Hansard* that I think is important is the Second Reading debate, when the Secretary of State was challenged by my hon. Friend the Member for Stretford and Urmston (Kate Green) on whether any jobs will be created and on what the proposal was doing in an enterprise Bill for jobs and growth. The Secretary of State replied that it will probably not do anything for jobs and growth, but that "the detailed implications" can be pursued later. What would my hon. Friend the Member for Hartlepool say in response to that?

Mr Wright: I will say two things to my hon. Friend, and I am glad that he has been reading *Hansard*. First, my strong view is that this clause should not be included in an Enterprise and Regulatory Reform Bill, as it is beyond this ragbag Bill's scope. Secondly, my hon. Friend was on the Front Bench on Second Reading, and he will remember that in response to interventions from the Opposition the Secretary of State called the clause a "tidying up" exercise. I do not agree with that at all, and I hope that the Minister will clarify the Government's intention. The clause is not a tidying up exercise; it is a deliberate attempt to try to reduce the scope of what the Equality and Human Rights Commission actually does. I would be happy to hear whether the Minister should apologise on the behalf of the Secretary of State for that "tidying up" remark.

Ian Murray: I would like to pursue this point a little, because my hon. Friend mentioned the questioning of the Secretary of State on Second Reading and the actual quote from my hon. Friend the Member for Stretford and Urmston (Kate Green) in *Hansard* reads:

"How will the provisions of clause 51 on repealing some of the provisions of the Equality Act 2010 in relation to the general duty and the good relations duty have any impact on business whatsoever?"

The Secretary of State replied:

"I was going to mention that measure at the end of my speech. We see it essentially as a bit of legislative tidying up; we are not going to argue that it has significant impacts on business. However, we can pursue the detailed implications."—[*Official Report*, 11 June 2012; Vol. 546, c. 75.]

Does my hon. Friend the Member for Hartlepool think that a 60% cut in anyone's budget is just a "legislative tidying up"?

Mr Wright: My hon. Friend makes an important point. Some of the provisions in the Bill are somewhat paradoxical and contradictory. My hon. Friend has, with a great deal of skill and precision, spent a huge amount of time challenging the Minister, a former employment lawyer, on employment legislation. There was cross-party support for the belief that it is wrong to reach the stage of a formal legal tribunal case and that some degree of consultation and conciliation before that event is wise. The clause, however, pushes the commission towards a court-led approach when fulfilling its duties as opposed to pre-court conciliation, and that seems at odds with what is being proposed elsewhere in the Bill.

Section 27 of the Equality Act 2010 enables the EHRC to provide conciliation services. The Government propose to repeal that, including closing the complaints service for disabled air travellers and asking the Civil Aviation Authority to provide the service instead. The Government argue that the service provided by the EHRC to date has not been cost-effective and duplicates services available elsewhere. The commission's contract with its present conciliation provider came to an end on 31 March 2012 and has not been replaced.

The Government state that

"the new Equality Advisory and Support Service",

which I understand will be commissioned by the Government Equalities Office from the private sector or civil society,

"will provide an opportunity to encourage greater take up of mediation and conciliation by victims of discrimination and by those against whom allegations of such discrimination have been made."

They argue that

"leaving the"

Civil Aviation Authority

"to provide a complete service could help to further incentivize the industry to improve compliance, minimizing the costs to industry and delivering a better outcome for disabled air travellers."

Again, citing the Government's own consultation, only 28% of respondents agreed with the notion that the CAA should deal with disabled air passengers' complaints. Does the Minister think that the transfer of disabled air passengers' complaints to a body managed by the airlines injects a necessary level of independence and impartiality into the complaints procedure? The commission strongly opposed that proposal during the consultation, saying:

"The Commission considers that this proposal, which will involve legislative reform, would undermine the direction of ministerial policy. In any event, it is wholly unnecessary, given that should ministers wish to discourage this approach, they are able to reduce funding to the Commission for this purpose, as is proposed in relation to advice and guidance. The proposed removal of the Commission's mediation and conciliation powers could lead to an increase in lengthy and expensive litigation by forcing private and public sector organisations down the more costly compliance rather than conciliation route."

[Mr Iain Wright]

I reiterate the point that I made in response to my hon. Friend the Member for Edinburgh South. The proposal is inconsistent with the Government's trying, in part 2 of the Bill, to emphasise conciliation over expensive compliance and litigation. Does not that demonstrate that this is a ragbag Bill? Frankly, one arm of Government, or even one arm of the Department, does not know what the other arm is doing.

Ian Murray: We Opposition Committee members have used the words "ragtag Bill" on occasions, but does my hon. Friend agree that "omnishambles" might be closer to the point?

Mr Wright: It is an omnishambolic ragbag. I could go on at length—*[Interruption.]* And I know that Committee members are keen for me to do so. However, it comes down to a single point. Clause 51 has no part to play in this or any other Bill. Given the previous cross-party support and what the Minister secretly thinks about this matter, I am surprised that it was included. It is a nasty clause and should not be in the Bill. I urge Committee members to vote against the clause standing part of the Bill, but if they do not, I hope that they will agree to the new clause that we tabled.

Norman Lamb: I join the shadow Minister in saying that it is a pleasure to serve under your chairmanship, Mr Brady.

Before I get on to the proposed new clause, I pay tribute to the unsung heroes of *Hansard*. We talk a lot about the work of *Hansard* and it has been mentioned many times in contributions by Opposition Committee members this afternoon. Its reputation for accuracy is impressive. On Tuesday, it accurately recorded an important exchange between myself and the hon. Member for Vale of Clwyd. I was addressing an important competition issue and the hon. Gentleman is reported as intervening with "Atishoo!" I do not think that I have ever seen that in writing before. My response was,

"Bless you. That was quite a shock."—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 10 July 2012; c. 501.]

That is recorded for posterity.

Mr Wright: On that point, given that it is now recorded twice in *Hansard*, and given that we are trying to promote efficiencies as much as possible, does the Minister think that there is duplication of effort here?

1.30 pm

Norman Lamb: I think that we would need a Monopolies and Mergers Commission to consider that.

Let me consider the clause. I have a high regard for the shadow Minister, but he indulged in mock outrage, which I guess I had anticipated. The contrast between his assertions this afternoon and what the general counsel for the commission told the Committee are telling.

Lorely Burt: I listened very carefully to the evidence and to the debate on the clause, and it seems that we have a streamlined EHRC that is playing a much more strategic role. As a Liberal Democrat member of the coalition Government, I recognise the great importance of the EHRC, but will the Minister confirm for the record how important this coalition Government believe the role of the EHRC is?

Norman Lamb: I am extremely grateful for my hon. Friend's intervention. Having an effective and highly regarded commission is incredibly important. The case for promoting equality of opportunity, regardless of gender, race and disability, is very important for a successful, competitive economy. That is why it is absolutely appropriate for the clause to be in the Bill.

Let me quote from the evidence given to the Committee by the general counsel for the Equality and Human Rights Commission, and let us compare what he said with the shadow Minister's claims—assertions—about the horror of what is proposed in this clause. The general counsel said:

"The proposals that change the remit of the Equality and Human Rights Commission in clause 51 will not make a significant difference to the work of the commission."–[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 19 June 2012; c. 76, Q168.]

Compare that with the shadow Minister's claims that the provision is a dreadful attack, initiated by a nasty party seeking to undermine the commission's work. On the basis of what the general counsel for the Commission said to this Committee, that is rubbish.

Julian Smith: Does the Minister agree that if the commission is better run, its accounts are firmly operated, and it has a tighter remit, there is more chance that it will help with the issues that its mandate covers?

Norman Lamb: I completely agree. Vague motherhood and apple-pie duties do nothing for anyone. They flatter to deceive, and give people a view that the commission can achieve great things, which it cannot. Let us focus on the practical things that it is there to do. It might then be able to do them well and effectively, promoting equality of opportunity.

Ian Murray: Surely the Minister is not telling the Committee, and agreeing with the Secretary of State, that a 60% cut in a budget is merely legislative tidying up that will have no effect whatever on the operation of the body.

Norman Lamb: If one looks at the way in which the money is being spent, one recognises that there is enormous scope for achieving real efficiencies in the organisation. The Opposition are congenitally incapable of considering the concept of cutting public expenditure. I remember well the former Prime Minister who could not allow himself to use the word "cut". We went through weeks of anguish waiting to see whether he was capable of saying the word. The Opposition are still in a parallel universe where it is not necessary to bring a £150 billion a year deficit under control. I disagree with the hon. Gentleman's intervention.

Ian Murray: There is a distinct contradiction in the Minister's view. On one hand, the Government are saying that the Opposition are allergic to cuts, and on

the other the Chancellor says in the House that our cuts were as bad as those he is proposing. There is a distinct contradiction on whether we have cuts.

The Chair: Before the Minister responds, I remind him that we are discussing not the Budget, but the structural implications of the Bill.

Norman Lamb: I am grateful to you, Mr Brady. I was addressing the Budget in response to the intervention, but let me get back to the important views of John Wadham, general counsel to the commission:

"We would want to keep some of the provisions that are being taken away, but they are not as significant as they might perhaps seem looking at the legislation."—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 19 June 2012; c. 76, Q168.]

He also said:

"This Bill reduces our powers and our remit, but not in a way that we are overly concerned about."

Will the Opposition get real on this? Will they recognise that we are talking about streamlining, which, as my hon. Friend the Member for Skipton and Ripon rightly said, will make the commission more effective in its important job:

"it is not a significant attack on our remit"—

contrary to the shadow Minister's claim—

"…but we will carry on doing our job and doing it well, I hope." —[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 19 June 2012; c. 79, Q176-177.]

On the cuts,

"Certainly, we are using this opportunity to become leaner and more effective." —[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 19 June 2012; c. 74, Q162.]

That is a welcome recognition from the commission. If only that recognition were shared by the Labour party, we might start to get somewhere.

I am grateful, none the less, to Opposition Members for their suggested amendments—*[Laughter.]*—or so says the script. I will first address the clause, and then I will address the points raised by the amendments.

Equality is fundamental for a strong economic recovery. We have to deploy the abilities and capabilities of every member of our society. I had a discussion with a Conservative Minister who put that remarkably well: as well as the interests of individuals and ensuring that every individual is treated fairly in our society, by discriminating against some in our society, we massively underachieve economically in a competitive global economy. Ensuring that all of our citizens can contribute to economic growth is of fundamental importance. We have to make the best use of all the talent that we have. That is why a strong and effective equality and human rights body is a priority, which is what our reforms are intended to achieve.

We want the EHRC to become a valued and respect national institution. To do so, we believe the commission must focus on the areas where it can add value as an independent equality body and A-rated national human rights institution. Incidentally, the EHRC's international A-rating is confirmation that it accords completely with the Paris principles that the shadow Minister referred to. The EHRC must be able to show that it uses taxpayers' money wisely, which is a rather important responsibility, and I suspect, on reflection, the shadow Minister would recognise that. To be fair to him, he conceded, as a former accountant, that that is important, but it is important that his party acts in accordance with that principle.

Since the EHRC's establishment in 2007, it has struggled to deliver across its remit and demonstrate value for taxpayers' money. As my hon. Friend the Member for Skipton and Ripon referred to in his intervention on the shadow Minister, the EHRC's first three sets of accounts failed to receive a clear audit opinion from the National Audit Office, attracting criticism from the Public Accounts Committee. In my view, this is depressing: the EHRC employed 140 interim members of staff at a cost of nearly £9 million in 2009-10, at a moment when one would have thought that our economy needed a bit of help from efficiencies in the public sector. That is almost half as much again as it cost to employ the remaining 440 permanent staff for that year and write off losses of £866,000 on a website that was never launched. The Labour party has talked a lot about the legacy of the previous Labour Government. Is the Labour party proud of that legacy?

David Mowat (Warrington South) (Con): The Minister quotes some compelling cost numbers. Will he concede, however, that as the accounts were not signed off for the past three years, those numbers must only be estimates?

Norman Lamb: I take that point. Interestingly, in the last year the accounts were approved, a period under this coalition Government, the EHRC struggled to deliver against its policy remit. For instance, the commission attracted criticism from the Joint Committee on Human Rights. Not only has the EHRC struggled with its finances, but it has also been criticised by that Committee on its failure to integrate human rights into its work.

Mr Iain Wright: If that is the case, how has the EHRC still got the international A-rating that the Minister lauded earlier?

Norman Lamb: The EHRC was designed and structured by the Labour party in government to be a strong independent body. I am trying to say that the coalition Government want it to be very successful. That is not in any way to say that its work has not been worth while—it does very important work. We want it to be more effective, and to ensure that the legislative framework allows it to focus its mind on the really important challenges that it has to face.

We recognise that the failures in how the EHRC was set up, led and managed have contributed to its underperformance—there is no doubt about that—but we believe that some of its difficulties stem from a lack of precision in its legislative mandate, which is why the clause seeks to clarify its legislative remit. We consider that focusing the EHRC on its core duties will enhance its capacity to develop and deliver a coherent programme of work.

The repeals will not impact on the EHRC's equality and human rights powers and duties under the Equality Act 2006. The EHRC will therefore retain its duty to promote understanding of the importance of human rights and the awareness of human rights, and to encourage good practice in relation to human rights. It will also

[Norman Lamb]

retain its duties to promote understanding of the importance of equality of opportunity and diversity and awareness of individuals' rights under equality legislation, and to enforce the Equality Act 2010 and work towards eliminating unlawful discrimination and harassment. The clause will, however, remove vague duties that are not enforceable by an individual pursuing a claim in a court or tribunal, and that, according to John Wadham's evidence, are of little value in terms of how the commission is charged with undertaking its core responsibilities.

On new clause 14 and new schedule 2, I should say how much we value the independence of the Equality and Human Rights Commission, which is assured by the 2006 Act that created it, and by it having been made clear that the EHRC is already accountable to Parliament through the Home Secretary—a framework that was designed by the Labour party in government. That is the standard approach in the UK: independence in law, coupled with financial supervision by a Department. It is consistent with the reforms that, following John Dunford's independent review, have been proposed for the Office of the Children's Commissioner, another structure established by the previous Government, and the shadow Minister should accept that such a model is appropriate.

It is not therefore clear why a different approach is considered necessary for the Equality and Human Rights Commission. In particular, we do not agree that the new clause and new schedule would in any way improve the commission's effectiveness in carrying out its equality and human rights functions. Very few public bodies are set up or funded directly by Parliament, and those that are, such as the parliamentary ombudsman, have a parliamentary or regulatory function that is not comparable to the role of the EHRC. Parliament grants funds to the Executive, and it is for the Executive to account to Parliament through Ministers for the use of those funds and for value for money, which is why the vast majority of public bodies are set up in a similar way to the EHRC.

The Equality and Human Rights Commission is held to account by Parliament in several ways. Its accounts are audited by the National Audit Office, which of course reports to the Public Accounts Committee. The EHRC's annual report and accounts are laid before Parliament. Its activities are subject to scrutiny by the Home Affairs Committee and the Joint Committee on Human Rights. In the past, both Committees have sought evidence from the EHRC, and whether they choose to do so in future is a matter for them. The EHRC's reports on progress in society are laid before Parliament by the Secretary of State in accordance with section 12 of the 2006 Act. The Home Office, as the sponsor Department, is committed to supporting the EHRC in managing a challenging programme of reform.

1.45 pm

We have also taken steps to underline the independence of the Equality and Human Rights Commission. As the Committee may be aware, we are in the process of appointing a new chair of the commission, and under this Government, for the first time, that appointment will be subject to pre-appointment scrutiny by a parliamentary Select Committee. Additionally, the board of the EHRC and the Home Office have agreed a framework document that explicitly recognises that the commission must be free to exercise its statutory functions without interference from Ministers. We believe that the safeguards of the 2006 Act and the framework document are sufficient to ensure that the commission is able to fulfil its functions independently of Government. However, if the commission believes that the Government have acted unreasonably, or encroached on its independence, it has the ultimate safeguard of the courts, and may seek a judicial review of any such action.

We want the Equality and Human Rights Commission to become a valued and respected national institution. We have therefore worked hard to develop a reform package that we believe will, across the board, increase its transparency and accountability to Government, Parliament, and the public whom it serves. That is key to raising standards while ensuring its independence and safeguarding its A-rated status as a national human rights institution. I therefore ask the Committee to accept that the EHRC remains accountable to Parliament through the Home Secretary. John Wadham gave this Committee clear evidence about the very limited impact of the reforms on the way in which the commission can go about its important work under its core duties. I ask the shadow Minister to reflect on that, and to withdraw the new clause and new schedule. I commend the clause to the Committee.

Mr Iain Wright: I am grateful to the Minister, but I am afraid that he has not convinced me. From his body language, I do not think he has convinced himself. However, I do agree with him that every public sector organisation—indeed, any organisation—and not just the commission should ensure that it is lean, effective and provides value for money, especially when its resources come from the taxpayer. I thoroughly agree with that; that is not the issue. The concern is whether a 60% cut in its budget will be too much to allow it to fulfil its duties. We fear that repealing certain sections and removing some of the EHRC's powers under the 2006 Act is counter-productive, and will make it difficult for it to fulfil its role.

Norman Lamb: May I ask the shadow Minister whether he accepts John Wadham's evidence?

Mr Wright: Mr Wadham is an important person—

Norman Lamb: Does the hon. Gentleman accept what he says?

Mr Wright: Let me answer the question. Mr Wadham has raised important points. He is an experienced and knowledgeable member of the commission, so we obviously have to take some of his concerns into account. Given what is going on under clause 51, and given the budgetary cuts elsewhere, we fear that the commission will not be able to fulfil its duties. In normal circumstances, the current situation, as set up by the previous Government, would provide sufficient accountability to Parliament and sufficient independence. Given what is going on, we are concerned about the future stability of the organisation. It needs greater independence from Government, and greater accountability to the House. That is why we have tabled the new clause.

Norman Lamb: The shadow Minister acknowledged that the Opposition had to take seriously the concerns expressed by John Wadham, who specifically said that the reforms were

"not a significant attack on our remit."—[Official Report, Enterprise and Regulatory Reform Public Bill Committee, 19 June 2012; c. 79, Q177.]

Does the shadow Minister agree?

Mr Wright: I looked closely at what Mr Wadham said to us in Committee, and at several other aspects of the consultation, and, on balance, we think that there is a threat to the commission, such that we tabled the new clause and new schedule. We still think that clause 51 has no part to play in the Bill, and that is why, with your indulgence, Mr Brady, I would like to test the Committee's opinion. I appeal to the Minister, who, I think, shares some of our concerns, to accept that we need to strike the clause from the Bill.

Norman Lamb: I reassure the hon. Gentleman that he should not read anything into my body language. As an ex-lawyer, I hate vague legal duties that achieve nothing. I call them motherhood-and-apple-pie duties—the sort that do nothing for anyone, and potentially flatter to deceive. I think that both he and I would sign up to the absolute importance of doing all we can to secure equality of opportunity; there should be no discrimination on grounds of gender, race, orientation, disability, age or anything else. People should be treated on the basis of their abilities. We agree with that. We want an effective organisation that spends its money properly and focuses on its core objectives.

Mr Wright: I cannot remember whether I am intervening on the Minister, or have taken an intervention from him. He is a formidable employment lawyer; when he becomes a former Minister, going back to the legal field will be a lucrative business for him. As an author, he will have to revise the book. He spoke about motherhood and apple-pie, but if that is what he thinks, did he raise his concerns during the passage of the 2006 Act? Why did he not table amendments to the effect that the clauses in question were irrelevant, would not help the commission with its duties, and needed to be tightened up?

Norman Lamb: I absolutely supported the Act, which was important and which consolidated and brought together different strands that had grown organically over many years. It was right to pass it. I am simply saying that the duties that we want to remove achieve nothing. It is right to focus on core responsibilities and take the advice of the commission's general counsel, who said in evidence to the Committee that there is no impact on its important work.

Mr Wright: I thank the Minister for that response, but I reiterate what I said before. I would like to test the opinion of the Committee, as we think it important that the clause be struck from the Bill.

The Chair: It may be helpful to the Committee if I explain that, although we have debated new clause 14 and new schedule 2, any Division on those would come later in the Committee's deliberations.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 11, Noes 6.

Division No. 23]

AYES

Bingham, Andrew	Mowat, David
Burt, Lorely	Ollerenshaw, Eric
Evans, Graham	Prisk, Mr Mark
Johnson, Joseph	Smith, Julian
Lamb, Norman	Wright, Jeremy
Morris, Anne Marie	

NOES

Danczuk, Simon	Onwurah, Chi
Murray, Ian	Ruane, Chris
O'Donnell, Fiona	Wright, Mr Iain

Question accordingly agreed to.

Clause 51 ordered to stand part of the Bill.

Clause 52

PRIMARY AUTHORITIES

Mr Iain Wright: I beg to move amendment 95, in clause 52, page 44, line 2, at end insert—

'(5) The Secretary of State, in publishing guidance as set out in subsection (3) must take steps to obtain and to take into account the views of small, medium and large sized businesses, local authorities and business organisations prior to the issuing of such guidance.'.

I want to express my disappointment in the collapse of support for me. It is collapsing faster than the country's support for the Lib Dems.

I very much agree with the concept of primary authority schemes. Indeed, they were established by the last Labour Government. It is fair to say that they have been considered a success; even Government Members might agree with that. I have mentioned today that there is a need for business to have certainty and consistency, and we strongly believe that primary authority allows businesses to receive consistent advice that can be applied with regard to local authorities. We therefore think that the extension of the schemes is to be welcomed and encouraged.

However, when I was reading clause 52 at the weekend, alongside *Hansard*, I was struck by a number of things. Specifically, proposed new subsection (3) of section 22 of the Regulatory Enforcement and Sanctions Act 2008, set out in subsection (5) of clause 52, states:

"The Secretary of State may from time to time publish guidance about matters likely to be taken into account for the purposes of subsection (1B)(b)."

Proposed new subsection (4) of section 22 states:

"The guidance may be published in such manner as the Secretary of State considers appropriate."

The Minister was saying in the last set of amendments how he disliked woolly, legalistic language. He said it needs to be taut and tight, but would he agree—I know he will not respond—that that language is far too vague?

Norman Lamb: No.

Mr Wright: I mentioned in debates on earlier amendments that businesses and other relevant stakeholders should be included in policy making to make Government

[Mr Iain Wright]

actions relevant and positive wherever possible for their businesses, their workers and the areas in which they operate. Amendment 95 would tighten the language and ensure that businesses and relevant stakeholders were consulted prior to the issuing of the guidance mentioned in the Bill.

Anne Marie Morris (Newton Abbot) (Con): Will the hon. Gentleman give way?

Mr Wright: I certainly will. Please don't hit me again.

Anne Marie Morris: Would I? I will raise again the issue that I raised in discussion on a previous amendment. Has the hon. Gentleman taken into account the cost of the proposal, and the challenge of doing that consultation properly? One of the challenges that I find—as the Committee knows, I support micro-businesses—is finding a wide enough range of business organisations that are able to put forward the view of the micros. If we start limiting and prescribing, without allowing the Minister the flexibility to do what is right, we will end up with something that does not work and is excessively burdensome.

Mr Wright: I really like the hon. Lady—I have to say that, because I am frightened of her as well. She can move her arm around better than I can move mine. I have to question whether her sling is genuine. She again misses the important point, however, which I reiterate: certainly for micro-businesses and small businesses, and to some extent medium-sized businesses, this is a question of proportionality. There is no point in having a rigid one-size-fits-all system that does not take into account the nature of the businesses that are affected.

Anne Marie Morris: That is exactly what the legislation proposes: something that is not rigid. The shadow Minister is proposing something that is rigid.

Mr Wright: No, I disagree. As I said in opening the debate on this amendment, the current language is far too vague and does not provide any certainty to business. The clause says that the Secretary of State may issue guidance from time to time, but businesses will say, "What on earth does that mean?" How does it help us try to provide some clarity in the policy-making framework that we have to deal with?

The Minister should be amenable and agree to the amendment, because it helps us to take a pro-business approach, it is proportionate in its scope, and it helps to tighten up the language in the Bill.

Mr Prisk: First, I welcome the Opposition's support for the primary authority schemes. It is fair to say that the idea originated with them. I was once in the position of the hon. Gentleman, and was Opposition spokesman in Committee when we debated the Regulatory Enforcement and Sanctions Bill. They were not happy times; it is better now.

Let me turn to the specifics of the amendment. There is a certain sense of déjà vu about it; there was a similar amendment this morning. We had an amenable conversation, in which there was an intervention from my hon. Friend the Member for Newton Abbot. It ended in the shadow Minister accepting my assurance and withdrawing his amendment. We will see whether that sense of déjà vu will be fulfilled. Let me do my best.

2 pm

Clause 52 will broaden the criteria for businesses that are eligible for the primary authority scheme. It means that the smallest businesses that operate in any one local authority area can now join others that share an approach to compliance. We will get into broader details when we come to clause stand part. A shared approach to compliance simply means that businesses consistently follow the same centrally issued guidance in order to fulfil their regulatory obligations. For example, franchises of a brand, or members of the same trade associations, may qualify. They will be able to enjoy the valuable assurance that primary authority partnerships now bring to larger businesses. It will ensure that small and large enjoy the same benefits.

We know that the new eligibility criteria as drafted are broad, but that is intentional. We are keen to ensure that as many small businesses as possible benefit from reduced regulatory burdens. That means that guidance for businesses and local authorities will be extremely important. We know that the devil will be in the detail, and that the views of interested parties will be vital in making the scheme work properly. That is why subsection (5) will allow the Secretary of State to publish guidance specifically on what a shared approach to compliance will mean in practice.

This is where the sun starts to peek out from the clouds for the hon. Member for Hartlepool. I can confirm that, as he requests—he should not get too excited—any guidance published as a result of the clause will be developed in consultation with stakeholders, including businesses, local authorities, trade associations and business groups.

My hon. Friend the Member for Newton Abbot was right that if we put all the additional details, which are too prescriptive, into primary legislation, the danger is that we constrain the ability to ensure that we apply the appropriate measures to the appropriate situation. The debate has been a useful opportunity to allow the Committee to hear the Government's intentions and to put them on the record. However, I do not believe that there is a need to prescribe the detail in the Bill. Having given that commitment and assurance, I hope that the hon. Gentleman will withdraw the amendment.

Mr Wright: I am delighted and somewhat surprised by the approach taken by the Minister. Given what he put on the record, and as I agree with a lot of what he said, I happily beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Iain Wright: I beg to move amendment 96, in clause 52, page 44, line 10, at end insert—

'(8) The Secretary of State, within 12 months of this part of the Act coming into operation, will prepare and publish in both Houses of Parliament a report detailing how the implementation of Section 52 of the Act has been affected by resources provided to local authorities' Trading Standards and Citizens Advice Bureaux.'.

It is me again, I am afraid, Mr Brady.

The British Retail Consortium, in its written submission to us, stated:

"We welcome moves to strengthen the regional and national perspectives of Trading Standards, given that many scams are perpetuated by organised criminals for whom jurisdictions and boundaries are meaningless. We sincerely hope that both the National Trading Standards Board and Citizens Advice are adequately resourced and appropriately skilled to achieve these aims."

Trading standards are often considered a Cinderella service, not thought about until something goes wrong, and then identified, quite rightly, as being vital to the social fabric of our country.

The Committee may remember that Graham Hebblethwaite, of West Yorkshire trading standards, told us in evidence:

"We understand that, so through the primary authority scheme, you can have much more effective regulation on a much wider basis, where with adequate trust, common sense and support from colleagues in other local authorities, an individual primary authority working well with its primary authority business can facilitate greatly reduced activity in other areas of the country. It might be a burden for the individual authority that has to manage that when setting up the relationship, but in effect, if you set up a good system with a good set of controls, and other authorities gradually recognise that and accept that the controls are in place, they can concentrate their resources on rogue traders".—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 21 June 2012; c. 126-27, Q277.]

I mentioned in earlier deliberations the impact on heritage planning provisions that funding cuts and pressures for local authorities will have, and I think the same principle applies here. The amendment would ensure that trading standards have the resources and skills to be able to deal with the clause's provisions.

One of the objectives of primary authority schemes is to strengthen consumer protection. Consumers should seek reassurance from a consistent approach to regulation. However, given the cuts to the funding of citizens advice bureaux throughout the country, and given the additional pressures that they face as a result of a deteriorating economic situation—there are more people going through their doors—as well as cuts to legal aid and other services, we are concerned that the clause will have an adverse impact on consumer protection and links to Citizens Advice. That is the basis for amendment 96.

As I have said, we support fully what the Government are trying to do via clause 52, but the amendment would ensure that relevant organisations, such as Citizens Advice and trading standards—which is, perhaps, more directly relevant—have sufficient resources to fulfil their obligations under the clause. That is why the amendment suggests that the Secretary of State should prepare and publish a report within 12 months to show how the implementation of this part of the Bill has been affected by cuts to resources in organisations such as trading standards and Citizens Advice. That would allow Parliament to gain an assessment of whether the jam is being spread too thinly. I hope that the Minister will be amenable to such an approach and I look forward to his comments.

Mr Prisk: Clause 52 extends the scheme, so that many more businesses can participate. The scheme has been in operation since 2009, when it was introduced by the previous Government. During that time, it has focused on enforcement and helped local authorities save money. We estimate that for every pound that the primary authority scheme costs, there is an approximate £3.60 benefit to the regulatory system, so it is an important way of streamlining and focusing activity on the things that matter. That is partly because it takes less time for a local authority inspector to complete their work with a business under a primary authority partnership arrangement. They can be better prepared and can target their efforts and attention on where the greatest risks lie. There are, therefore, opportunities for trading standards and so on to be able to do their job more effectively and efficiently.

Indeed, we heard from a number of witnesses who gave evidence to the Committee during our first week of sittings that primary authorities help local authorities and local trading standards to focus the scarce resources that they do have on where they are most needed. The hon. Gentleman rightly quoted Graham Hebblethwaite from West Yorkshire Joint Services, which operates a substantial number of primary authorities. He said that

"an individual primary authority working well with its primary authority business can facilitate greatly reduced activity in other areas of the country."—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 21 June 2012; c. 126-27, Q277.]

In a sense, therefore, rather than being compromised by budgetary pressures, local authorities are actually assisted in meeting their budgetary obligations.

I do not underestimate that pressures exist for funding trading standards and other consumer services. We have discussed extensively the Bill's consumer reforms, and I do not intend to test your patience by revisiting them at great length, Mr Brady. It is important, however, that the Committee understands why a report, as proposed by the amendment, would not provide meaningful analysis for the House. The most significant resource commitment associated with the scheme for local authorities is for the primary authority in establishing and maintaining a partnership. Primary authorities are permitted to recover their costs for that work, so new partnerships formed as a result of the extension can be self-funded and are unlikely to be affected by changes to trading standards budgets.

Local authority-funded Citizens Advice services are entirely separate from the primary authority scheme. I suspect that, were I to get into the whys and wherefores of the relationship between individual local authorities and their consumer affairs, you would rightly call me to order, Mr Brady, so all I will say is that the funding of consumer services will have no effect on the implementation of the clause.

I share Members interests in making sure that local authorities are not overwhelmed by demand for partnerships, which is why I reiterate that we have made it clear that we will involve the Local Government Association and individual authorities in designing the detail of the extended scheme and monitoring its implementation.

It is important to bear it in mind that the existing protection—namely that the Secretary of State has regard to the resources available to local authorities when assessing new partnerships—will continue to apply.

As we discussed this morning on statutory review clauses, the Government are committed to strengthening the review of all new regulatory arrangements. In practice,

[Mr Prisk]

however, 12 months after the start would not provide a sufficient period to get a full view of the way in which the eligibility extension has worked for businesses and local authorities.

I say to the hon. Gentleman and the Committee that we recognise the importance of continuous monitoring and evaluation, and we are committed to ensuring that it happens. In line with Government policies, the current reforms will be formally reviewed in three to five years following implementation. That will be the right point at which we can get a serious, meaningful conclusion on how they are developing, see where wrinkles that we had not anticipated may have occurred, and discuss what we can do to improve matters. However, if serious issues were encountered that affected implementation, the review would be brought forward so that any adjustments could be made. We do not anticipate that that will happen, but I put those comments on the record today, so that members of the Committee can see that that is the Government's intention.

To summarise, we do not believe that the report suggested in the amendment is necessary, because the successful implementation of the clause is distinct from funding to local authorities for trading standards, let alone Citizens Advice. Necessary safeguards are in place to ensure, as I mentioned earlier, that local authorities are able to manage the impact of the extension effectively. It has been a useful debate on an important related issue, but given my assurances, I hope that the hon. Gentleman will reconsider and be prepared, as he has in the past after securing important assurances, to withdraw the amendment.

Mr Iain Wright: I am grateful for the Minister's positive, constructive comments. I welcome the involvement of the LGA on the design of any extensions, and I was particularly pleased to hear that the Minister intends the Government to have a review within three to five years. If he could tighten that time scale up, perhaps moving closer to three years, we would be in a place to do business together, and I would be more than happy to withdraw the amendment. If that broad, ambiguous three-to-five-year period, which would be uncertain for businesses, could be tightened up to within three years, it would be very productive.

Mr Prisk: I said two things: we expect to do the review within three to five years, which is a sensible period, but my additional point was that if it is clear that something is wrong and is affecting implementation, the review would be brought forward. I hope that helps.

Mr Wright: What would be the point at which the review would be brought forward? If it had not been working, what criteria would the Government and Ministers use to decide to do that?

Mr Prisk: Clearly, we must focus seriously on the impact of implementation. Perhaps to ensure that it is clear and to confirm it for the record, I will send a note to the hon. Gentleman, and through you, Mr Brady, to the Committee, setting out and confirming how that would work.

Mr Wright: The Minister has been constructive and I welcome his comments. On that basis, and in order to make progress, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Mr Iain Wright: I shall be brief. I have stated on several occasions—this is the fourth or fifth time—that we agree with the concept of the primary authority scheme, which we introduced during the previous Labour Government.

I have a number of brief questions for the Minister. What additional areas of policy does he have in mind to introduce when it comes to the primary authority scheme over the next few years? On a similar theme and with a constituency hat on, although this issue affects many hon. Members, metal theft is a major problem in my area and elsewhere in the country. It has been discussed several times in the House, and I understand that a private Member's Bill will have a Second Reading tomorrow. On that basis, how does the Minister feel about including metal theft as part of the primary authority scheme? In my area, I have seen that the theft of metal can occur in Hartlepool, for example, but it may then be sold in another part of the country, so consistency of approach would be helpful. I raise that point on the back of evidence to the Committee from the Chartered Institute of Environmental Health, which said that such an approach would be very sensible and demonstrate joined-up government thinking at all levels. Will the Minister consider implementing that approach, as well as what timetable would be available for it? I look forward to hearing what he has to say.

2.15 pm

Mr Prisk: Perhaps I can start with that. It is an important point that I asked officials about, and they kindly produced an additional note. In reality, the existing licensing arrangements under the Scrap Metal Dealers Act 1964 fall within the scope of the legislation. In addition to whatever may or may not be discussed tomorrow on the Floor of the House, the opportunity for scrap metal merchants who wish to work together to share compliance and form a primary authority is within the scope of current legislation. That is a good and important point to bear in mind.

I also wish to flag up a couple of other important issues concerning the operation of the clause. As we have heard, the measure will provide an opportunity that will allow the smallest businesses to participate, and I would like to provide some examples to the Committee so that people understand the range and opportunities involved. Currently, primary authority partnerships can be formed to cover matters that include, among others, health and safety, fair trading, food standards and product safety. In the first three years of the scheme, some 512 businesses have formed partnerships, covering about 50,000 business premises. One third of those businesses—37%—are small and medium-sized businesses, albeit, I suspect, more medium than small.

That shows that the scheme is accessible and popular, but there is a problem. When I was in opposition and sat in the hon. Gentleman's seat, we considered the

Regulatory Enforcement and Sanctions Act 2008. I felt that the previous Government failed to address the fact that the primary authority scheme focused principally on larger businesses, and the question in my mind concerns how to help the smallest, single-site businesses enjoy the same assured form of regulation.

We are trying to introduce new eligibility criteria that open the scheme up. Those are designed to be broad—we touched earlier on what a shared approach to compliance means—and perhaps I may provide the Committee with some examples. A small business that operates from a single site would be able to comply if it followed regulatory guidance from its trade association on how to manage a key risk. Let us take the specific example of an individual small business involved in making cheese. By following specific guidance on the appropriate way to manage temperatures in cheese production—a very important issue—and by working with others and through its trade association, it would be able to form a primary authority under the clause. That is an important shift. At the moment, small businesses in one location are not able to do that given the way that partnerships operate.

Another important example is that of franchise companies. Compliance policies are often included in the terms of a franchise agreement. At the moment, we have the strange situation in which a single-site franchisee needs to follow the same procedures as all other sites in that brand, although there will be instances of local authorities demanding that they fulfil their regulations on a different matter, thereby putting that franchisee at a disadvantage.

Removing that problem and allowing franchisees under a brand to form a primary authority partnership would open up the whole scheme. To give Members an idea, there are 36,000 franchise outlets in the UK. In addition, 30 trade associations regularly work with the Better Regulation Delivery Office, which represents something like 750,000 businesses.

Anne Marie Morris: I commend the Minister on a first-class proposal and an excellent development and step forward. As I understand it, there has been a lot of support for the measure among the trade bodies that he has consulted. What steps will he take to ensure that some of the smaller bodies, which might fall below his line of sight, find out about this measure? We want as many businesses to take advantage of it as possible.

Mr Prisk: I entirely agree, not only with my hon. Friend's compliment but—perhaps more importantly—about needing to get the message out. As the Bill progresses, I wish to ensure that the message goes out to the smallest groups, and to individual businesses who may wish to form a trade association in order to participate. I am sure that the all-party group for micro businesses, among others, will wish to participate in that. It is a wonderful opportunity for many of us who have been asked by small businesses in our constituencies why Tesco is allowed assured compliance but they are not. This will answer that question.

Julian Smith: For the scheme to be effective, the overall architecture of where it is administered needs to work effectively. I understand that responsibility for the primary authority scheme was moved from the Local Better Regulation Office in April this year. Will the Minister clarify who within BIS is now running it, and how that fits in with the Government's many other deregulatory structures, such as the Better Regulation Executive and other units?

Mr Prisk: We had a problem. The review of regulations was dealt with in the Department for Business, Innovation and Skills but an entirely separate organisation dealt with implementation. The two needed to be brought closer together. That is why we have brought the expertise from the old LBRO into the Department. Therefore, the issue of regulation, the way it is dealt with and its implementation are brought together. That is where the oversight for that will occur.

The point about primary authority partnerships is that the local authority in each case—for example, West Yorkshire Trading Standards Services—leads at a local level. That is where the relationship exists for the businesses. It was also interesting in the Committee evidence sessions to hear that witnesses on both sides of the equation were supportive. Councillor Canver of the Local Government Association said that

"enabling more businesses to be part of that scheme will raise standards for businesses more widely."

Jane Bevis from the British Retail Consortium said that

"some of our small and specialist retailers are looking forward to the opportunity of trade associations also being able to play a role in this"—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 21 June 2012; c. 124, Q275, Q274.]

The chief executive of the Trading Standards Institute told us that this was "a natural thing to do".

This is a good opportunity to try to ensure that the smallest businesses in the sectors we have discussed are able to benefit from a scheme that started under the previous Government and that can now be widened, so that whatever the size of business, it can enjoy the benefit of assured compliance.

Touching on the broader issue of the subjects, the way in which that works at the moment includes quite a wide variety of eligible activities that fall under the primary authority scheme. It includes, for example, fair trading, product safety, food standards, health and safety, petroleum licensing and explosives licensing. It includes metrology, and I have to confess that I am not entirely sure what that is. It also includes age-related sales among other things. There is some difference between the nations—England, Scotland, Wales and Northern Ireland—but nevertheless this is a broad opportunity. I hope hon. Members from all parties will recognise that this a good chance to ease the burden of compliance and ensure that small businesses can do what they want: that is, follow the rules as set out, but have the confidence of knowing that they will not find those rules are changed when implemented. That is a vital part and I strongly recommend the clause to the Committee.

Question put and agreed to.

Clause 52 accordingly ordered to stand part of the Bill.

Clauses 53 and 54 ordered to stand part of the Bill.

Schedule 17

UNNECESSARY REGULATION: MISCELLANEOUS

Question proposed, That the schedule be the Seventeenth schedule to the Bill.

Mr Iain Wright: I do not intend to ask my hon. Friends to vote against schedule 17. I am confident that, in the face of the slowest recovery out of a global financial crisis and a double-dip recession made in Downing street, an Enterprise and Regulatory Reform Bill that repeals the Wireless Telegraphy Act 1967 to ensure that retailers are no longer obliged to notify TV Licensing of sales and rental of TV sets, and that also repeals the Water Industry Act 1991, which required the inclusion of an in-area trading ban of a licensed water company, will mean that we will now see economic growth flourish. I really do not know why the country is concerned about this Government's economic competence and compelling vision.

Julian Smith: It is a lot better than the work that the hon. Gentleman's Government did on repealing legislation. Before he criticises us, will he clarify what he did to deregulate during his 13 years in office?

The Chair: But only while talking about the Bill before us.

Mr Wright: I will always adhere thoroughly to your guidance, Mr Brady. I do not want you to rule me out of order.

There is a serious matter when it comes to schedule 17—or rather, there is not. Part 3 of schedule 17 concerns insolvency, which the Minister mentioned this morning. The Bill changes provisions for early discharge from bankruptcy set out in the Enterprise Act 2002. R3, the body representing some 97% of insolvency practitioners, stated in its written submission that

"we view the Bill as a missed opportunity to bolster the UK business rescue culture and help to protect the UK economy from the actions of unfit company directors. Addressing these two issues would play a crucial part in delivering a key aim of the Bill—encouraging long term growth."

We have tabled no amendments to this part of the Bill, although we reserve the right to consider doing so on Report. I am keen to work collectively and constructively with the Government and the Minister to ensure that our bankruptcy and insolvency regime is as conducive as possible to our economy's long-term growth and competitiveness, and to encourage and incentivise the survival of businesses as much as possible. On that basis—with your permission, Mr Brady—it would be worth debating whether we should revise insolvency legislation to safeguard existing companies as well as making policies to create new ones.

I accept fully that the protection of creditors is vital. In years gone by, creditors in this country had the right to chop off the ears of a bankrupt. I am not suggesting that we table an amendment to that effect, although if the Government wish us to do so, I am more than happy to do so. I accept that in an economy in which access to finance is a major obstacle to growth, anything that could limit credit requires careful consideration. With your permission, Mr Brady, I suggest that, in the same way we considered Cadbury, Kraft and Manchester United as case studies for the takeover regime, we consider the Coryton oil refinery as a case study for what we need to do to ensure that important assets for our economy are kept in this country.

Coryton was owned by Petroplus, which went bankrupt early this year. The company owned five plants in western Europe. Coryton is the most efficient refinery plant in western Europe. I understand that it has a Nelson complexity rating of 12, whatever that means.

Ian Murray: How much?

Mr Wright: Twelve, meaning that it could produce a high proportion of lighter fuels that fetch a higher margin in the markets. It was a highly profitable plant, although the manner in which the parent company structured its debt meant that it had £2 billion in bonds against it. Nevertheless, from an objective point of view, the plant seems to be a strong candidate for remaining a going concern. One would think that other plants in western Europe and elsewhere would be further down the line towards closure. However, the UK plant will be the only Petroplus plant to close, with the loss of 900 jobs in Essex.

Shell has bought the facility and is turning the site from a refinery into a simple—if it can be simple—storage depot for oil and diesel. Its advanced refining capability is now being stripped from the site and transferred to Shell's plant in Rotterdam. Thurrock council has empirical evidence—I know that that phrase might shock and concern the Minister—in its impact assessment suggesting that the refinery is worth £100 million to the local economy.

I have described what is going on with Coryton oil refinery. With your permission, Mr Brady, I suggest that some of that could be due to insolvency legislation. Is there anything we can consider doing? In France, for example, when a company goes bust, French legislation dictates that the process should minimise the impact on employment. In the UK, as schedule 17 states, the top priority is the interests of creditors. I fully understand and accept that.

Norman Lamb *rose—*

Mr Wright: I will give way.

The Chair: Before the Minister responds, my permission is growing a little tenuous. The only provisions relating to insolvency in schedule 17 are to do with the early discharge of bankruptcy. I fail to see the relevance of the hon. Gentleman's remarks.

2.30 pm

Norman Lamb: I simply wanted to rise to support you as our esteemed Chairman, Mr Brady. I was going to ask what on earth this has to do with early discharge for individual bankruptcy.

Mr Wright: My point—I will finish in a sentence—is that the purpose behind part 3 of the schedule is to ensure that we can have an enterprise culture as much as possible in this country; I welcome what the Government are trying to do—

Norman Lamb: That is a second sentence.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): Comma.

Mr Wright: Semi-colon. I am trying to probe the Minister in a very complimentary manner. We are discussing an enterprise Bill and we are concerned that the long-term competitive position of this country should be enhanced through the legislative framework with regard to early discharge from bankruptcy wherever possible. Therefore, is there anything else that we should be considering with regard to schedule 17 and elsewhere in insolvency legislation

to ensure that our long-term competitiveness is enhanced and that assets that are important to this country are maintained?

David Mowat: I agree with you, Mr Brady, that the Coryton issue is not really relevant to the Bill, but as it has been raised—

The Chair: No, Mr Mowat. Even though it has been raised, I would rather you did not.

David Mowat: You really would? I should just like to concentrate on a few things, Mr Brady. If it is out of order—

The Chair: I think not on this occasion.

Mr Wright: Thank you, Mr Brady. I have concluded my remarks. This is an enterprise Bill and the objective of all hon. Members is to ensure that we can support the long-term competitiveness of our country and the assets that can help us grow the economy. Is the effect of bankruptcy on the Coryton oil refinery something that we should look at and amend the Bill in future?

Norman Lamb: I suspected that the shadow Minister was trying your patience, Mr Brady, by returning yet again to Coryton. Suffice to say that I would be happy to have a discussion with him after the Committee has concluded its deliberations this afternoon. I would like to concentrate on what the schedule is about. He mocks individual repeals, but it is a completely different culture in this Government from what has gone before. For the first time, the Government are seeking to look at the stock of existing regulation and get rid of those that impose unnecessary or inappropriate burdens on business or which are simply no longer relevant. It was a mindset that never existed under the previous Government.

The hon. Gentleman talked earlier about one in, one out, which imposes a real discipline on Ministers. Every time any new regulation is considered we have to consider what we might get rid of to facilitate the introduction of the new measure. If that discipline had been present in the previous Government we might not have had six new regulations every day. The hon. Gentleman would be wise to take note of the approach we are taking and recognise that action has to be taken on all fronts.

Julian Smith: I congratulate the Minister on the schedule. Could he clarify how the red tape challenge and any deregulation coming off that will be implemented? We hope that there will be lots of regulations coming off the statute book as a result of that challenge.

Norman Lamb: I am happy to accept my hon. Friend's congratulations on the schedule. It is appreciated. This is just one small part of the whole agenda of repealing unnecessary, inappropriate or oppressive regulation. Where it is possible in future to remove regulation by secondary legislation, we will do that, and only where it is necessary to do it by primary legislation will we use that mechanism to do so. We will remain focused on removing regulation that is no longer appropriate or necessary, or that imposes an excessive burden on business. Incidentally, that approach also needs to be taken to consider the stock of regulation that has built up over the years at EU level, much of which now needs to be reconsidered.

The repeal in part 1 of schedule 17 will remove the outdated requirement on retailers to notify TV Licensing whenever they sell a TV, which imposes an unnecessary burden on business. Businesses will benefit because their staff will no longer have to spend time dealing with TV licensing inspectors and being trained to record details of TV sales, or spending time requesting information from customers, which may include managing any customer resistance to the request for personal data. Removing the burden will lead to a welcome reduction in costs for businesses. The British Retail Consortium has described the repeal as an enormous help. Its view is clearly not shared by the Labour party.

Ian Murray: I appreciate that the Minister is trying to get rid of unnecessary regulations, but he has not said why the regulation is disappearing. Has he discussed with the licensing bodies, including the BBC, the impact that the measure may have on licence uptake in future?

Norman Lamb: I have just explained why we are repealing this unnecessary regulation. It will have a small impact on the BBC, but it will benefit business and will therefore help with jobs by removing an unnecessary regulatory burden that business has to deal with.

Although I acknowledge that there may be some loss of licensing revenue to the BBC as a result of the repeal, the potential loss represents only a tiny proportion of its annual revenue from the licence fee. We do not envisage that the loss of that level of revenue will cause the BBC any great difficulty. Nevertheless, the Department for Culture, Media and Sport will monitor the impact of the repeal on the BBC's revenue. Moreover, TV Licensing has a number of other tools for reducing evasion and non-payment that it will use to try to make up for any losses. The Government are talking to the BBC about what other non-regulatory options for reducing TV licence fee evasion may be available to it. In answer to the hon. Member for Edinburgh South, discussions with the BBC are under way to seek to minimise the potential impact on revenue.

Part 2 of schedule 17 removes section 2(3)(d)(iii) of the Water Industry Act 1991, a provision known as the in-area trading ban, with which the shadow Minister will be familiar. That provision will remove a barrier to competition in the water sector by enabling associate companies of water undertakers to compete for contracts in the area of their parent water company, enabling them to compete on an equal footing with other water companies that have no restrictions on where they can supply water. In particular, it will enable them to compete for national multi-site water supply contracts.

The Government are committed to promoting greater competition in the water sector to encourage innovation, increase consumer protection and build resilience to climate change. Removing barriers to competition, including the in-area trading ban, is a key element of the reforms to the water sector outlined in the water White Paper.

Ian Murray: I am interested in the Minister's speech about the schedule. Does he agree that the three clauses that he is promoting will remove regulations brought in under a Conservative Government?

Norman Lamb: I have no idea. It is largely irrelevant. *[Interruption.]* This Government want to consider regulation wherever it came from and whenever it was introduced and see whether it is appropriate now, in this modern age, to remove it. The hon. Gentleman's party would have done well to have adopted that discipline during its time in government, rather than adding six new regulations every day during its period in office.

The Government published the draft Water Bill on 10 July 2012. Pre-legislative scrutiny will give Members the opportunity to analyse our proposals in detail, and we look forward to hearing views on our liberalising proposals. The provision will be implemented through an amendment of water company licence conditions by Ofwat, the water sector regulator.

Part 3 of schedule 17 repeals section 279(2) of the Insolvency Act 1986. I will confine my remarks to individual bankruptcy, in marked contrast to the shadow Minister's. Section 279(2) allows bankruptcy to end in less than 12 months when certain conditions are met, which is commonly known as early discharge. Currently, most bankrupts gain their discharge from bankruptcy after 12 months, and their unpaid debts are written off at that point. Early discharge was introduced to allow an even earlier end to bankruptcy for those whose affairs do not require any further investigation. Early discharge was intended to promote rehabilitation and reduce the stigma attached to bankruptcy.

When we reviewed the effectiveness of the provision, however, we found that it had not had the positive impact that we expected. Our review found that only 15% of bankrupts thought that the discharge period of less than a year was appropriate. The provision had, however, introduced considerable financial and administrative burdens into the bankruptcy case administration process, which is why we seek to repeal that measure. The average time at which early discharge is effective is eight months, so all that is achieved from quite a costly and bureaucratic process is four months, which is not a particularly significant gain.

Early discharge notices cost businesses time and money. We have found that, by repealing early discharge, we will save businesses £0.6 million a year. I know that is irrelevant to the Labour party, but it is worth achieving for businesses. Having a single automatic discharge period will also provide transparency and clarity in the bankruptcy regime. The measure is supported by stakeholders, including bankrupts and creditors. The Institute of Credit Management states:

"There are no benefits of early release…and the cost is ridiculous."

Christians Against Poverty says that

"we can see no tangible benefit…that can justify the cost…to the Insolvency Service and creditors."

I commend the measure to the Committee.

Question put and agreed to.

Schedule 17 accordingly agreed to.

Clause 55

EXPLOITATION OF DESIGN DERIVED FROM ARTISTIC WORK

Question proposed, That the clause stand part of the Bill.

Mr Iain Wright: Clause 55 repeals section 52 of the Copyright, Designs and Patents Act 1988 to remove the 25-year limitation for artistic works created by an industrial process. The repeal will make such designs consistent with the approach across most UK copyright law whereby artistic works have copyright protection for the lifetime of the creator plus 70 years. The approach seems sensible and provides a degree of consistency and therefore simplicity. The measure, which we support, will help industries such as the British furniture and jewellery sectors.

Julian Smith: Will the hon. Gentleman congratulate Sir Terence Conran, who has articulated the problems experienced by the UK furniture manufacturing and design industry, and accept that the clause will make a massive difference to that industry, which is worth £2 billion to £3 billion to the UK economy?

2.45 pm

Mr Wright: I am happy to do that, I think. There has been a display outside the Committee Room all week by the UK furniture manufacturing industry, which is an important part of what the country can do. Anything that can boost manufacturing, particularly furniture manufacturing, should be welcomed.

The Minister will have seen the submission from the Alliance Against IP Theft, which raises reasonable points about future legislative commitments. The alliance stated that it would be helpful to seek clarification of the application of section 51 of the 1988 Act as it applies to designs. It also made a reasonable point:

"Section 51 was intended to address functional articles such as exhaust pipes, not works which derive their value from their creative nature."

Does the Minister have any plans to tackle that point? We want clause 55 to work, but the Alliance Against IP Theft stated in its submission:

"Without such a provision, the repeal of Section 52 will have limited benefits for classic designs."

Has the Minister considered that submission? What is his response to its concerns?

Norman Lamb: I welcome the shadow Minister's support for the provision. From a legal perspective, clause 55 repeals the exceptions contained in section 52 of the Copyright, Designs and Patents Act 1988 and the Copyright (Industrial Process and Excluded Articles) (No. 2) Order 1989, with which hon. Members will be familiar, and removes references to section 52 elsewhere in the 1998 Act. In plainer language, if it is necessary for hon. Members, the existing law—section 52—removes copyright protection from mass-produced artistic works 25 years after the works were first marketed. If I market a chair that I designed and that I now manufacture, I can have copyright protection for 25 years, but thereafter any of my competitors may market their copies of my chair design and I can do nothing to stop them from doing so. Repealing section 52 would mean that all categories of artistic work will enjoy the full term of copyright duration—the life of the creator plus 70 years, rather than the 25 years to which copyright enforcement is currently limited. That will help designers and manufacturers of classic designs, who have been campaigning for the law to be changed and who want to

encourage investment in the UK designers of the future. As we have already heard, the changed has been welcomed by designers such as Sir Terence Conran and Tom Dixon.

Spending on UK design output amounts to some £33.5 billion a year, and there are already around 350,000 people in core design occupations in the UK. We want to promote innovation among designers and to encourage investments in new designs while deterring the copying of original creative works. Furthermore, the UK is one of only three EU member states—the others being Estonia and Romania—that limit the term of protection for mass-produced copyright works. Designers argue that that undermines the integrity of our design industry and that it may make British companies less willing to support long-term investment in design than their European competitors. We therefore want to align our position with the rest of Europe.

We recognise that the repeal of section 52 may have implications for those who manufacture, distribute or sell replicas, such as, for example, replicas of classic home ware, and it is important that we take their concerns into account. However, it is important to bear in mind that not all replicas or furniture inspired by classic designs infringe copyright. There would be an infringement only if the copy is of a substantial part of an original copyright work. As in other areas of copyright law, it will obviously be for the courts to determine the exact scope of the law. In the light of emerging case law from the European Court of Justice, the time is right to make the change. We know that those in affected sectors have been aware that the law may need to be updated and that they have been following developments closely.

We want to minimise adverse impacts on sellers of replicas. Although we recognise the absolute importance of promoting the design industry, we must take account of others who may be affected and minimise such impacts. We will make transitional provisions to allow sellers affected by the change sufficient time to clear their existing stock and to assess which, if any, of their replicas might infringe copyright. My officials have already had constructive meetings with replica furniture makers. They will therefore be allowed enough time to seek from any relevant copyright owners the necessary permission to continue importing and selling replicas, or to modify their supply contracts and products.

David Mowat: Will the Minister clarify whether the extension of the copyright applies to imitations outside the UK, for example in China, or only to people making imitations in the UK?

Norman Lamb: I await inspiration from my left. I will continue, but I will ensure that I either respond to my hon. Friend about his concern or write to him and other Committee members.

Finally, I make it clear that the clause is not about giving some form of blanket copyright to furniture designs. That has been suggested by some commentators, who have perhaps misunderstood what we are trying to achieve. In fact, only those items of furniture that are works of artistic craftsmanship will be eligible for copyright protection, as is currently the case. In any event, various categories of work, such as sculptures, greetings cards, book jackets and stamps are already excluded from the scope of section 52 of the 1988 Act, and therefore already enjoy the full term of protection. I therefore urge the Committee to support the clause.

Question put and agreed to.

Clause 55 accordingly ordered to stand part of the Bill.

Clause 56

POWER TO CHANGE EXCEPTIONS: COPYRIGHT AND RIGHTS IN PERFORMANCES

Mr Iain Wright: I beg to move amendment 97, in clause 56, page 46, leave out lines 5 and 6 and insert

'provide that any act which may be done under this Chapter notwithstanding the subsistence of copyright is pursuant to such regulations no longer permitted without regard to the subsistence of copyright.'.

The Chair: With this it will be convenient to discuss the following:

Amendment 98, in clause 56, page 46, line 6, at end insert—

'(1A) The power to make regulations under this section is exercisable only in making provision for the purposes mentioned in section 2(2)(a) and (b) of the European Communities Act 1972.'.

New clause 15—*Sharing and viewing on the internet*—

'(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—

"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.".'.

New clause 16—*Material available to the public under freedom of information*—

'(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

(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.".'.

Mr Wright: The clause is important. I seek your guidance, Mr Brady, about whether we will have a clause stand part debate. My remarks will range widely around the issues involved, just as a means of explaining the rationale of the amendments, and I hope that, with your permission, I will be able to do that.

The Chair: My guidance is that whether we have a stand part debate depends on how widely the debate on the amendments has ranged.

Mr Wright: Thank you, Mr Brady. That is very helpful.

As I and my hon. Friends have often said, the Bill's purpose is to try to improve the competitiveness of this country's economy and, in so doing, to nurture the growth sectors of the global economy in which Britain has a competitive advantage now and might have in future. The sectors of the global economy in which we are strong are automotives and pharmaceuticals, and we are particularly strong—I know that the Minister of State has been to the Farnborough air show this week, as have I—in aerospace, defence and security.

I also think that we are strong in the creative sector, in which we play a leading role. Thinking about it, the creative sector makes an immense contribution to the British economy. We are the world leader in the music industry. It is fitting that we are talking about this on 12 July, because it is 50 years to the day since the Rolling Stones played their first gig at the Marquee on 12 July 1962—I think the Minister of State was there. But to return to the present day, our small island has had a remarkable impact on popular music throughout the world. We had almost 13% of global music sales in 2011. One in eight albums sold around the world is British. The UK has had the best-selling album artist anywhere in the world in four of the past five years.

Norman Lamb: Not the Stone Roses, please.

Mr Wright: That's next year.

The UK's best-selling album artists were Amy Winehouse in 2007; Coldplay in 2008; Adele in 2011; and—I have left the Minister's favourite till last—Susan Boyle in 2009. Those are tremendous achievements for the British economy and for the creative sectors.

I have not mentioned this before, but I am fond—too fond—of the Stone Roses. I do not think I have mentioned that I went to see them play at Heaton Park. Their three concerts in Manchester, attended by 225,000 people, boosted the Greater Manchester economy by some £23 million. Again, that is a tremendous achievement. It shows the links between great British iconic bands and the positive impact that they can have on the economy.

The publishing sector is a particular success story.

Chi Onwurah: I thank my hon. Friend for giving way. Before he moves on from the great successes of the British music industry, is he aware that when I talk to many in the music industry—for example, at the creative industries summit that the Labour party held on Tuesday—I am told that they wish to be treated, particularly by the Government, as an industry that creates jobs and contributes to the economy rather than as an art form, as it were, and that they wish their contribution to be better recognised?

Mr Wright: My hon. Friend makes a fair point. We would like to see an industrial strategy that identifies the growth sectors of the future and that works closely and proactively with those industries, such as aerospace, pharmaceuticals, automotives and the creative music industry, to ensure that their concerns are addressed.

I was moving on, Mr Brady, to the publishing sector—

Norman Lamb: Oh, I thought you were moving on to the amendments.

Mr Wright: I need to set out the rationale. *[Interruption.]* The clause is important. I want to address the issues very carefully.

Ian Murray: Does my hon. Friend agree that the Minister should want to hear about publishing, given his significant contribution to publishing in this country with his marvellous book?

Mr Wright: Absolutely. I think it is currently the 480,000th most popular book sold on Amazon, which is quite impressive. I may be making up those figures. I have no empirical evidence whatever to support what I have said. I am taking a leaf—literally—from the Minister's own book.

Publishing contributes £5 billion every year to our economy, and 41% of sector revenues come from export sales, which is a bigger proportion than any other country on earth. The UK book market is the fifth largest in the world and we are one of only four countries that produce more than 100,000 titles each year. I am sure the Minister is keen to wrap up the Committee and get on to his caravan holiday, where he can eat a pasty while reading "Fifty Shades of Grey". It is not simply erotic fiction. I never thought I would use the phrase "erotic friction" in Committee. [Hon. Members: "Fiction."] The friction is on page 115—*[Laughter.]*

Science, technical and medical journals employ more than 10,000 people in the UK and generate more than £800 million of annual export revenue. Given that one of our country's growth sectors is education, particularly higher education, the supremacy of our academic journals throughout the world is an impressive example of dovetailing and mutual competitive advantage.

3 pm

The third sector that I want to mention is the UK video games and interactive entertainment sector. It is worth £3 billion to the national economy and global growth is expected to exceed 10% per annum in the next decade. We lead the world with creativity in this sector. "Batman: Arkham City", produced by Rocksteady Studios in north London, sold 2 million copies in its first week of release. There is also "Football Manager 2013" by Sports Interactive, which is based in Old Street, and online games such as "Moshi Monsters", which is produced by Shoreditch-based Mind Candy and has 50 million registered users.

There are many reasons why we in Britain are so pre-eminent and successful in the creative industries. There is too much to go into here—certainly with your strict chairmanship, Mr Brady—but one of the reasons undoubtedly is the strong legislative framework that surrounds copyright and intellectual property, which gives the creator of works in this country confidence that such creative input will not be exploited or reproduced without some sort of recognition or reward. We jeopardise that strength in the legislative framework at our peril.

Ian Murray: My hon. Friend makes a valuable point about copyright, particularly in terms of publishing. Does he think that the promotion of the Minister's book has been enough compensation for me copying a few chapters?

Mr Wright: I will see my hon. Friend in prison.

The World Trade Organisation forecast suggests that intellectual property value is growing faster than world GDP. Other countries are grasping the importance of the link between a rigorous copyright and IP regime and the facilitation of economic growth. South Korea is a good example of that. In 2004, South Korea was put on a watch list by the US Government for failing to protect copyright and IP. The South Korean music market collapsed in the first decade of the 21st century—I am afraid I have no idea about bands from South Korea. However, through tough legislation to clamp down on illegal file sharing the industry has returned to growth. In 2010, music sales in South Korea grew by 11.7% and the market has become the 11th biggest in the world.

I thank you, Mr Brady, for your indulgence, because it was important to set the context. We in the UK are leading players in the global creative sector. The sector will become an increasingly important part of the global economy, as well as our domestic economy, and Britain is well placed to exploit our competitive advantage. However, other countries are closely considering the link between copyright protection and growth in markets. With its ill thought-through proposals in clause 56, the Government risk undermining that potential success in the future. In its submission to the Committee, UK Music stated:

"The inclusion of copyright clauses in this Bill came as a surprise to many copyright stakeholders. We widely anticipated copyright legislation, but we did not anticipate that the copyright legislation would be attached to this particular bill. This 'surprise' generated a degree of confusion and alarm amongst our community. This was needless. Better communication between the Government and its key stakeholders would have prevented this."

Such comments do not demonstrate a decidedly pro-business, pro-growth or pro-enterprise stance from the Government.

We have mentioned time and again that with this Government there is an absence of consultation with business and a subsequent lack of certainty for companies, whether it be the feed-in tariffs or the oil and gas raid by the Chancellor in the Budget of 2011or the lack of progress and certainty regarding the regional growth fund. The simple fact that the music industry, an important industry for the UK economy, has stated that the Government's actions in this Bill are cause for "confusion and alarm" does not suggest a harmonious—do you see what I have done there?—productive and mutually beneficial relationship between Government and business that will allow for long-term stability and investment and the continuing supremacy for UK businesses.

The lack of an impact assessment on this part of the Bill, the absence of any intellectual property and growth White Paper on the back of the recent copyright consultation and the tabling of wide-ranging and significant new clauses a matter of days before the Committee is due to consider them all indicate a piecemeal, ad hoc and rag-bag approach to copyright legislation. Indeed, it seems that the Government are making policy up as they go along, with no consideration of the wider repercussions or the impact on competitiveness for an important sector.

As I understand it, the original intention of clause 56 was to maintain penalties to prevent breaches of copyright on such things as piracy. We would support the original intention and hope to work with the Minister to revise the wording of clause 56 to ensure that that intention is implemented into law. That is the basis of our amendments.

I want to set out the basis and rationale of the amendments, as they deal with concerns regarding the current wording of the clause. I say here and now that we will not press our amendments to the vote if the Minister agrees to withdraw clause 56 in Committee and pledges to return on Report with a form of wording that legislates for its original intention, rather than the wider, vague and ambiguous Henry VIII powers that clause 56 currently provides.

Norman Lamb: A generous offer.

Mr Wright: It is still on the table.

My hon. Friend the shadow Secretary of State raised concerns on the matter on Second Reading, where the Chair of the Select Committee on Culture, Media and Sport also raised concerns. The Chair asked the Secretary of State to confirm first, and correctly, that

"copyright is the legal expression of intellectual property rights, and is not a regulation".—[*Official Report*, 11 June 2012; Vol. 546, c. 65.]

The Chair of the Select Committee also asked the Secretary of State to reassure the House that changes to

[Mr Iain Wright]

copyright—specifically, extensions of copyright extension—would not be passed through statutory instrument and without full and proper parliamentary scrutiny.

Following Second Reading, the Secretary of State wrote to the Chair of the Select Committee, copying in my hon. Friend the shadow Secretary of State, and placed a copy of the letter in the Libraries of both Houses. He said, regarding the Chair's concern on copyright exception, that

"if following careful consideration of responses to its recent consultation. the Government decides to make changes to copyright exceptions it would be our intention to do so via secondary legislation. This can already be done using existing powers in section 2(2) of the European Communities Act 1972."

That is an important consideration, which forms the basis of one of our amendments, and I will return to the matter of the 1972 Act.

The Secretary of State also referred to clause 56 in his letter and the power that it will give to him. He said:

"This power will allow us, when necessary, to make changes to exceptions, while also ensuring that the current penalties associated with serious cases of copyright infringement are maintained and apply consistently to offences of equal seriousness. I can reassure you"—

the Chair of the Select Committee—

"that the power is limited to the amendment of exceptions and does not allow any other amendments to copyright. As a safeguard, each use of the Order-making power must be approved by Parliament."

Two issues form the basis of our amendments, and I will deal with each in turn. The Secretary of State maintains that he has the power to make changes to copyright exceptions via secondary legislation, using the powers provided by section 2(2) of the 1972 Act. Over the weekend, I read *Hansard* and the 1972 Act. Section 2(2) states:

"Subject to Schedule 2 to this Act, at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by order, rules, regulations or scheme, make provision…for the purpose of implementing any EU obligation of the United Kingdom, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised; or…for the purpose of dealing with matters arising out of or related to any such obligation or rights or the coming into force, or the operation from time to time, of subsection (1) above; and in the exercise of any statutory power or duty, including any power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person entrusted with the power or duty may have regard to the objects of the EU and to any such obligation or rights as aforesaid."

However, schedule 2 to the 1972 Act, to which section 2(2) refers, states in paragraph 1(1):

"The powers conferred by section 2(2) of this Act to make provision for the purposes mentioned in section 2(2) (a) and (b) shall not include power…to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal".

It is clear that the powers conferred on a Minister by section 2(2) of the 1972 Act are limited, confined to implementing EU directives. Moreover, the schedule to the 1972 Act expressly prohibits a Minister from having the power to legislate by order, other than for the rules of procedure for any court or tribunal. That is not applicable in the case we are discussing.

Ian Murray: My hon. Friend is demonstrating the slight contradictory nature and confusion of what is being brought forward. That was emphasised on Second Reading. The Chair of the Select Committee on Culture, Media and Sport asked the Secretary of State:

"Will he assure the House that the Government will not change copyright in that way without proper parliamentary scrutiny?"

The Secretary of State replied:

"Yes, I can give assurances on that."

But only 20 minutes later in the same debate the Select Committee Chair asked the Secretary of State exactly the same question:

"Can he provide an assurance that they will be introduced not by statutory instrument, but in proper, primary legislation?"

The Secretary of State replied:

"I am not going to give the hon. Gentleman a very precise answer because I will need to check on the exact legal position."—[*Official Report*, 11 June 2012; Vol. 546, c. 65-74.]

Does that not highlight the confusion around these clauses?

Mr Wright: As I said earlier, I think the Government are making this up as they go along. They do not have a very clear strategy on how to deal with such important matters for a growing and important part of our economy in terms of copyright legislation. We would suggest going back to the 1972 Act. In the interests of greater clarity and greater certainty, clause 56 should be amended to provide that the powers it confers on the Secretary of State apply solely in the context of restricting the operation of copyright exception and regulatory penalties for copyright infringement.

On a wider and very significant point, it is simply not correct to state that any law can be enacted in the UK by a Minister without full parliamentary scrutiny simply because the subject matter falls within EU law. I am sure some Government Members will agree with me on this specific point and about the relationship between this Parliament and EU legislation As I understand it, the original intention of the clause was to address concerns relating to penalties for copyright infringement.

When the Bill was published in May, the Intellectual Property Office explained the rationale behind the clause on its website:

"Currently, when section 2(2) of the European Communities Act 1972 is used to amend the exceptions to copyright and performance rights, this can cause difficulties as its use may require a downwards adjustment of criminal penalties in copyright legislation."

An order-making power to allow amendment of any exceptions to copyright and performance rights via secondary legislation will enable the Government to preserve the level of penalties which are set out in the substantive copyright legislation. In some cases this includes penalties of up to ten years for copyright legislation on a commercial scale. It would not allow any reduction or increases in penalties."

The submission from the Publishers Content Forum to this Committee put the situation rather succinctly:

"As a solution supposedly designed to meet a specific and technical need, the language and scope of the proposed Clause seems entirely at odds with the problem it is intended to address."

The Minister said that he does not like loose, motherhood and apple-pie drafting of legislation and legal language but that is exactly what the clause uses. The Alliance Against IP Theft, in its submission to this Committee, said:

"We question why it has been felt necessary to use such generalised, loose language to address a very specific legal flaw".

As a former Minister, I understand the importance of and need for secondary legislation. I agree with the use of statutory instruments as a means to implement EU directives where necessary, but full parliamentary scrutiny should be used when creating or amending substantive copyright legislation. There is also a risk that the Government may be tempted to bundle a whole range of reforms of copyright exceptions into a single statutory instrument. This would virtually remove Parliament's ability to scrutinise, challenge and, where necessary, amend, proposed legislation.

The SI procedure is a clumsy and blunt device: the Committee can either agree or disagree with the motion. But a particular change may have differing impacts on differing industries; some changes may narrow exceptions while others could widen them. In those circumstances, how can hon. Members properly scrutinise the proposed legislation? Can the Minister outline what his policy will be on bundling groups of exceptions together? How could he ensure that each specific copyright exception would be subject to the fullest possible parliamentary scrutiny?

I can imagine a scenario where the House may be asked to consider a bundle of copyright exceptions in the interests of the efficient use of parliamentary time. The House may agree with exceptions (a) and (c), but not (b), for whatever reason. How would the opinion of the House, as set out in that debate, be accommodated by the Government in such a scenario, given the limitations of the statutory instrument procedure?

3.15 pm

This morning we considered clause 49 and sunset provisions. Will the Minister outline the relationship between what is proposed in clause 56 and sunset provisions, as in clause 49? He mentioned insolvency this morning and how it would not be conducive to certainty and stability among the sector. Will he also cast his eye over investment in the creative sector? Does he anticipate that such changes to copyright will be for a period of up to five years and then be subject to sunset review? What impact does he think that such an approach will have on investor confidence and certainty?

Let me give some examples. The commercial archive sector is a growing industry with many organisations and innovation in the form of content digitisation and delivery, as well as, it has to be said, competitive pricing. There is a huge risk that many operators in the sector will simply move operations out of the UK and close their businesses in the event of an uncertain copyright and IP regulatory framework. Investment in digitising content to preserve it for future generations and make it available for use by producers and programme makers is only possible if organisations know that they can recoup investment from licensing content. Expensive digitisation projects will simply not happen if there is uncertainty about the protection of intellectual property, or if markets are destabilised due to extended collective licensing, meaning that there is no commercial incentive for them to make such an investment.

In late 2011, for example, 90% of the film and video archive owned by Associated Press was in analogue form, on old film and tape stock. In order to meet demand from creative users, AP has invested $3 million to digitise much of that and make it available via a new platform, so that their footage can be licensed and downloaded in seconds. ITN has also just completed the full digitisation of its archive in a two-year, multi-million-pound project to digitise 30,000 film cans and tapes. Both companies have told me that that investment was justified by the belief that they can grow licensing revenue in the traditional broadcast market and from digital customers who have previously found analogue content inaccessible. Large contracts were awarded to London-based companies Prime Focus Technologies and Deluxe Digital to implement the projects, but such an investment is now at risk through the implementation of the clause as it stands.

That is the basis of our amendments. Amendment 97 aims to tighten up the clause to ensure that any measure carried out under this section of the legislation is appropriate. With that probing amendment, we intend to find out whether the Government have additional reasons for the provision, other than the specific and original intention to narrow copyright exceptions.

Amendment 98 would clarify the language and ensure that the powers contained in the clause are not Henry VIII powers, but can only be used to implement exceptions provided for specifically in the 1972 Act. Any other changes, such as the right of public performance, are not harmonised at EU level, so we believe that such provisions would require primary legislation.

This is an important clause for a significant and potentially growing part of the UK economy. I hope that the Minister accepts not only our concerns, but our wish to work closely with him on this matter in order to ensure that we have a tight copyright framework, to encourage and incentivise investment in this country, and to protect and nurture the growth sectors of our creative industries. I hope that the Minister sets out his rationale behind the clause, that he will clarify the policy stance contained in the clause, and that he accepts our amendments.

Norman Lamb: May I first of all disappoint the shadow Minister by confirming that I do not have a caravan, nor do I have "Fifty Shades of Grey"? He should not judge others by his own standards. He is obviously dreaming of his summer holidays ahead and his erotic literature, sitting in a caravan somewhere on the edge of Hartlepool. That vision does not inspire me, but each to their own.

I am grateful to the Opposition Members for their amendments and new clauses. The shadow Minister's speech was impressive, but he somewhat misunderstood the Government's purpose and intent. His speech was something of an assault on the Government's approach to intellectual property, yet the Opposition supported the previous clause, which is a start. We have common ground on that particular aspect.

Clause 56 is not part of the wider Hargreaves work but arose as a specific consequence of our wanting to keep the strong penalties needed to remove exceptions. The shadow Minister talks about evidence-based policy making, proper consultation and proper consideration of the issues, which is precisely why the Government commissioned Hargreaves to undertake an independent review, during which he talked to many stakeholders representing a wide range of views. The Government

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will make announcements about the outcome of that review and their response to it in due course, but the review is a proper basis for making policy.

The shadow Minister also said that section 2(2) of the 1972 Act does not give power to take powers, but we are not using section 2(2) today; we are using the 1988 Act to take powers for the reasons outlined. On that point, he is simply wrong.

The shadow Minister also raised concerns about the bundling of different proposals, which was raised by the Alliance Against IP Theft. Parliamentary counsel will decide whether and how statutory instrument changes should be bundled, but I can confirm that the Government will ensure that any proposed changes are presented to Parliament in a way that ensures proper consideration and scrutiny. Any use of the power must include an impact assessment before being laid before Parliament on an affirmative resolution basis.

Mr Iain Wright: Why is there no impact assessment for this clause?

Norman Lamb: Impact assessments are appropriate when using the power; they are not appropriate now. There is no impact to assess. The use of the power will be assessed if and when it is used. As I say, the power may have to be used as a result of judicial decisions that require changes. The power is a mechanism to do so without losing the important penalties in this country's framework, which are widely regarded as important. The mechanism allows the preservation of those penalties when changes are made.

Mr Wright: Given that logic, why have impact assessments been produced for other parts of the Bill, such as clause 50 on heritage protection? Those provisions will not be used until the relevant power is enacted.

Norman Lamb: In those cases, there is a clear route forward for what the Government seek to do through the measure. Here, we are simply creating an order-making power. Of course, when such powers are exercised, we will consult, do the impact assessment and lay them before Parliament on an affirmative resolution.

Chi Onwurah: Is the Minister saying that, every time such powers are used, they will be accompanied by an impact assessment? What form will the impact assessment take, and how will it be brought to the attention of the House and stakeholders?

Norman Lamb: I can confirm that if and when the order-making power is used, it will be accompanied by an impact assessment each time, according to the normal principles, which have been strengthened by this Government, of undertaking such assessments. Let me make some progress.

The Government have carefully considered the amendments and new clauses and their potential impact. Amendments 97 and 98 would greatly limit our ability to change the permitted actions listed in the 1988 Act, while maintaining existing penalties for copyright infringement. If this Government or another were required to legislate to clarify and update the law, they could be thrown back on the use of the powers of the European Communities Act 1972, which would have the effect of reducing maximum statutory penalties. Is that what the Opposition want? What they are seeking to do would have that effect.

The hon. Member for Hartlepool talks about the importance of this country's regime, and the clarity and continuity that it provides, but his amendments would dismantle it, so that if changes were necessary, the penalties would be lost. I again ask whether that is really what he wants, because that would be the effect.

Simon Danczuk (Rochdale) (Lab): Does the Minister not accept that the proposals are causing confusion not only in the Government, as was pointed out by my hon. Friend the Member for Newcastle upon Tyne Central, but in the creative industries, as was pointed out by my hon. Friend the Member for Hartlepool? I appeal to the Minister. As the proposals are clearly causing concern, it would be more helpful to withdraw and reconsider them, which would reassure the creative industries, so that they are comfortable with what the Government are proposing.

Norman Lamb: Of course I understand that when any reform is proposed, the people who may be affected by it will have anxieties. There is no reason to withdraw the provisions, and I hope I can reassure Opposition Members and provide greater clarity to those outside Parliament about what we are seeking to achieve.

If we have to rely on the European Communities Act, as the Opposition seem to want, we would be in a more inflexible position, and I suggest that we do not agree to amendments 97 and 98. More specifically, amendment 97 would mean that the Government could only remove a copyright exception in its entirety, rather than being able to narrow, amend or broaden it. That would create a straitjacket rather than having the flexibility provided by the clause, which is surely worth achieving. At times, it will be necessary to remove an exception entirely, and clause 55, which the Opposition have supported, is an example of our doing just that. However, it is not only possible but probable that a copyright exception will need to be adjusted rather than entirely removed, perhaps as the result of technological changes and/or legal developments and judicial decisions.

Amendment 98 would mean that the Government could restrict only copyright exceptions that are covered by EU law. It would not, for example, allow us to change exceptions in response to domestic legal judgments on those parts of our law—the non-harmonised parts—that are not subject to control from Brussels. I am sure hon. Members will agree that it is better to retain what little flexibility we have in reacting to developments in a rapidly changing world. We would surely all agree that it makes sense to be able to react quickly to ensure that we are compliant with the law.

New clause 15 is an attempt to clarify what may be done with material posted on the internet with the permission of the rights holder. It would explicitly provide that it is not an infringement of copyright to circulate links to such material, or to perform the actions necessary to display it on a personal computer. The question of circulating links to, and extracts from,

material—specifically in relation to news stories posted online—was considered in the recent legal judgment in the Meltwater case, which may yet be subject to an appeal. In the light of this developing jurisprudence, the Government are not convinced that now is the right time to make changes in this area, as there could be an appeal and a judgment. It would also not be a simple matter to frame exactly what legislative changes are required. Bearing in mind the prevalence of EU law, any judgment could have an impact on the changes that the Opposition seek to introduce. If at some future date there is a need to return to the issue, I can assure hon. Members that we will, but we have to wait for the emerging judicial position.

3.30 pm

The second point covered by the new clause, which is that it should be legal to perform the steps required to display on a computer material that has been legally published online, does not appear to be necessary. There is already legal protection under copyright law for a person making a transient copy of a work if that is necessary for a lawful use, such as display on a computer. *[Interruption.]* The hon. Member for Hartlepool seems agitated.

Mr Iain Wright: As a point of clarification and help to the Minister, I think he is moving on to new clauses 15 and 16, which my hon. Friend the Member for East Lothian has not yet moved.

The Chair: As a point of clarification for the Committee, it is not possible to move them at this point, but I have indicated that we will debate them along with the amendments.

Norman Lamb: It makes sense for me to continue, and the hon. Member for East Lothian can come in afterwards. I absolutely urge her not to tear up her speech; we are keen to hear it.

New clause 16 would introduce new provisions into the Copyright, Designs and Patents Act 1988 dealing specifically with copyright works that have been issued to the public in response to a freedom of information request. I assume that the hon. Lady's intention is to make it easier to reuse and give further publicity to information released under FOI provisions. As a general principle, I am a great advocate of freedom of information. The new clause would make it possible for information released under FOI to be communicated to the public, perhaps by being posted online. While the hon. Lady's intention is laudable, the new clause may have unanticipated consequences. It could mean, for example, that material owned by third parties, but held by the Crown, is released under a copyright exception introduced under the provision and is freely usable, which would breach the rights of the third party.

Although that may sound like a good thing, it may not always be to the taste or preference of people who have consigned to the Government, in good faith, material over which they still own copyright to find it spread across the internet and the world. That is what her new clause would do. A third party that has copyright over some material that has been passed to Government to hold in good faith could then find that the Government had distributed it, effectively to the world, without the third party having any control. That is an unintended and inappropriate consequence. Although there may be laudable intentions behind the proposed new clause, we may find it goes further, faster, than any of us might desire, and I ask the hon. Lady to consider whether it would be better not to pursue it.

In conclusion, the power in clause 56 to amend copyright exceptions is already significantly circumscribed and limited by EU law. Although the amendments and new clauses are intended to clarify the scope of the power, or to clarify the use of copyright works in particular circumstances, they do not add any meaningful safeguards and would undo the intention behind the Government's proposals. I therefore hope that the amendments and new clauses will not be pressed to a Division.

Fiona O'Donnell: It is lovely to see you back in the Chair, Mr Brady. I hope that it is not for the last time, as we head towards what will, I am sure, be an emotional ending to the Committee for us all. I am grateful to the Minister for his response on both of my new clauses—I think I am grateful. In a sense, the ball is back in his court: how will he address the issue? It is evident that the law has not caught up with new media and the worldwide web, and the Government must respond. He also spoke about problems due to legal actions that may be subject to appeal, but that can be a reason for delaying doing anything for ever. He spoke about needing to be compliant with EU law, but there are interesting debates going on in this place about our membership of the EU, so perhaps we should postpone until we are absolutely certain what the coalition's position is.

Norman Lamb: Whatever one's views about the European Union—positive, negative or whatever—the fact is that we are in the EU at the moment and subject to the copyright legal framework that exists across the EU and the single market. When court action is under way, and a decision may be appealed, surely it does not make sense to legislate. It could be overturned within months by an appeal decision based on European law.

Fiona O'Donnell: I thank the Minister for further clarifying his thinking, but I want to press him, and test his thinking on the principle. Once the legal wranglings are resolved definitively, would he wish to take action? A Cambridge professor, Lionel Bently, said:

"there is something fundamentally wrong with a legal regime which renders the innocent acts of many millions of citizens illegal."

Many of those citizens may be in Committee today. We all have websites—I hope we do—that we use to communicate with our constituents. We may also have Twitter accounts that we use to tweet links to published articles. In all innocence, we could be breaking the law. The Minister really has to come up with something better than saying "not yet."

Ian Murray: My hon. Friend is making a powerful speech. The legal judgments have been made, and they are being appealed, or other action may be being taken to resolve the matter, but at this moment, the websites of the Minister and of the Secretary of State for Culture, Olympics, Media and Sport are in breach of the provisions.

Fiona O'Donnell: I thank my hon. Friend for his intervention. I did intend, at least, to draft the amendment tightly to remedy the problem. Two activities would be confirmed as legal: first, circulating links to lawfully published copy, and secondly, viewing that content in a web browser.

Norman Lamb: The hon. Lady referred to the concern that millions of citizens may be inadvertently breaking the law, but the change introduced by the new clause does not appear to be necessary. There are already legal protections under copyright law for a person making a transient copy of a work if it is necessary for a lawful use, such as display on a computer. There is the issue of the commercial interest, which is being played out in court, but in terms of individual citizens, her concerns may not be well founded.

Fiona O'Donnell: I am grateful to the Minister for that reassurance. Of course, he has the benefit of "inspiration" on his side.

Chi Onwurah: I am still confused by the Minister's intervention. My hon. Friend referred to tweeting. I tweet regularly, but a tweet is not transient. It stays in the memory of machines—and hopefully of people as well—for a long time, so that is not a transient use of a link.

Fiona O'Donnell: I thank my hon. Friend for her intervention. I am sure that her tweets are in no way transient, and are permanently burned into the minds and memories of the readers.

I refer the Minister to the Copyright, Designs and Patents Act 1988. My understanding is that it permits free linking to copyright material only when a copyright owner has made it available online, and it does not allow the work to be republished or adapted unless already permitted by the 1988 Act. If the Minister's understanding of the 1988 Act is different, I would welcome an intervention from him, or his receiving inspiration from another source. I look forward to hearing from him on that point in his response. The Act does not permit any new republication or reuse of copyright material, nor does it permit anyone to link to infringing content. It does not allow web users to bypass paywalls.

As I said, this issue is relevant to many of us, if using our websites to post a link to an article infringes existing law. Without the new clauses, that will remain the case. To take examples from the Cabinet, such postings regularly appear on the sites of the Secretaries of State for Culture, Olympics, Media and Sport; for Work and Pensions; for Energy and Climate Change; and for Education. Perhaps they have licences; perhaps not. Either way, it does not seem right that they should need a licence for this fundamentally innocent activity. Nor should the Minister, who rightly shares links to coverage of his work with constituents and other interested parties, be at risk of breaking the law.

What is more, if the new clauses fail, or the Minister cannot give me assurances that these issues are covered—that the 1988 Act does not apply in this way—we will still be in the perverse position that we would breach copyright simply by visiting a public website in our offices. Luke Scanlon, from the legal firm of Pinsent Masons, wrote earlier this month:

"The UK Government is considering reform of copyright laws in the wake of the Hargreaves Review. One change that it must make when reforming copyright law is to make it clear that the act of web browsing does not require permission from copyright holders."

If the Minister can assure me that that is the case, and no amendment to the Bill is required to meet those criteria, I will be happy not to press the new clauses to a Division.

The new clauses also clarify the status of shortened web addresses, which is particularly important to those who tweet. For tweeting a link to legitimately published content online—a movie trailer on the studio's website, for example—Twitter uses a short form, t.co, which forwards to the original address. Tweeting a link to a positive article about this Committee's work, perhaps, should one appear in a newspaper tomorrow, should not breach copyright. We should all be able to further the mission of publicising the excellent work of the Committee.

The 1988 Act was drafted before the world wide web was proposed by Tim Berners-Lee, and its original provisions do not take account of the most innocent use of web technologies. This is therefore an excellent opportunity to bring legislation up to date. The Minister said he was grateful for our contributions, but it would be nice if on this occasion that gratitude could extend to his admitting that the Bill is not completely perfect.

In making this change Parliament would also be adhering closely to the information society directive. To quote Professor Bently again, this time looking at that directive, the fundamental point is that

"browsing—looking at a webpage—does not involve an infringement and is perfectly lawful (unless in breach of some sort of security provision). Article 5 is intended, amongst other things, to 'enable' such legal acts of browsing: temporary copies created to facilitate such browsing are deemed non-infringing."

3.45 pm

The new clause would be a limited way to realign copyright law with European legislation—that was the advice that I was given—and to render innocent acts legal, including the 1.3 million articles that British web users post to Twitter or Facebook each month. I look forward to the Minister's response. I hope that he will acknowledge that there is an issue and that he will give an undertaking to deal with those concerns. At that point, I may consider withdrawing the new clause.

Norman Lamb: We do not feel that there is an issue that needs to be addressed. I apologise for repeating this point, but the issue is subject to litigation. There is a decision, and it may be appealed. It would make sense, as far as I can see, to await the outcome of any possible appeal that may be brought in the case.

Ian Murray: Will the Minister give us a commitment that if the legal processes go one way or another, he will return to the House with some kind of legislative response, in order to ensure that the issues raised by my hon. Friend the Member for East Lothian do not come to fruition?

Norman Lamb: I absolutely agree that the issues raised by the hon. Lady are important and legitimate. The sensible thing to do is to await the outcome of any further appeal in the case—there may not be, but there

could be—and to review the position in the light of any decision that emerges. We are, as I have indicated, subject to European law in that area of policy. One therefore cannot simply legislate in ignorance—I do not mean that in any way rudely—of the overall European context, within which we have to operate.

Reference has been made to the question of an individual sending a short link. That in itself is lawful, but the wholesale copying of an article would be an infringement of copyright, unless the author has given permission.

Fiona O'Donnell: That will be reassuring to the 1.3 million citizens whom I referred to.

I want to press the Minister to place categorically on the record that any individual posting the title of a published content on their website, Twitter or Facebook will not be found guilty of breaching copyright law.

Norman Lamb: That is a complex legal area. It is important that we get the correct answer. I will await my officials to give the hon. Lady an absolutely clear response to the question.

Let me quickly make one or two additional points. I am happy to allow an intervention in a moment if necessary. Circulation of links and tweets are not the same as transient copies for display. Links have been dealt with in the Meltwater case that we have referred to. We must await the outcome of the case.

May I give a rather depressing response to the hon. Member for East Lothian? Ultimately, the matter is for the courts to determine. As the law is evolving and practice is evolving, as we use the internet more and more, to a degree, one has to wait for judicial decisions on the basis of European law to determine whether any particular act is lawful. Ultimately, they are decisions for the courts.

Chi Onwurah: The Minister is trying to clarify matters in a difficult and complex area, but his clarifications, and his Government's clarifications, need to go much further. For example, he said that wholesale copying is illegal. Could he clarify what "wholesale" means in that context? When I forward a tweet, I am copying it to my 4,000 followers. Is that wholesale copying? On the general point that the law is evolving, the law comes into disrepute if the vast majority of people in this country do not understand what is legal and what is illegal. The points that my hon. Friend raised are important. The law needs to be seen to be in the 21st century, and I urge the Government to take further action.

Norman Lamb: Let me say a couple of things. First, we will reflect on the explanatory notes to ensure that they give as much clarity as possible. If they can be improved, we will ensure that we do that. Secondly, it will be worth my writing to members of the Committee to reflect on everything that has been said today, particularly the speech that the hon. Member for East Lothian gave in presenting her new clauses, so that we can give as clear a position as possible.

Unfortunately, we all just have to accept that the law on internet use—internet use is growing rapidly—is evolving, so one cannot give absolute clarity about which individual actions a court might conclude are lawful or unlawful. It is simply impossible for us to give a clear view about the judgments that will be reached by courts in due course, but I will try to give as much clarity as possible on our understanding of the European law position by writing to members of the Committee.

Ian Murray: The Minister is giving some assurances that the Government are taking this issue seriously, and we all appreciate that case law is evolving in regard to digital, media and the internet, but through the probing of our amendments and our interventions we are seeking—Parkins *v.* Sodexho Ltd was referred to during early parts of our consideration and the Government tried to legislate in primary legislation to mitigate the effects of case law—assurances that if we have to mitigate for the effects of case law, the Government will look seriously at it.

Norman Lamb: The critical question is that when one gets case law, it is inevitably appropriate to consider the implications of that case law. When one is dealing with an area of European competence, any response that one makes has to be in accordance with that European legal framework. I am sure that the hon. Gentleman understands that. People in this room will have different views on the EU, but a well-functioning single market is absolutely in the interests of the UK economy and having good clear copyright rules that apply across that single market is equally important. We would, of course, reflect on any decision and act, if appropriate, within the boundaries of what European law allows.

Fiona O'Donnell: I realise that we could come up with thousands of scenarios, but would a UK citizen be performing an illegal act if they received an e-mail or a tweet from outside the UK which had a link that took them to published content and they downloaded it, given that the link originated outside the UK and would not be covered?

Norman Lamb: It depends on whether the content is in breach of copyright and the particular circumstances of the case. Most links are not copyright works, so circulating the link is usually acceptable. I fully understand and everyone recognises that it is not an ideal situation for an individual consumer—a user of the internet, as we all are. There is a lack of clarity because of this evolving European law. As I said, I will write to hon. Members to give as much clarity as we can in this highly complex area of law.

Fiona O'Donnell: As I say, much of what we circulate is not subject to copyright law. But what about extracts from published works which appear in a paper, such as pages 10 to 12 of "Fifty Shades of Grey"? I have not read the book. I do not know whether I would want to post a link to that as I am more of an M and S girl than S and M. *[Laughter.]* However, many Members post links to something in a newspaper when the content of the newspaper is subject to copyright law.

Norman Lamb: The answer there is that it depends on the size of the extract from "Fifty Shades of Grey" that the hon. Lady was seeking to disseminate to her followers. I am getting extremely concerned about the activities of

[Norman Lamb]

Labour Members, particularly over the lazy summer months. It depends on the scale. To pass on a brief quote would not be a breach. But if one were to disseminate a substantial chunk of a copyright protected work it would be a breach of the law.

Fiona O'Donnell: I am sure that the whole Committee will agree that we have strayed into a complex area. There are some worrying challenges out there. The Minister was talking about the extent of a passage in a book that we chose to post a link to. What is substantial? What is small in terms of literary works is something we may wish to ponder. He may have his lazy, hazy days of summer to do just that. I believe the Minister to be a good and honest man and that he will give this his attention. I therefore indicate my desire to withdraw the new clause.

The Chair: Order. It might be helpful for guidance to point out that the new clauses will be reached at a later point so it need not trouble us at the moment.

Mr Iain Wright: I rise briefly to respond to what the Minister said about my remarks. I am not convinced by what he said. I said that we have a world-beating industry in the creative sector. We need to nurture that as much as possible because it will be a growing part of the global economy. One of the reasons why we have such a world-beating industry is because we have robust and stable copyright and IP legal frameworks in which people can create works. In a modern digital age where technology is moving quickly, we need to ensure that that is still the case.

Norman Lamb: Would the hon. Gentleman accept that the effect of his amendment would be to require us to rely on the European Communities Act for any amendment required as a result of a judgment under European law? That would result in us losing the ability to impose sanctions at the level that is deemed appropriate in this country, thereby putting at risk the very regime that he says is so good.

Mr Wright: My concerns are fourfold. First, I am not convinced that we have empirical evidence on this. This is something that the Business, Innovation and Skills Committee mentioned in its report, "The Hargreaves Review of Intellectual Property: where next?" Hargreaves says that there could be £2.2 billion-worth of economic activity arising from the review. But it is difficult to drill down and provide robust, empirical supporting evidence for that figure. The head of the Intellectual Property Office is quoted in the report. He stated:

"Inevitably the estimates that the Hargreaves Review produced were broad-brush. Where we are now taking forward the recommendations, we are in any case required to produce much more detailed impact assessments. That is what we have been working on over the last few months and so our plan, for instance, in the copyright area will be to publish a consultation with much more detailed costs and benefits. Obviously, part of the point of that is to consult people on the policy, but it will also be to get people's opinion on the strength of the analysis and of the cost benefit."

If that had been done, we would be in a more secure place in relation to the drafting of the Bill, but it was not done—the Minister has put legislation before consultation—and that has unnerved the industry and undermined potential investor confidence.

As it is currently drafted, the clause is far too vague and uses loose language. It gives wide-ranging powers to the Secretary of State without providing for full parliamentary scrutiny, and I am incredibly concerned about that. We should always be concerned about Henry VIII powers, and I am convinced that the clause has such powers.

With your permission and guidance, Mr Brady, I wish to test the opinion of the Committee on my amendments. I want to put it on the record that, because the subject is of such importance to a growing part of the UK economy, we will return to it on Report and at other stages.

Norman Lamb: I rise briefly to repeat that the clause is not part of Hargreaves. I have sought to make that point very clear. Indeed, any use of the power will be accompanied by an impact assessment, proper consultation and the opportunity for Parliament to make a decision. I repeat that the amendments, which the Opposition seek to press to a vote, would undermine the framework of sanctions in this country. The only way we would be able to make changes required by judgments under European law would be to use the European Communities Act, thereby reducing our ability to impose fines or imprisonment for breaches. Do the Opposition really want to undermine that sanctions regime?

Mr Wright: I reiterate what I said before: I want to test the opinion of the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 11.

Division No. 24]

AYES

Danczuk, Simon	Onwurah, Chi
Murray, Ian	Ruane, Chris
O'Donnell, Fiona	Wright, Mr Iain

NOES

Bingham, Andrew	Mowat, David
Burt, Lorely	Ollerenshaw, Eric
Evans, Graham	Prisk, Mr Mark
Johnson, Joseph	Smith, Julian
Lamb, Norman	Wright, Jeremy
Morris, Anne Marie	

Question accordingly negatived.

Amendment proposed: 98, in clause 56, page 46, line 6, at end insert—

'(1A) The power to make regulations under this section is exercisable only in making provision for the purposes mentioned in section 2(2)(a) and (b) of the European Communities Act 1972.'.
—(Mr Iain Wright.)

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 11.

Division No. 25]

AYES

Danczuk, Simon	Onwurah, Chi
Murray, Ian	Ruane, Chris
O'Donnell, Fiona	Wright, Mr Iain

NOES

Bingham, Andrew	Mowat, David
Burt, Lorely	Ollerenshaw, Eric
Evans, Graham	Prisk, Mr Mark
Johnson, Joseph	Smith, Julian
Lamb, Norman	Wright, Jeremy
Morris, Anne Marie	

Question accordingly negatived.

The Chair: Mr Wright, you sought my guidance earlier. I indicated that if we had a wide-ranging debate, it was my intention to treat that as a clause stand part debate. I think we have had an extraordinarily wide-ranging debate—at times, an entertaining one—so I propose to put the question on the clause.

Clause 56 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —(*Jeremy Wright.*)

4.6 pm

Adjourned till Tuesday 17 July at Nine o'clock.