PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Seventeenth Sitting

Tuesday 17 July 2012

(Afternoon)

CONTENTS

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Saturday 21 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

Tuesday 17 July 2012

(Afternoon)

[Hugh Bayley *in the Chair*]

Enterprise and Regulatory Reform Bill

Written evidence to be reported to the House

ERR 43 Professor Catherine Waddams, University of East Anglia

ERR 44 Law Society of Scotland RE-SUBMITTED

ERR 45 Employment Lawyers Association

ERR 46 British Association of Picture Libraries and Agencies (BAPLA)

ERR 47 Royal Borough of Kensington and Chelsea

ERR 48 UNISON

ERR 49 Historic Houses Association

ERR 50 Squire Sanders (UK) LLP

ERR 51 Design and Artists Copyright Society (DACS)

Clause 57

Directors' remuneration: effect of remuneration report

Question this day again proposed, That the clause stand part of the Bill.

1.30 pm

The Chair: I remind the Committee that with this we are discussing the following:

Government new clause 5—*Payments to directors: members' approval of directors' remuneration policy—*

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

"(2A) The regulations must provide that any information required to be included in the report as to the policy of the company with respect to the making of remuneration payments and payments for loss of office (within the meaning of Chapter 4A of Part 10) is to be set out in a separate part of the report."

(2) After section 422 of that Act (approval and signing of directors' remuneration report) insert—

"422A Revisions to directors' remuneration policy

(1) The directors' remuneration policy contained in a company's directors' remuneration report may be revised.

(2) Any such revision must be approved by the board of directors.

(3) The policy as so revised must be set out in a document signed on behalf of the board by a director or the secretary of the company.

(4) Regulations under section 421(1) may make provision as to—

(a) the information that must be contained in a document setting out a revised directors' remuneration policy, and

(b) how information is to be set out in the document.

(5) Sections 422(2) and (3), 454, 456 and 463 apply in relation to such a document as they apply in relation to a directors' remuneration report.

(6) In this section, "directors' remuneration policy" means the policy of a company with respect to the matters mentioned in section 421(2A)."

(3) In section 439 of that Act (quoted companies: members' approval of directors' remuneration report), in subsection (1), at the end insert "other than the part containing the directors' remuneration policy (as to which see section 439A).".

(4) After that section insert—

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

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

(a) at the accounts meeting held in the first financial year which begins after the coming into force of section (*Payments to directors: members' approval of directors' remuneration policy*) of the Enterprise and Regulatory Reform Act 2012 or at an earlier general meeting, and

(b) at an accounts or other general meeting held no later than the end of the period of three financial years beginning with the first financial year after the last accounts or other general meeting in relation to which notice is given under this subsection.

(2) A quoted company must give notice of the intention to move at an accounts meeting, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy if—

(a) a resolution required to be put to the vote under section 439 was not passed at the last accounts meeting of the company, and

(b) no notice under this section was given in relation to that meeting or any other general meeting held before the next accounts meeting.

(3) A notice given under subsection (2) is to be treated as given under subsection (1) for the purpose of determining the period within which the next notice under subsection (1) must be given.

(4) Notice of the intention to move a resolution to which this section applies must be given, prior to the meeting in question, to the members of the company entitled to be sent notice of the meeting.

(5) Subsections (2) to (4) of section 439 apply for the purposes of a resolution to which this section applies as they apply for the purposes of a resolution to which section 439 applies, with the modification that, for the purposes of a resolution relating to a general meeting other than an accounts meeting, subsection (3) applies as if for "accounts meeting" there were substituted "general meeting".

(6) For the purposes of this section, the relevant directors' remuneration policy is—

(a) in a case where notice is given in relation to an accounts meeting, the remuneration policy contained in the directors' remuneration report in respect of which a resolution under section 439 is required to be put to the vote at that accounts meeting;

(b) in a case where notice is given in relation to a general meeting other than an accounts meeting—

(i) the remuneration policy contained in the directors' remuneration report in respect of which such a resolution was required to be put to the vote at the last accounts meeting to be held before that other general meeting, or

(ii) where that policy has been revised in accordance with section 422A, the policy as so revised.

(7) In this section—

(a) "accounts meeting" means a general meeting of the company before which the company's annual accounts for a financial year are to be laid;

(b) "directors' remuneration policy" means the policy of the company with respect to the matters mentioned in section 421(2A).".'.

Amendment (a) to new clause 5, in subsection (1), at end insert—

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

Amendment (b) to new clause 5, in subsection (4), leave out new section 439A(1)(a) and (b).

Amendment (c) to new clause 5, in subsection (4), leave out new section 439A(2) and (3).

Amendment (d) to new clause 5, in subsection (4), leave out new section 439A(5).

Amendment (e) to new clause 5, in subsection (4), leave out new section 439A(6)(b) and insert—

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

Amendment (g) to new clause 5, at end add—

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

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

Amendment (i) to new clause 5, at end add—

'(6) The Secretary of State shall, within three months of the passing of this Act, make provision by regulations under section 1277 of the Companies Act 2006 requiring the provision of information about the exercise of voting rights in respect of directors' remuneration policy.'.

Amendment (j) to new clause 5, at end add—

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

"227A Appointment of remuneration consultants of public company

(1) Remuneration consultants may be appointed for each financial year of the company.

(2) For each financial year for which a remuneration consultant or consultants is or are to be appointed (other than the company's first financial year), the appointment must be made before the end of the accounts meeting of the company at which the company's annual accounts and reports for the previous financial year are laid.

(3) The directors may appoint a remuneration consultant or consultants of the company—

(a) at any time before the company's first accounts meeting;

(b) to fill a casual vacancy in the office of remuneration consultant.

(4) The members may appoint a remuneration consultant or consultants by ordinary resolution—

(a) at an accounts meeting;

(b) if the company should have appointed a remuneration consultant or consultants at an accounts meeting but failed to do so;

(c) where the directors had power to appoint under subsection (3) but have failed to make an appointment.

(5) A remuneration consultant or consultants of a public company may only be appointed in accordance with this section.

(6) In this section a "remuneration consultant" means a person who is appointed to advise on the terms of directors' service contracts.".'.

Government new clause 6—*Payments to directors of quoted companies.*

Government new clause 7—*Payments to directors: minor and consequential amendments.*

Government new clause 8—*Directors' remuneration reports and payments to directors: transitional provision.*

Government new clause 17—*Remuneration committees and non-executive directors.*

Government new clause 18—*High Pay Commission.*

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Norman Lamb): I start by reflecting further on the *Financial Times*, which the hon. Member for Hartlepool has been keen to quote from because it is the only source of support he can find for the Opposition's position. Under the headline, "Cable to unveil revised executive pay plans" the *Financial Times* states:

"However, big investors praise Mr Cable for heeding the advice of shareholders, who do not want to micromanage companies with 'overly bureaucratic' rules…The head of equity at a leading European fund manager, which is also a top-20 shareholder of many FTSE?100 companies, said:"

Mr Iain Wright (Hartlepool) (Lab): Name them.

Norman Lamb: I am quoting from the *Financial Times*. The hon. Gentleman will have to take his complaint there. To continue:

"'Shareholders want power when chief executives are abusing their positions, but we do not want to manage every little detail.'"

As the Labour party appear to want to do. That was an unnecessary aside from me.

"'We are a check on companies, not their managers.'"

What matters is getting this distinction right between the role of shareholders and the role of those who manage the company. Another leading European fund manager is quoted by the *Financial Times*:

"It has been an encouraging process?.?.?.Vince Cable is listening. He started out as a bit dictatorial"—

He will love that—

"but he has shown he is a listener. We do not need excessive, legally binding rules."

The *Financial Times* also analyses different elements of the package. On pay policy its verdict is:

"The business secretary has moved quite a way to meet company and investor concerns. He won praise for achieving a balance".

It goes on to say that not everyone is happy.

Mr Wright: Tell us more about that bit.

Norman Lamb: I have said quite enough. At least I have revealed that some were not entirely convinced. The consensus of opinion was that he had achieved the right balance. Back to where I had got to: on the specific issue of employee involvement, which was the

[Norman Lamb]

subject of one of the Opposition's amendments, we do not believe in mandating that all companies must have employees on boards or board committees. Indeed, it is fair to say that in 13 years in government the Labour party chose not to legislate for employees on boards. We have to see the amendment in the context of what happened with Labour in government.

Fiona O'Donnell (East Lothian) (Lab): The Minister has just said that he does not believe in mandating all companies to have employees on boards. Does that mean that he believes that some companies should?

Norman Lamb: I very much welcome companies choosing—

Fiona O'Donnell: Choosing.

Norman Lamb: Absolutely. The hon. Lady may have seen that we have launched a major initiative on employee ownership. I strongly advocate employee ownership. If one can find ways of engaging employees, and if possible giving them a stake in the enterprise where they work, there can be very impressive results. Cass business school has done a thorough analysis of the performance of employee-owned companies, as against other companies. It demonstrates greater resilience in difficult economic times, more profitability, especially in smaller companies, and certainly more productivity. The benefits for companies from engaging employees are clear and apparent. I welcome any company that chooses to act in that way, but it is not for the Government to mandate companies to do that.

Lorely Burt (Solihull) (LD): Before we broke for lunch, the Minister was responding to my point. I was trying to get some kind of agreement that because diversity on boards is important, the Government could legislate in the future to increase diversity, for example with regard to women in boards and helping them reach the recommended quota. While I appreciate that at this stage, we certainly do not want to set on the face of the Bill any requirement, the possibility that we might do that in the future would direct the minds of board directors to accommodate what I am suggesting.

Norman Lamb: Parties can choose to take particular positions in manifestos on how they want to see this area of policy evolve. That can be a debate within each party. My hon. Friend's point regarding women on boards is well made.

On that point, the European Commission, through Commissioner Reding, has advocated mandatory quotas. The UK approach has been a voluntary approach. Interestingly, our approach, which Commissioner Reding has been impressed by—I have spoken to her directly about it—has delivered results. The best approach, which I would take, is always, if you can, achieve things voluntarily and take people with you. The Prime Minister himself said that we cannot rule out for ever and a day mandating quotas for women on boards, but it is not our preferred option. Sometimes there are unintended results. Norway, for example, has a firm prescriptive quota on the number of women on boards. It has ended up with a relatively small number of women serving on large numbers of boards. That does not promote the diversity that we are after. I am proud that this Government are taking steps to enable women to stay in the work force and remain economically active. The pipeline through to deliver greater diversity on boards is ultimately the most critical thing, and not enough women are getting to a senior level.

Ian Murray (Edinburgh South) (Lab): Is the Minister aware of my colleague in the Scottish Parliament, Jenny Marra, tabling a Bill to look at minimum quotas for both women and men on public sector bodies? Will that set a strong example to the private sector of where it should be going regarding its own make-up?

Norman Lamb: I am not aware of that initiative, but I certainly think the public sector should seek to lead by example. If we are making the case that diversity is a good thing and delivers better performance, we ought to be demonstrating that.

Mr Wright: If the Minister thinks that diversity is a good thing that results in better performance, will he remind the Committee how many women are in the Cabinet?

Norman Lamb: I would regard that as a somewhat mischievous intervention.

Mr Wright: From me? Come on.

Norman Lamb: Unexpected, I have to say, from the hon. Gentleman. Normally he rises above that sort of cheap shot.

I am mindful of trying the patience of the Chair somewhat. All parties have a long way to go in terms of diversity—certainly my party has. That is reflected in the Cabinet, as it has been in previous Cabinets. Political parties need to take the necessary steps, as well as bodies in the broader economy.

Mr David Anderson (Blaydon) (Lab): Will the Minister give way?

Norman Lamb: Well, I am conscious that—

Mr Anderson: I want to talk about the Bill, and I will bear in mind what the Minister said about not trying the Chair's patience. This part of the Bill is about whether we have employees on boards, not about diversity, and the thrust of the Bill is to make our economy more successful. Employees sit on boards in Germany, and it has the most successful economy, certainly in Europe and almost in the world. Should we not follow Germany's example?

Norman Lamb: I personally think that we have a lot to learn from Germany in many respects. It has managed to maintain its manufacturing sector when, over the past decade under the previous Labour Government, manufacturing declined significantly as a proportion of the overall economy in the UK, and we have ended up with a heavily unbalanced economy. This Government are taking action to rebalance the economy away from an over-reliance on consumption, debt and the City of

London towards a balanced economy in which exports become more important again and manufacturing plays a central role.

Although many people point to examples in other countries, as hon. Members have done, the UK system of corporate governance involves a unitary board. I make that point partly in response to my hon. Friend the Member for Solihull. Germany and Sweden both have a two-tier system with an additional advisory board, on which the employees play a part. The tradition in the UK has been to have a single unitary board, and we do not distinguish in law between types of director. They all have the same duties. In Germany, an employee on an advisory board does not have the same duty as a member of a unitary board in this country. Of course, while I welcome companies choosing to offer employees a position on the board, employees must recognise—this is sometimes a difficult issue for trade unions and others—that they then take on a director's full responsibilities, which are quite onerous and mean that one cannot necessarily simply represent the interests of employees; one's duty as a director is to the owners of the company. There is the potential for a slightly conflicted position, which does not occur in the advisory board system in Germany and Sweden.

While there is nothing to stop a company appointing an employee as a director, making that a requirement would be a fundamental change in our system of corporate governance and one that the Labour party chose not to make when in government. There are practical issues, too. Many of the quoted companies under discussion employ thousands of staff across the globe. Appointing somebody to the board to represent their views is simply not realistic. There is a danger of tokenism if one employee, for example, is appointed represent potentially thousands of employees. That would be difficult for them, especially given the other duties that they must meet.

However, we agree that employees have a valuable contribution to make, which is why we have encouraged employees to use their existing rights to information and consultation arrangements. Such rights have not been heavily used in this country so far. We encourage employees to take advantage of their rights and to air their views about directors' pay and other issues.

Fiona O'Donnell: The Minister is stopping just short of being patronising, but does he not see the imbalance here? The workers, who after all play a huge role in creating the wealth of a company, have to negotiate their pay and conditions with management, but they have no influence when it comes to directors and people higher up the pay scale deciding what they should be paid. The Minister really wants a change of culture, but the danger here is that when we return to the good days—possibly under a new Government—shareholders will not hold the board to account when they are getting a return on their investment. The danger is that the culture does not change.

1.45 pm

Norman Lamb: We have made it clear that we want the culture to change. We agree on the need for that. I am horrified by the suggestion that I am even close to being patronising, which I do not seek to be.

An employee coming on to the board of a company, under this country's system of governance, has to take on the full responsibilities of a director, which is an onerous role that can conflict with their role as an employee representative. That role is very different from a position on an advisory board in Germany or Sweden. That is not to say that employees' views should not be listened to. Indeed, what is happening to employee pay should be taken into account, too. That is why our draft regulations on remuneration reporting propose that companies report on whether and how they have sought employee views. We specifically propose that that should be part of the regime.

I put it to hon. Members that a range of initiatives is already forging progress on board diversity and that proposed new clause 17 is neither appropriate nor necessary.

Finally, I thank the hon. Members for proposing new clause 18. During a time of economic restraint, however, a new, publicly funded quango to examine directors' pay is not necessary. I know quangos are dearly loved by the Opposition, and the temptation to set up a new one is too much to miss, but the task could be undertaken in other ways. That role is filled expertly by a wide range of organisations. I am confident that there will be no shortage of people keen to set out research and best practice and to tell us whether our reforms are working. The Government welcome such activity, and a wealth of good research is carried out by a range of investors and others. Indeed, we are grateful for the work of the High Pay Commission that concluded last December. The independent High Pay Centre has been established and will carry forward the important research that the commission started.

New clause 18 suggests that a permanent high pay commission would make recommendations to the Secretary of State on issues such as remuneration levels, but we are clear that it is not the Government's role to intervene on such issues. I suspect that the hon. Member for East Lothian agrees that Governments should not determine pay levels but should set the context to ensure that shareholders can hold their companies to account. Pay levels are for companies and their shareholders, not for Government to micro-manage, which is why we are putting more information and power into the hands of shareholders. After all, their money is at risk, not that of bureaucrats in Whitehall. For those very good reasons, the proposed amendment is unnecessary.

Mr Iain Wright: Mr Bayley, it is a pleasure to see you again for the last time.

I thank the Minister for his considered response, although he was somewhat churlish. Many of our amendments, if not all of them, move along the lines that the Government propose. There is not a huge difference between us on many things.

Let me support the Government with evidence from the now well-thumbed *Financial Times* of 21 June:

"Mr. Cable's package contains some good proposals. In particular, his suggestion that companies should provide a single figure for remuneration is an excellent one."

Julian Smith (Skipton and Ripon) (Con): Will the shadow Minister repeat the first sentence? I could not hear him.

Mr Wright: Yes, I will. It is good to have the hon. Gentleman back. The first sentence was:

"Mr Cable's package contains some good proposals. In particular, his suggestion that companies should provide a single figure for remuneration is an excellent one."

We agree. In terms of providing simplicity, transparency and accountability, a single figure for remuneration is appropriate. There are also concerns, however, about what will happen where directors receive deferred payments. If there is a remuneration package in which a director will receive £3 million in years one and two, but in year three there will be a bonus of £5 million, how will that be reported in year one to give the clearest possible view within the single remuneration figure? In general, however, we welcome the measure.

The Minister seemed to have some sympathy with amendment (a), which would insert into the new clause the words:

"The regulations must include information regarding the 10 highest paid employees in the company outside of the board".

The Minister said that he wanted to promote transparency, but that there were potential flaws in the draft. Again, I suggest to him that if he agrees with the principle, I would be more than happy not to press the amendment to a vote and we could work on proposals to bring forward on Report. Would that be acceptable?

I certainly agree with the notion that financial services are very important, because they affect people's livelihoods, mortgages and general living, but there are other industries in which transparency is needed. An Enterprise and Regulatory Reform Bill, in which we have a clause about director's remuneration and, hopefully, one about improving corporate governance, is an appropriate place to look at this issue.

I can understand some of the flaws in the drafting of amendments (b), (c) and (d), for which I apologise, but the central focus is that we think that it is appropriate to have an annual binding vote. As I said this morning, we do not think that that is particularly onerous. It is in keeping with much of what the Government want to do. I am concerned that if we have a vote every three years we will see large peaks and troughs in directors' pay. That is not stable, applicable or conducive to the best long-term running of a company. I will be more than happy not to press these amendments if the central premise that we have an annual binding vote is taken on board.

Mr Anderson: In an earlier contribution, my hon. Friend the Member for East Lothian made a point about inequality. If an employee was underperforming to the extent that some of these companies have done over the past few years, they would be out the door in a matter of days. There would not be any chance of them saying, "We will give you a year to improve and come back."

Mr Wright: My hon. Friend is absolutely right and the Government recognise it as well. I suspect that the Minister's secret position is that he believes wholeheartedly in an annual binding vote.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): Further to the point that my hon. Friend the Member for Blaydon made, my hon. Friend the Member for Hartlepool, the former Minister, drew a comparison between these highly paid—obscenely highly paid, in some cases—directors and Premier League footballers. Does he agree that footballers whose performance was at the level of some of these directors would soon find themselves benched, and possibly transferred?

Mr Wright: That is absolutely correct. I will quote paragraph 63 of the March consultation document, because it is significant. It states:

"Given that remuneration policies can vary year-on-year in response to changing circumstances, the Government proposes that the default position should be that remuneration policy is reported on annually and put to an annual shareholder vote. Any proposed changes to remuneration policy for the forthcoming year would be contingent on the resolution being carried."

That seems a very clear, simple and important position, with which we would agree. We hope that the Government, notwithstanding the consultation that took place—we understand that—would agree as well. We think that it should be the position. I again stress to the Minister that it is not particularly onerous.

I will move on to the remuneration consultancy work. I was struck by what the Minister said this morning. He seemed to suggest that he agreed with virtually everything we say and that, if matters as they currently stand and what the Government propose do not work, they will bring forward legislation. My point is that we have the opportunity here and now in the Bill. Matters regarding remuneration consultancy are happening in the real world now.

I do not know when the next legislative vehicle for a Bill sponsored by the Department for Business, Innovation and Skills will come along. Why do we not take the bull by the horns and deal with it while we have the opportunity? We seem to agree on what we want to see regarding increased disclosure, transparency and reporting. Why can we not act on that now? I again make the offer to the Minister that I will happily not press the amendments if he will give a commitment to come forward with similar amendments, properly drafted, on Report, with which the whole House could agree.

I am disappointed with his stance on corporate governance, diversity in the boardroom and remuneration committees, particularly employee representation on remuneration committees. Again, he seems to agree with what we say but will not go the extra mile. Similarly, I am very disappointed, given the debate going on in the real world about fairness in executive pay, that he dismissed—not in a patronising manner—the suggestion of the High Pay Commission.

Julian Smith: I am delighted with that proposal because it is for a top-down, Russian-style quango. I will use it to promote my anti-business Labour party argument. If the Opposition are making such a proposal they are not serious about British business.

Mr Wright: The hon. Gentleman shows a profound misunderstanding, even an outdated notion, of what is going on in the real world. It is not reds under the beds who make such points; it is moderate commentators and business people. People such as the CBI say that there is no justification for some of this excessive pay, and we need to do something about it. I thought the Government agreed. The hon. Gentleman is a bit of an

outlier in this regard. Mainstream opinion—politically, socially, economically and within business—says that this has gone far too far over the past 30 years or so. Something needs to be done.

Norman Lamb: My hon. Friend the Member for Skipton and Ripon was talking about setting up a quango.

Mr Wright: Yes. Something needs to be done about inequality and the extent to which executive pay has far outpaced normal average earnings. We need to do something about that, make recommendations and have a wider public debate. We consider the High Pay Commission would be a good opportunity to allow that to happen.

Chris Ruane (Vale of Clwyd) (Lab): Does my hon. Friend agree that the hon. Member for Skipton and Ripon holds those opinions because he was not here for this morning's session, when my hon. Friend elucidated his arguments and gave such a crisp, eloquent analysis that we all agreed with it?

Mr Wright: In the face of difficult questioning by my hon. Friend, I agree. While I am still basking in the glow, I give way again.

Fiona O'Donnell: Continuing the bedroom furniture analogy, does my hon. Friend agree that it is not reds under the beds who are out of touch but the blues in the Cabinet?

Mr Wright: Very good. We may be coming to the end of the Committee's deliberations, but my hon. Friend the Member for East Lothian has not gone downhill. She is not demob happy. In terms of pay and performance, I hope my hon. Friend gets a considerable bonus for that.

I inadvertently missed out an amendment; that is the one regarding 75% super-majority. Again, we heard a common theme from the Minister that he tends to agree but in terms of drafting and possible repercussions of the amendment he could not accept it. I understand how the wording of the amendment makes it difficult for the Government to accept it. Having said that, I want to put on record the need for a super-majority to ensure that we promote consensus on remuneration policy between shareholders and the company. I think that the Minister secretly agrees with that, and I repeat the suggestion that I made earlier not to press that amendment but to bring forward a proposal on Report requiring 75% of the votes cast. Would he accept such a proposal? It would be useful to get a definitive yes or no.

2 pm

John Cryer (Leyton and Wanstead) (Lab): One point that has not been touched on is the problem of proxies. It is widely known that in a lot of big companies the boards turn up to shareholder meetings and when there is a problem they whip a few proxies out of their back pocket and defeat anything that is a problem. It remains to be seen how the Bill will work out when it has received Royal Assent, but I can imagine that that problem will raise its head again in future.

Mr Wright: That is right. One of the amendments that we tabled, which would have turned on section 1277 of the Companies Act 2006, attempted to deal with improved disclosure in how people vote, to provide that scrutiny in respect of institutional shareholding.

I want to go back to the super-majority and the 75%, because although there has been a shareholder spring in many respects, the simple fact is that shareholders are understandably concerned about the excessive level of director pay. That can also, as the Government's consultation concedes, provide an example of poor engagement during the process of preparing the remuneration policy. Shareholders are often annoyed and concerned that their realistic and objective concerns about directors are simply ignored. The Government's consultation demonstrates that and it provides a number of examples, such as a FTSE 250 firm, which said in response to 40% of shareholders withholding support for the remuneration report:

"We have noted the disquiet expressed by some of our shareholders and have recorded it for future reference".

One can see why some shareholders are concerned. A FTSE 100 chief executive officer, in response to 42% of votes being cast against the remuneration report, said:

"This strikes me as being a matter of excessive micro managing."

I am sure the Minister will agree that they simply do not get it. In the interests of trying to provide as broad and consensual a coalition as possible, I ask for the third time: if I do not press amendment (e) to new clause 5 to a vote but introduce an amendment on Report to the effect that 75% of votes cast are required to approve a remuneration policy, will the Government agree with me and vote to support that?

I hope I have made it clear that regardless of the drafting of some of the amendments, we are keen to test the Committee's opinion. This issue is incredibly important to fairness and to the vigour of corporate life in the UK, and we need to take a very clear stance. The Government have gone some way to doing so, and we agree with them in many respects, but we think they need to go further. On that basis, I would like to test the Committee's opinion on our amendments.

The Chair: Just before I ask the Minister to reply, I think it would be perfectly reasonable, if the Opposition so required, to divide the Committee on the two new clauses. If the shadow Minister wants to test the view of the Committee on the amendments, perhaps while he is listening to the Minister's response he could choose one of them as indicative. I do not think it would be reasonable to have seven or eight divisions on seven or eight separate amendments. The Minister should respond first, of course, to the invitation that the shadow Minister has just made.

Norman Lamb *rose—*

Hon. Members: Hear, hear.

Norman Lamb: May I thank hon. Members for that welcome back? Once the shadow Minister gets back into his seat, may I thank him for the very reasonable way in which he responded to what I had to say?

Mr Wright: Don't patronise me.

Norman Lamb: It was reasonable. It is important to note the hon. Gentleman's point that the Opposition believe we are moving along the same lines, which were his words, and that there is not a lot of disagreement between us. When, and if, Opposition Members seek in a future debate to castigate the Government for any element of the package, let us ensure that we remember the context, because there is a broad level of agreement about what we seek to achieve. There are differences between us on specific elements of the package, but overall, it seems to have broad support in this place, which reflects the broad support outside, certainly within the shareholder community, and that is very welcome. The hon. Gentleman was also generous enough to quote a comment from the *Financial Times* that was completely supportive of what the Government sought to do.

Let me deal with some of the hon. Gentleman's specific points. He asked a reasonable question about how one can ensure that there is transparency on deferred payments. The methodology will be clearly set out in regulations about what is required of companies in the remuneration report, and it will reflect on the actual pay earned rather than potential pay awarded.

On the hon. Gentleman's comments about Opposition amendments, in a sense, the difference between us there is that the Government take the view that when consulting, the responses to the consultation should be listened to and taken on board, as should the concerns raised, the experience of practitioners, and so on. It is absolutely right that we should be prepared to move from our original position or the things that we ask for opinions on, if the responses suggest that another way of cracking the nut might work better.

For instance, the point about employees outside the board is technically dodgy—to use a technical phrase—in that the main provision deals with directors and the amendment discusses people who are not directors. The Government, however, have identified that the main mischief lies in the financial services sector. That is why there is a consultation at present under the auspices of the Treasury that seeks to get clear rules about transparency. I made the point that we will become the most transparent jurisdiction of any in terms of financial services, if we implement what is being consulted on now.

On the annual binding vote, it is again a question of our listening to the consultation responses. The hon. Gentleman referred to the risk of large peaks and troughs, but investors considering a proposed pay policy will be able to see what is proposed for that three-year period and whether peaks and troughs are likely. If at any point during that time, looseness in the policy's framing is exposed by excessive pay, they have the ability to vote down, on the advisory vote, the company's performance in the past year, which will then trigger the vote at the next annual general meeting. A mechanism exists and "ingenious" was the description used—not just by me, but by one of the witnesses who gave evidence to the Committee—to describe how the balance has been struck.

The hon. Gentleman referred to the March consultation document on the 75% super-majority issue. He accepts that the drafting of the amendment is potentially flawed, because it would, de facto, require unanimity of those voting, which is clearly not sensible and could create complete gridlock. Again, we listened to the responses of those who were present and who voted on the idea of a 75% vote, and the view of the investor community was that that was too high a hurdle to clear.

Annual general meetings in recent weeks have shown that the 50% threshold has been reached on a number of occasions, so this is not a threshold without teeth. It has been demonstrated to work and it is a proportionate proposal based on our consultation.

On remuneration consultants, we share the concern that they have played a part in conduct that has resulted in inflated pay deals, but what we want to legislate for is a lot more transparency in relation to the amount being paid to consultants and to the people whom they have instructed to give advice. The bizarre aspect of the Opposition's proposed new clause is that it would mandate companies to use such people, which is perverse, given the Opposition's view that that is where the problem lies. Why mandate companies to use them? Companies should be free to use them, if they so choose, but there should be absolute transparency, for which the Bill will legislate, about the arrangement between the company and the consultant.

On diversity, we all agree about the importance of diverse boards, but the issue is what mechanism we use to get to that stage. The Labour party prefers prescription, while we prefer trying to take people with us to try to change the culture. That is working with regard to getting more women on boards—26% of new appointments to FTSE 100 boards in the past year have been women, which is an historic high. That has been achieved through the voluntary approach, not through mandation, so it can work.

On employees, it is not possible to have an employee on a remuneration sub-committee of the main board without that employee being a main director of the board. That position carries all of the onerous responsibilities to which I have referred. We prefer to allow companies to make their own judgments about engagements with staff. We are absolutely free and open to employees being allowed on and invited on to a board, but it is not the Government's job to mandate the process.

Fiona O'Donnell: I want to take the Minister back to the question of diversity on boards. The Labour party has 81 women Members of Parliament—more than all the other parties put together—as a result of all-women shortlists. Does the Minister think that shows that his and his party's approach, and that of others, to increasing diversity in this place is better than ours?

Norman Lamb: I will be clear: our approach has failed so far. That is a serious point and I feel strongly about it. We need more women and more minorities in this place. We need to reflect modern Britain. Political parties have not succeeded in that. All-women shortlists have some negative points, but I acknowledge that they have resulted in a significant step change. I do not seek to defend what we have achieved so far. We need to do much better.

My hon. Friend the Member for Skipton and Ripon made a point about the establishment of the commission. Whatever question is posed, it seems that the Labour party's default position is to set up a new quango. If there is a problem in society, it proposes setting up a

quango to sort it out. That is old thinking and it has resulted in vast expenditure on unelected, unaccountable bodies in this country.

Fiona O'Donnell: What about the NHS?

Norman Lamb: The NHS under Labour was full of unaccountable quangos, and millions of people worked for it. Labour Members were exemplars at establishing and promoting the role of quangos in the economy. The idea that the problem under discussion can be solved by establishing a quango is completely outmoded. As I have said—*[Interruption.]* Bless you.

2.15 pm

Chris Ruane: In the interests of equality and parity, will the hon. Gentleman agree with me that that "Atishoo!" should be recorded by *Hansard* as well?

Norman Lamb: It probably ought.

The Chair: Order. I am afraid that it is only hon. Members whose contributions can be recorded in *Hansard*. I must draw the line somewhere.

Chris Ruane: On a point of order, Mr Bayley. Does "Erskine May" not say that when a Member responds to a word or a phrase, then that should be recorded?

The Chair: The Member's response of course will be recorded. I can assure the hon. Gentleman that his two interventions will be recorded.

Norman Lamb: I think it is an enormous shame for the Chair to deny a moment of posterity to the official by not recording that, and I thank the hon. Member for Vale of Clwyd for his attempt to get that recorded.

I end by saying that the solution to these problems is not to set up a quango. There are plenty of bodies out there that will do the research. There will be a wealth of research undertaken. That is very much to be welcomed. We believe overall that this is a balanced package. It is a smart package because it drives behaviour change without imposing excessive bureaucratic burden on companies. That is why it has been so widely welcomed.

Mr Iain Wright: Mr Bayley, I am mindful of your guidance about ensuring that the Committee is not gridlocked with seven or eight amendments. Let me thank the Minister for what he said. We do not think that this long-standing problem of excessive executive pay will be sorted by the establishment of a quango; of course not, but we consider that the establishment of a high pay commission could help fuel and facilitate well-argued debate about the whole subject and help to focus minds. He knows that he is distorting our position when it comes to the establishment of a high pay commission.

Our main concerns when tabling the amendments were an annual binding vote and better and improved disclosure of remuneration consultants. On that basis I give notice that we would like to test the opinion of the Committee on new clauses 17 and 18 and, given the two concerns I have just raised, amendments (b) and (j).

Question put and negatived.

Clause 57 accordingly disagreed to.

Clauses 58 to 63 ordered to stand part of the Bill.

New Clause 2

CONFIDENTIALITY OF NEGOTIATIONS BEFORE TERMINATION OF EMPLOYMENT

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

"111A Confidentiality of negotiations before termination of employment

(1) In determining any matter arising on a complaint under section 111, an employment tribunal may not take account of any offer made or discussions held, before the termination of the employment in question, with a view to it being terminated on terms agreed between the employer and the employee.

This is subject to the following provisions of this section.

(2) Subsection (1) does not apply where, according to the complainant's case, the circumstances are such that a provision (whenever made) contained in, or made under, this or any other Act requires the complainant to be regarded for the purposes of this Part as unfairly dismissed.

(3) In relation to anything said or done which in the tribunal's opinion was improper, or was connected with improper behaviour, subsection (1) applies only to the extent that the tribunal considers just.

(4) The reference in subsection (1) to a matter arising on a complaint under section 111 includes any question as to costs, except in relation to an offer made on the basis that the right to refer to it on any such question is reserved.

(5) Subsection (1) does not prevent the tribunal from taking account of a determination made in any other proceedings between the employer and the employee in which account was taken of an offer or discussions of the kind mentioned in that subsection."'.—*(Norman Lamb.)*

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 9, Noes 7.

Division No. 26]

AYES

Bingham, Andrew	Ollerenshaw, Eric
Burt, Lorely	Prisk, Mr Mark
Carmichael, Neil	Smith, Julian
Johnson, Joseph	Wright, Jeremy
Lamb, Norman	

NOES

Anderson, Mr David	Onwurah, Chi
Cryer, John	Ruane, Chris
Murray, Ian	Wright, Mr Iain
O'Donnell, Fiona	

Question accordingly agreed to.

New clause 2 read a Second time.

Amendment proposed to new clause 2: (a), at end of first sentence of new section 111A(1), leave out 'the employee' and insert

', the employee or either one of the following chosen employee representatives—

(a) a trade union official;

(b) a workplace representative; or

(c) a legal representative.'.—(*Ian Murray.*)

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 27]

AYES

Anderson, Mr David	Onwurah, Chi
Cryer, John	Ruane, Chris
Murray, Ian	Wright, Mr Iain
O'Donnell, Fiona	

NOES

Bingham, Andrew	Ollerenshaw, Eric
Burt, Lorely	Prisk, Mr Mark
Carmichael, Neil	Smith, Julian
Johnson, Joseph	Wright, Jeremy
Lamb, Norman	

Question accordingly negatived.

Amendment proposed to new clause 2: (b), at end of new section 111A(5) add—

'(6) The Secretary of State shall review the operation of Clause 111A [Confidentiality of negotiations before termination of employment] after 12 months and shall confirm its continuation through an affirmative resolution of both Houses of Parliament.'.—(*Ian Murray*.)

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 28]

AYES

Anderson, Mr David	Onwurah, Chi
Cryer, John	Ruane, Chris
Murray, Ian	Wright, Mr Iain
O'Donnell, Fiona	

NOES

Bingham, Andrew	Ollerenshaw, Eric
Burt, Lorely	Prisk, Mr Mark
Carmichael, Neil	Smith, Julian
Johnson, Joseph	Wright, Jeremy
Lamb, Norman	

Question accordingly negatived.

New clause 2 added to the Bill.

New Clause 5

PAYMENTS TO DIRECTORS: MEMBERS' APPROVAL OF DIRECTORS' REMUNERATION POLICY

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

"(2A) The regulations must provide that any information required to be included in the report as to the policy of the company with respect to the making of remuneration payments and payments for loss of office (within the meaning of Chapter 4A of Part 10) is to be set out in a separate part of the report."

(2) After section 422 of that Act (approval and signing of directors' remuneration report) insert—

"422A Revisions to directors' remuneration policy

(1) The directors' remuneration policy contained in a company's directors' remuneration report may be revised.

(2) Any such revision must be approved by the board of directors.

(3) The policy as so revised must be set out in a document signed on behalf of the board by a director or the secretary of the company.

(4) Regulations under section 421(1) may make provision as to—

(a) the information that must be contained in a document setting out a revised directors' remuneration policy, and

(b) how information is to be set out in the document.

(5) Sections 422(2) and (3), 454, 456 and 463 apply in relation to such a document as they apply in relation to a directors' remuneration report.

(6) In this section, "directors' remuneration policy" means the policy of a company with respect to the matters mentioned in section 421(2A)."

(3) In section 439 of that Act (quoted companies: members' approval of directors' remuneration report), in subsection (1), at the end insert "other than the part containing the directors' remuneration policy (as to which see section 439A).".

(4) After that section insert—

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

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

(a) at the accounts meeting held in the first financial year which begins after the coming into force of section (*Payments to directors: members' approval of directors' remuneration policy*) of the Enterprise and Regulatory Reform Act 2012 or at an earlier general meeting, and

(b) at an accounts or other general meeting held no later than the end of the period of three financial years beginning with the first financial year after the last accounts or other general meeting in relation to which notice is given under this subsection.

(2) A quoted company must give notice of the intention to move at an accounts meeting, as an ordinary resolution, a resolution approving the relevant directors' remuneration policy if—

(a) a resolution required to be put to the vote under section 439 was not passed at the last accounts meeting of the company, and

(b) no notice under this section was given in relation to that meeting or any other general meeting held before the next accounts meeting.

(3) A notice given under subsection (2) is to be treated as given under subsection (1) for the purpose of determining the period within which the next notice under subsection (1) must be given.

(4) Notice of the intention to move a resolution to which this section applies must be given, prior to the meeting in question, to the members of the company entitled to be sent notice of the meeting.

(5) Subsections (2) to (4) of section 439 apply for the purposes of a resolution to which this section applies as they apply for the purposes of a resolution to which section 439 applies, with the modification that, for the purposes of a resolution relating to a general meeting other than an accounts meeting, subsection (3) applies as if for "accounts meeting" there were substituted "general meeting".

(6) For the purposes of this section, the relevant directors' remuneration policy is—

(a) in a case where notice is given in relation to an accounts meeting, the remuneration policy contained in the directors' remuneration report in respect of which a resolution under section 439 is required to be put to the vote at that accounts meeting;

(b) in a case where notice is given in relation to a general meeting other than an accounts meeting—

(i) the remuneration policy contained in the directors' remuneration report in respect of which such a resolution was required to be put to the vote at the last accounts meeting to be held before that other general meeting, or

(ii) where that policy has been revised in accordance with section 422A, the policy as so revised.

(7) In this section—

(a) "accounts meeting" means a general meeting of the company before which the company's annual accounts for a financial year are to be laid;

(b) "directors' remuneration policy" means the policy of the company with respect to the matters mentioned in section 421(2A).".'.—*(Norman Lamb.)*

Brought up and read the First and Second time.

Amendment proposed: (b), to new clause 5, in subsection (4), leave out new section 439A(1)(a) and (b).—*(Mr Iain Wright.)*

The Committee divided: Ayes 7, Noes 9.

Division No. 29]

AYES

Anderson, Mr David	Onwurah, Chi
Cryer, John	Ruane, Chris
Murray, Ian	
O'Donnell, Fiona	Wright, Mr Iain

NOES

Bingham, Andrew	Ollerenshaw, Eric
Burt, Lorely	Prisk, Mr Mark
Carmichael, Neil	Smith, Julian
Johnson, Joseph	
Lamb, Norman	Wright, Jeremy

Question accordingly negatived.

Amendment proposed: (j), line 83 at end add—

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

"227A Appointment of remuneration consultants of public company

(1) Remuneration consultants may be appointed for each financial year of the company.

(2) For each financial year for which a remuneration consultant or consultants is or are to be appointed (other than the company's first financial year), the appointment must be made before the end of the accounts meeting of the company at which the company's annual accounts and reports for the previous financial year are laid.

(3) The directors may appoint a remuneration consultant or consultants of the company—

(a) at any time before the company's first accounts meeting;

(b) to fill a casual vacancy in the office of remuneration consultant.

(4) The members may appoint a remuneration consultant or consultants by ordinary resolution—

(a) at an accounts meeting;

(b) if the company should have appointed a remuneration consultant or consultants at an accounts meeting but failed to do so;

(c) where the directors had power to appoint under subsection (3) but have failed to make an appointment.

(5) A remuneration consultant or consultants of a public company may only be appointed in accordance with this section.

(6) In this section a "remuneration consultant" means a person who is appointed to advise on the terms of directors' service contracts.".'.—*(Mr Iain Wright.)*

The Committee divided: Ayes 7, Noes 9.

Division No. 30]

AYES

Anderson, Mr David	Onwurah, Chi
Cryer, John	Ruane, Chris
Murray, Ian	
O'Donnell, Fiona	Wright, Mr Iain

NOES

Bingham, Andrew	Ollerenshaw, Eric
Burt, Lorely	Prisk, Mr Mark
Carmichael, Neil	Smith, Julian
Johnson, Joseph	
Lamb, Norman	Wright, Jeremy

Question accordingly negatived.

New clause 5 added to the Bill.

New Clause 6

PAYMENTS TO DIRECTORS OF QUOTED COMPANIES

'After section 226 of the Companies Act 2006 insert—

"CHAPTER 4A

DIRECTORS OF QUOTED COMPANIES: SPECIAL PROVISION

Interpretation

226A Key definitions

(1) In this Chapter—

"directors' remuneration policy" means the policy of a quoted company with respect to the making of remuneration payments and payments for loss of office;

"remuneration payment" means any form of payment or other benefit made to or otherwise conferred on a person as consideration for the person being, or agreeing to become, a director of a company, other than a payment for loss of office;

"payment for loss of office" has the same meaning as in Chapter 4 of this Part.

(2) Subsection (3) applies where, in connection with a relevant transfer, a director of a quoted company is—

(a) to cease to hold office as director, or

(b) to cease to be the holder of—

(i) any other office or employment in connection with the management of the affairs of the company, or

(ii) any office (as director or otherwise) or employment in connection with the management of the affairs of any subsidiary undertaking of the company.

(3) If in connection with the transfer—

(a) the price to be paid to the director for any shares in the company held by the director is in excess of the price which could at the time have been obtained by other holders of like shares, or

(b) any valuable consideration is given to the director by a person other than the company,

the excess or, as the case may be, the money value of the consideration is taken for the purposes of section 226C to have been a payment for loss of office.

(4) In subsection (2), "relevant transfer" means—

(a) a transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company;

(b) a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid.

(5) References in this Chapter to the making of a remuneration payment or to the making of a payment for loss of office are to be read in accordance with this section.

(6) References in this Chapter to a payment by a company include a payment by another person at the direction of, or on behalf of, the company.

(7) References in this Chapter to a payment to a person ("B") who is, has been or is to be a director of a company include—

(a) a payment to a person connected with B, or

(b) a payment to a person at the direction of, or for the benefit of, B or a person connected with B.

(8) Section 252 applies for the purposes of determining whether a person is connected with a person who has been, or is to be, a director of a company as it applies for the purposes of determining whether a person is connected with a director.

(9) References in this Chapter to a director include a shadow director but references to loss of office as a director do not include loss of a person's status as a shadow director.

Restrictions relating to remuneration or loss of office payments

226B Remuneration payments

(1) A quoted company may not make a remuneration payment to a person who is, or is to be, a director of the company unless—

(a) the payment is consistent with the approved directors' remuneration policy, or

(b) the payment is approved by resolution of the members of the company.

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

226C Loss of office payments

(1) No payment for loss of office may be made by any person to a person who is, or has been, a director of a quoted company unless—

(a) the payment is consistent with the approved directors' remuneration policy, or

(b) the payment is approved by resolution of the members of the company.

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

226D Sections 226B and 226C: supplementary

(1) A resolution approving a payment for the purposes of section 226B(1)(b) or 226C(1)(b) must not be passed unless a memorandum setting out particulars of the proposed payment (including its amount) is made available for inspection by the members of the company—

(a) at the company's registered office for not less than 15 days ending with the date of the meeting at which the resolution is to be considered, and

(b) at that meeting itself.

(2) The memorandum must explain the ways in which the payment is inconsistent with the approved directors' remuneration policy (within the meaning of the section in question).

(3) The company must ensure that the memorandum is made available on the company's website from the first day on which the memorandum is made available for inspection under subsection (1) until its next accounts meeting.

(4) Failure to comply with subsection (3) does not affect the validity of the meeting at which a resolution is passed approving a payment to which the memorandum relates or the validity of anything done at the meeting.

(5) Nothing in section 226B or 226C authorises the making of a remuneration payment or payment for loss of office in contravention of the articles of the company concerned.

(6) In this section the "company's website" is the website on which the company makes material available under section 430.

226E Payments made without approval: civil consequences

(1) An obligation (however arising) to make a payment which would be in contravention of section 226B or 226C has no effect.

(2) Subject to subsections (3) and (4), if a payment is made in contravention of section 226B or 226C—

(a) it is held by the recipient on trust for the company or other person making the payment, and

(b) in the case of a payment by a company, any director who authorised the payment is jointly and severally liable to indemnify the company that made the payment for any loss resulting from it.

(3) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with the transfer of the whole or any part of the undertaking or property of the company or a subsidiary of the company, it is held by the recipient on trust for the company whose undertaking or property is or is proposed to be transferred.

(4) If a payment for loss of office is made in contravention of section 226C to a director of a quoted company in connection with a transfer of shares in the company, or in a subsidiary of the company, resulting from a takeover bid—

(a) it is held by the recipient on trust for persons who have sold their shares as a result of the offer made, and

(b) the expenses incurred by the recipient in distributing that sum amongst those persons shall be borne by the recipient and not retained out of that sum.

226F Relationship with requirements under Chapter 4

(1) This Chapter does not affect any requirement for approval by a resolution of the members of a company which applies in relation to the company under Chapter 4.

(2) Where the making of a payment to which section 226B or 226C applies requires approval by a resolution of the members of the company concerned under Chapter 4, approval obtained for the purposes of that Chapter is to be treated as satisfying the requirements of section 226B(1)(b) or (as the case may be) 226C(1)(b).".'.—*(Norman Lamb.)*

Brought up, read the First and Second time, and added to the Bill.

New Clause 7

PAYMENTS TO DIRECTORS: MINOR AND CONSEQUENTIAL AMENDMENTS

'(1) The Companies Act 2006 is amended as follows.

(2) In section 180 (consent, approval or authorisation by members)—

(a) in subsection (2), in the words before paragraph (a)—

(i) after "Chapter 4" insert "or 4A", and

(ii) for "that Chapter" substitute "either of those Chapters",

(b) in that subsection, in paragraph (a), for "that Chapter" substitute "the Chapter concerned", and

(c) in subsection (3), after "Chapter 4" insert "or 4A".

(3) In section 190 (substantial property transactions: requirement of members' approval), in subsection (6)(b), for the words in brackets substitute "(payments to which the requirements of Chapter 4 or 4A apply)".

(4) In section 215 (payments for loss of office), after subsection (4) insert—

"(5) Nothing in this section or sections 216 to 222 applies in relation to a payment for loss of office to a director of a quoted company."

(5) Section 430 (quoted companies: annual accounts and reports to be made available on website) is amended as follows.

(6) After subsection (2) insert—

"(2A) If the directors' remuneration policy of a quoted company is revised in accordance with section 422A, the company must ensure that the revised policy is made available on the website on which its annual accounts and reports are made available.

(2B) If a person ceases to be a director of a quoted company, the company must ensure that the following information is made available on the website on which its annual accounts and reports are made available—

(a) the name of the person concerned, and

(b) particulars of any payment for loss of office (within the meaning of Chapter 4A of Part 10) made to the person, including its amount and how it was calculated."

(7) In subsection (3) —

(a) for "the annual accounts and reports on the website" substitute "the material made available on the website under subsections (1) to (2B)", and

(b) for "the annual accounts and reports from" substitute "such material from".

(8) After subsection (4) insert—

"(4A) Where subsection (2A) or (2B) applies, the material in question—

(a) must be made available as soon as reasonably practicable, and

(b) must be kept available until the next directors' remuneration report of the company is made available on the website."

(9) In subsection (5)—

(a) in the words before paragraph (a), for the words from "the annual accounts and reports" to "that period" substitute "material available on a website throughout the period mentioned in subsection (4) or (as the case may be) (4A)", and

(b) in paragraph (a) for "the annual accounts and reports are" substitute "the material is".

(10) In section 440 (quoted companies: offences in connection with procedure for approval)—

(a) in subsection (1) —

(i) after "section 439(1)" insert "or 439A(1) or (2)", and

(ii) in the words in brackets, after "report" insert "or policy",

(b) in subsection (2), for "the accounts meeting" substitute "the meeting to which it relates", and

(c) in subsection (5), omit the definition of "the accounts meeting".

(11) In Schedule 8 (in the index of defined expressions), at the appropriate places insert—

"directors' remuneration policy (in Chapter 4A of Part 10)	section 226A(1)"
"payment for loss of office (in Chapter 4A of Part 10)	section 226A(1)"
"remuneration payment (in Chapter 4A of Part 10)	section 226A(1)".'.

Brought up, read the First and Second time, and added to the Bill.

New Clause 8

Directors' remuneration reports and payments to directors: transitional provision

'(1) Subsection (2) of section 439A of the Companies Act 2006 (as inserted by section (Payments to directors: members' approval of directors' remuneration policy)(4) of this Act) does not apply in relation to a company prior to the holding of the meeting mentioned in subsection (1)(a) of that section of that Act of 2006.

(2) Chapter 4A of Part 10 of the Companies Act 2006 (as inserted by section (Payments to directors of quoted companies)) does not apply in relation to remuneration payments or payments for loss of office made by a company before the earlier of—

(a) the end of the first financial year of the company to begin after the coming into force of that section of this Act, and

(b) the date from which the first directors' remuneration policy to be approved under section 439A of the Companies Act 2006 (as inserted by section (Payments to directors: members' approval of directors' remuneration policy)(4) of this Act) takes effect.

(3) Chapter 4A of Part 10 of the Companies Act 2006 does not apply in relation to remuneration payments or payments for loss of office that are required to be made under an agreement entered into before 27 June 2012 or in consequence of any other obligation arising before that date.

(4) An agreement entered into, or any other obligation arising, before 27 June 2012 that is modified or renewed on or after that date is to be treated for the purposes of subsection (3) as having been entered into or (as the case may be) as having arisen on the date on which it was modified or renewed.

(5) The amendment made by section(Payments to directors: minor and consequential amendments)(4) does not apply in relation to a payment for loss of office to which subsection (2) or (3) of this section applies.'.—*(Norman Lamb.)*

Brought up, read the First and Second time, and added to the Bill.

New Clause 11

Power to reduce duration of copyright in transitional cases

'(1) Section 170 of the Copyright, Designs and Patents Act 1988 (transitional provisions and savings) is amended as follows.

(2) At the beginning insert "(1)".

(3) At the end insert—

"(2) The Secretary of State may by regulations amend Schedule 1 to reduce the duration of copyright in existing works which are—

(a) unpublished, or

(b) published but anonymous or pseudonymous.

(3) The regulations may provide for the copyright to expire on the commencement of the regulations or at any later time.

(4) "Existing works" has the same meaning as in Schedule 1.

(5) Regulations under subsection (2) may—

(a) make supplementary or transitional provision;

(b) make consequential provision, including provision amending any enactment or subordinate legislation passed or made before that subsection comes into force.

(6) The power to make regulations under subsection (2) is exercisable by statutory instrument.

(7) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament." '.—*(Norman Lamb.)*

Brought up, and read the First time.

Norman Lamb: I beg to move, That the clause be read a Second time.

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

Government new clause 13—*Licensing of copyright and performers' rights.*

Government new schedule 1—*'Licensing of copyright and performers' rights Regulation of licensing bodies.*

2.30 pm

Norman Lamb: Government new clauses 11 and 13 and Government new schedule 1 will amend the Copyright, Designs and Patents Act 1988. The copyright system is an important part of the UK's social and economic infrastructure. Not only is it key to the business model of many creative industries, it also affects the sharing of information and culture by researchers, educators and citizens. As we discussed last Thursday when we considered the amendments of the hon. Member for East Lothian, if she is listening—

Fiona O'Donnell: I am sorry.

Norman Lamb: No need to apologise. If she is correcting the voting intentions of the hon. Member for Leyton and Wanstead, that would be a good thing. I was thrilled for a moment that he might be willing to join us in a bipartisan spirit.

As we discussed last Thursday when we considered the amendments of the hon. Member for East Lothian, the copyright system even affects Members of Parliament with their fondness for tweeting. The Government want to ensure copyright makes the greatest possible contribution to UK economic growth and society.

Some have suggested that the Government's proposals come as a surprise, which was the flavour of the shadow Minister's rather mean-spirited comments last time. [Hon. Members: "Withdraw."] I withdraw and apologise, but he suggested that the proposals were rather last minute and not thought through. Precisely the opposite is true.

I will set out the sequence of events that led to this point. The Hargreaves review of intellectual property and growth was commissioned in November 2010, and reported in May 2011 following seven months of extensive consultation with a wide range of stakeholders. The Government responded last August, and in a further follow up, we published a consultation on copyright in December 2011. That further extensive consultation with stakeholders concluded in March. We published the first part of our response to the consultation in June. All that is in marked contrast to the shadow Minister's suggestion that the proposals have been introduced unexpectedly.

The Guardian reported on 18 May:

"Labour has called on the government to 'stop dithering' and move swiftly to liberalise archaic UK copyright laws…Ivan Lewis, the shadow culture secretary…urged the government to act to implement the recommendations of the report".

We are doing precisely that, so no more carping from the Opposition suggesting that the process, which has resulted in legislative proposals, has not been full and deliberative.

Chi Onwurah: Although I recognise that the Government new clauses relate to some of the Hargreaves review's findings, they hardly implement the Hargreaves review. I hope the Minister accepts that.

Norman Lamb: There is more to come. This is the first tranche of Hargreaves's recommendations, and we seek to implement the recommendations in an ordered and sensible way.

For those too young to remember, the Hargreaves review follows the previous Government's Gowers review and "Digital Britain" report, which contained similar proposals but were not delivered. I say no more.

In his 2006 pre-Budget report, the then Chancellor said the Gowers review

"has considered the challenges of globalisation and technological change, and sets out a strategic vision of a system that is balanced, coherent and flexible, ensuring that the operations of the system work for businesses and consumers…The Government welcomes the Gowers Review and will take forward those recommendations for which it is responsible."

That was in 2006. So far, so good, but nothing happened until 2010.

Our predecessors showed great foresight in introducing those proposals and commissioning the Gowers review. That was a good start, and now something has happened to implement the recommended changes.

Ian Murray: I am rather confused because the Minister told this Committee on its 15th sitting, last Thursday, that the clause was

"not part of the wider Hargreaves work."

He went on to say:

"The Government will make announcements about the outcome of that review and their response to it in due course".—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 12 July 2012; c. 628.]

It seems, though, that these new clauses are part of the Hargreaves work. Will he clear up that confusion for us?

Norman Lamb: It is simply that our debate last week was not part of the Hargreaves recommendations. It was to deal with changes that may be required to maintain compliance with EU law. These now are the first tranche of proposals. There will be further announcements in due course on the implementation of the Hargreaves recommendations. These measures require primary legislation to implement them. Hargreaves concluded that

"the UK's intellectual property framework, especially with regard to copyright, is falling behind what is needed."

The review painted a picture of an IP system that is the foundation for a substantial proportion of the UK's innovation and economic growth but that needs to adapt to meet the challenge of new technologies. As we said in our response, we share this concern. The copyright system needs to reward creators' investment and encourage innovators to develop new products and services around creative content, and it needs to support consumers' and users' reasonable expectations. Decisions published in the first part of the Government response to the copyright consultation are at the heart of the new clauses and the new schedule, which I propose to move today. Decisions on the rest of the consultation, including copyright exceptions, will be announced later in the year, and so are not subjects on which I intend to spend any time today. In other words, they are matters that will be announced later on.

Professor Hargreaves was clear in his review that efficient markets for copyright licensing are strategically important to growth in this country. What we aim to do with these clauses is to modernise copyright licensing, putting in place measures that will give our licensing system the competitive edge and help UK creative industries

retain their world-beating status. This package of measures is designed to bring benefits for businesses, creators and consumers by making it easier to use copyright material to create value across the economy in society. These clauses and schedule will do three things: allow the creation of orphan works schemes to open access to potentially valuable material that currently cannot be licensed or used; put in place a voluntary regime for extending collective licensing to help reduce complexities in the licensing system; and reserve a power to introduce statutory codes of conduct for collecting societies if they fail to operate to minimum standards.

I shall turn first to the provisions of proposed new sections 116A, 116C and 116D to the Copyright, Designs and Patents Act 1988 in respect of orphan works in new clause 13. It benefits no one to have a wealth of copyright works being entirely unusable because the owner of one or more of the rights in the work cannot be contacted. Let me be clear that this is not simply a cultural issue but a very real economic issue that potentially valuable assets are not being used. It is also an issue of respect for copyright if those assets are being used unlawfully. The Government, therefore, want to introduce the measures to allow for both commercial and cultural uses of orphan works subject to satisfactory safeguards for the interests of both owners of orphan rights and rights holders who might potentially suffer from unfair competition from an orphan works scheme.

The British Film Institute stated, in its response to the Government's recent consultation on copyright, that such a scheme would be

"very beneficial to the public, archives across the UK (including the BFI National Archive), researchers, academics and innovators."

The Publishers Association stated in its response:

"The PA also supports a solution intended to facilitate both non commercial and commercial use of orphan works, provided this is based on due diligence and fair remuneration."

Of course, we know that some concerns have been raised about how an orphan works scheme would operate. We have listened to those concerns and the Committee has my assurance that the following series of safeguards is incorporated in our proposals.

First, the scheme will not take the form of an exception to copyright. Instead, users will require authorisation by an independent body to use orphan works. The independent body will not itself be able to hold a licence to use such works; that is to say, there is no scope for self-licensing. A work can only ever qualify for authorisation as an orphan work after a diligent search for rights holders has been conducted. That is at the heart of our proposals. The person who seeks to use a work has to go out and search for the owner of the rights before seeking to get the work licensed under an orphan works licensing scheme.

Secondly, there will be a registry of orphan works, which will make it easier for rights holders to check whether any of their work is being considered or used as an orphan work, and it will enable them to regain control of their work—the copyright subsisting in the work.

Thirdly, licences to use orphan works will come at an appropriate price, comparable to that of similar known works being used in a similar way, and depending on the particular use being proposed. *[Interruption.]* I am concerned that the hon. Member for Hartlepool, who is the shadow Minister and also a former Minister, is starting to yawn and I am worried that I am boring him. [Hon. Members: "No."] He might be losing the will to live, but we are near the end and I encourage him to keep going to the bitter end.

Fourthly, licences will always be non-exclusive to avoid unfair competition. Finally, nothing in the amendment alters a rights owner's moral rights. It will be assumed that a missing rights holder has asserted their moral rights and they will continue to be respected and protected accordingly.

As part of this package of measures on orphan works, new clause 11 will reform section 170 of the Copyright, Designs and Patents Act 1988. Existing copyright provisions for unpublished, anonymous and pseudonymous works mean that they remain in copyright until 2039 at the earliest. That creates the anomaly that works such as unpublished letters from the 19th century remain in copyright. For example, the British Library said in its response to the consultation:

"From the perspective of Library staff explaining this to a user, the fact that an unpublished medieval manuscript is still in copyright and has the same legal status as a current best-seller is extremely nonsensical and can result in challenging conversations."

That is an interesting way of putting it. More orphan works could be made available for legal use if the Secretary of State harmonises the length of copyright term for them with the approach in European law. That would also help to solve the overall orphan works problem.

Let me turn to the amendments to the provisions in proposed new section 116B on extended collective licensing, which are also in new clause 13. These make provision to allow the Secretary of State, by regulations, to authorise voluntary extended collective licensing within the UK. Currently, collecting societies license copyright works on an "opt-in" basis.

The Minister of State, Department for Business, Innovation and Skills (Mr Mark Prisk): Atishoo!

Norman Lamb: Bless you. We have been in each other's company for so long now that we are all catching each other's colds.

Extended collective licensing would allow qualifying collecting societies to apply to offer some non-exclusive licences on an "opt-out" basis. That means that, subject to rigorous safeguards, a collecting society that represents a significant number of rights holders could be authorised to license on behalf of all rights holders for a particular class of works. The absolute exception to that is where the rights holder says "no" to the collecting society by exercising his or her right to opt out of any ECL scheme.

Much evidence was submitted to the Hargreaves review and the subsequent consultation on copyright pointing to the time-consuming and expensive nature of rights clearance. The situation is being compounded every day in the digital age as increasing numbers of works are created. Users need more and more permissions and rights holders are finding it increasingly difficult to retain control over their works. ECL can help simplify rights clearance because it creates a one-stop shop where it is used. That saves time and money for both users and rights holders. For that reason, Universities UK described ECL as—

2.45 pm

Ian Murray: Atishoo!

Norman Lamb: My goodness, it is all over the place.

Universities UK said that ECL was

"part of the essential reform of copyright to suit the digital age"

in their response to the recent consultation. The Government know very well that ECL may not be appropriate for all types of rights, or for all types of creative works. For example, we know that some copyright licensing, often for primary rights, tends to take place via direct negotiation between the rights holder and the user. Let me be clear that there is no intention to interfere with existing licensing models that clearly work for a sector.

Let me also confirm that ECL will be entirely voluntary for collecting societies. It will be entirely up to them whether to apply to use the system and to define the scope of their application. Under our proposals, there can be no imposition of ECL on markets that do not want it. It is also important that any ECL system will take account of the interests of rights holders in controlling how their work is used. To do that, there are four safeguards that we see as essential to any ECL scheme. First, a collecting society that wants to use ECL must be able to prove that it is significantly representative of the rights holders who would be affected. Secondly, it must secure the support of its members, who are themselves rights holders, for the application. Thirdly, it must have a code of conduct in place which meets the Government's minimum standards. In itself, that will provide an incentive to raise standards, including protection for non-member rights holders. Finally, all rights holders must retain the capacity to opt out of an ECL scheme. Some respondents to our consultation felt that that safeguard should be enshrined in statute. We have listened; I can confirm that subsection (3) of new section 116B has that effect.

New schedule 1 inserts schedule A1 into the Copyright, Design and Patents Act 1988 and requires a collecting society to put in place a code of conduct which meets certain criteria. Where a collecting society fails to introduce an appropriate code, there is a reserve power for the Secretary of State to put one in place. Again, we are trying to provide an incentive for a code of conduct to be put in place by the collecting authority. I want to be absolutely clear that the Government recognise the value of collective licensing and the role played by collecting societies.

Collecting societies and the services they provide are central to the monetisation of copyright, but we all know that the system is not perfect. The Hargreaves review noted that they tend to be monopoly suppliers in their sectors, and that there is evidence that practice could be improved in some areas. Hargreaves argued that greater protection was required for the members of collecting societies and their licensees. All that was corroborated by evidence to the recent copyright consultation. Minimum standards of transparency and good governance are, in a sense, ends in themselves. They are good principles for how to operate. It is hard to argue that they are not a good thing, and that was reflected in the broad consensus in the copyright consultation about the need for minimum standards.

This reserve power is designed to support a system of self-regulation in which collecting societies self-regulate through codes of conduct that incorporate minimum standards set by the Government. I can assure the Committee that it will only ever be used to put in place a statutory code where a collecting society's own system of self-regulation fails. In other words, this is simply an insurance policy for members and for licensees of collecting societies when voluntary self-regulation fails. If a code is breached, members of collecting societies and their licensees have no option to shop elsewhere if they want to license their rights collectively or to buy a collective licence. In essence, we want them to have the type of protections that consumers dealing with monopoly suppliers in other sectors enjoy. We want to be able to guarantee that they enjoy these minimum standards, and this is what the reserve power is designed to do.

Users of the system were almost unanimously in favour of this reserve power. As the Federation of Small Businesses pointed out in its submission,

"There is little point for collecting society codes being purely voluntary because collecting societies are monopolies. Therefore a statutory backstop and enforcement is essential."

Of course, if self-regulation is effective then this reserve power will not need to be used. I am confident about the prospect of effective self-regulation, given the work that has been done by collecting societies on codes of conduct, under the auspices of the British Copyright Council. I applaud that work.

The schedule also amends schedule 2A of the Copyright, Design and Patents Act 1988 to ensure that the orphan works and extended collective licensing schemes also apply in respect of performers' rights. Much of the operational detail about how orphan works, extended collective licensing, and the reserve power on codes of conduct will operate will be contained in regulations that we will develop. That will go through the full consultation process and ultimately be subject to approval by Parliament. In developing these we will, of course, continue to involve those affected fully, through an existing informal working group of users and collecting societies and through wider consultation, to ensure that the views, knowledge and experience of stakeholders are central in shaping the detail of these schemes. I thank hon. Members, on the whole, for staying with me.

Mr Iain Wright: I shall not detain the Committee for too long. We discussed on Thursday, in debating clause 56, many of the issues that have been set out very thoughtfully and in detail by the Minister this afternoon. I put on record then our concern about the broad Henry VIII powers that the Secretary of State was giving himself. To some extent, new clause 11 arouses similar concerns about the broadest possible powers.

The power to reduce duration of copyright in transitional cases in new clause 11 allows a Minister to reduce the term of copyright protection in a work at any time. When the 1988 legislation was going through Parliament, the view was expressed in the other place that existing copyright owners should not suddenly find themselves with a right less valuable than the one they already enjoyed. That important principle was set out in Parliament 25 or so years ago. How will the Minister reconcile what was said then to what has been proposed now? What consultations will take place in respect of the reduction of the term of copyright protection?

As I said, the matter is of some concern, and I think we will return to this on Report. We have not tabled any amendments. I do not intend to divide the Committee

on this, but there are some concerns that we would like to explore further on Report. I suspect that the other place would like to do so as well. I was taken by what the Minister said about new clause 13. He provided some reassurance. There are concerns here, but I just have a few questions about what he said. He mentioned the need for an independent body. Who or what is the independent body? He mentioned the need for a diligent search? That was an interesting phrase. What does that constitute? Is "diligent" the same as the test of reasonableness in law? Will somebody have to demonstrate to a court that they carried out a reasonable test? The Minister mentioned the example of an unpublished medieval manuscript being under copyright as for a modern work and said how ridiculous that was. What role will proportionality play in what is to be carried out here? The Minister also mentioned the registry of orphan works. Forgive my ignorance, but how will that be compiled? What tests of completeness will be undertaken?

Those are the three broad points I would like to have clarified. However, what the Minister said was quite reassuring. I give notice that we will come to this at a later stage in the Bill. We want to reflect over the summer and look at it again on Report. I am interested to hear the Minister's response to the questions I have posed.

Norman Lamb: I am grateful to the shadow Minister for that response. First, the independent body that will authorise and license orphan works and verify searches has yet to be determined. However, it will be an independent body and there will be a full consultation.

Mr Wright: A quango.

Norman Lamb: There has to be a licensing authority for this purpose. We are unleashing through this significant potential economic activity, as opposed to the sort of organisation the hon. Gentleman proposed earlier. However, I enjoyed his intervention from a sedentary position. There will be no self-licensing.

The hon. Gentleman also asked what would constitute a diligent search. There will be further consideration of how exactly the scheme would operate before setting it out in secondary legislation. Extensive thought has already been given to what should be done in a diligent search for different sectors, including by the European digital libraries initiative. It is likely that searches would differ across the various sectors, and therefore sector-specific guidance may need to be developed. Existing industry databases, registries and bibliographic publications are just some examples of sources of information that could be searched. If the digital copyright exchange finds favour with industry and becomes a reality, it is likely that a search of that would be an essential part of any diligence search. Searching on such an exchange should be cheaper than searching a variety of unconnected databases.

I am getting pieces of paper thrown at me from every direction.

Mr Wright: Are they under copyright?

Norman Lamb: They will definitely be recorded for posterity. The point has already been made that the registry is where the works will be registered after the diligent search has been undertaken, and the details will be consulted on.

Mr Wright *rose—*

Norman Lamb: Let me make one point and then I am happy to give way. The hon. Gentleman's chide from a sedentary position was that I was creating a new quango. It could be an existing body, such as the Copyright Tribunal, so there may be no need to establish a new body. There will need to be an independent licensing authority that will have responsibility.

Mr Wright: I thank the Minister for giving way. I think he just said that the registry would reside with the person who has the register. I am not sure if I am correct. Am I right in thinking that the user who wishes to exploit copyright works without first clearing them would be the actual owner of the repository of the works? Is that correct? Have I understood that in the right fashion?

Norman Lamb: Copyright remains where copyright always has been in an orphan work. It is just that the rights holder cannot be found. Nothing about an orphan works scheme changes copyright. Indeed, the mechanism that would be established after full consultation would create a foundation for the owner perhaps to be discovered. A work, perhaps a photograph or some other artistic work, may be exploited—in the best possible sense—by being licensed through an orphan works scheme and appearing in the public domain lawfully for the first time, because to do so at the moment would be unlawful. The original rights holder may then identify his or her photograph and reassert their rights and take back control of their work. This mechanism empowers the owners of orphan works to do something that is currently denied to them by the fact that the work simply cannot be used because no one can get authority if the rights owner cannot be found.

3 pm

The registry will help to reduce the number of orphan works and allow rights holders to check whether works are being used as an orphan. If someone took a photograph that was being exploited by a third party that had secured a licence to do so, that owner can periodically search through the list of orphan works that have been licensed and may spot the piece of work that they own the rights to and be able to assert their right. It is an empowering process.

We have had productive conversations with a wide range of stakeholders, and the hope is that the process will develop as we draft the secondary regulations that will implement the scheme. The Bill creates the powers to establish the scheme. The detail will follow through secondary legislation. *[Interruption.]* More stuff is coming; this is a very efficient operation. If someone wants to use an orphan work, they undertake a diligent search, which is verified by the independent authorising body—

Mr Wright: Quango.

Norman Lamb: Which may be an existing body.

Mr Wright: Existing quango.

Norman Lamb: The licence fee is paid based on the best assessment of the value of the work, and the money is held for the original rights holder, so that if they emerge, it can be handed to them. The work can then be used, and the authorising body registers the orphan accordingly.

Mr Wright: In my original line of questioning, I mentioned "diligent search" and "proportionality" and cited the example of a mediaeval manuscript and the British Library asking whether it was an inappropriate use of resources. Will the Minister talk a little bit about proportionality and how that will constitute part of the criteria for a diligent search?

Norman Lamb: I come back to the catch-all defence, which is that all of this is to be determined through regulation and that there will be a thorough consultation. Obviously, proportionality is essential and what is a diligent search for one type of work may be inappropriate for another, so that proportionality must be secured. The principle is clear that people should try hard to find the original rights holder. The detail of what that will entail and the guidance that people will be offered will be developed through secondary legislation, subject to consultation. We will hopefully then have a scheme that is proportionate.

Mr Wright: The Minister is asking us to do an awful lot on the basis of a nod and a wink and a "Trust me, I'm a Minister." It is of some concern that the powers are quite broad and that everything will become clear in regulations and secondary legislation. Will the Minister give us a timetable for the consultation and the laying down of regulations to give us an indication of whether the matter can be debated at some length later in the progress of the Bill, whether on Report or in the other place?

Norman Lamb: I do not have a detailed timetable. We do not have a clear timeline for the implementation, although obviously I want to ensure that we make speedy progress so that we can put a scheme in place as soon as possible. It is a bit churlish of the hon. Gentleman to suggest that it is all based on trusting the Minister. He will know very well, and as a former Minister he will remember, that it is not appropriate to set out the detailed arrangements for a scheme in vast sections of primary legislation. It is appropriate for secondary legislation, and it will be voted on in this place.

I agree absolutely that we must get the balance right between primary and secondary legislation, but the benefit when one is designing detailed scheme rules is that if during the use of those rules it becomes apparent that some tweaking is necessary to make them work sensibly, it is easier to do so than to wait for a moment to introduce primary legislation, which might be two years down the line. We are introducing the flexibility to ensure that the scheme works effectively.

We want to take time to consult thoroughly. We have already begun the consultations with stakeholders, but we want to make progress to ensure that the scheme can be implemented. I end by repeating that—

Chi Onwurah *rose—*

Norman Lamb: Oh. Excitement.

Chi Onwurah: Before the Minister concludes, I want to echo the concerns of my hon. Friend the former Minister and ask whether we can have a little more detail on the funding of this new quango, which could be an existing quango. The Minister made it clear—well, I think he made it clear—that the money gathered from licensing will be retained for the authors, which implies that the quango will not be funded from the licence money. Can he confirm whether that is the case?

Norman Lamb: Again, these are all things that will be consulted on. One source of funding that will be available and could be used for the purpose is a proportion of the payments made for the use of orphan works that will never be retrieved by the original licence holder, for instance if the person has disappeared or never discovers that the work has been licensed for use. The question that must be asked is what happens to the money held for people who do not emerge. One option—no decision has been taken—is that it could be used to help fund the licensing authority. All the options will be examined thoroughly in due course.

I end by—*[Interruption.]* I was about to end. On the question of unclaimed licence fees, I suspect that I have largely made the point that there will be further consideration, with input from stakeholders, of the details of how it will work. The authorising body will hold unclaimed licence fees in an escrow account. As the amount could build up to something substantial, it will probably be appropriate to allow for a certain amount to be withdrawn after a certain period. Possible uses for unclaimed fees could include subsidising the cost of running the orphan works scheme, paying for preservation costs in public institutions or paying for industry training. There is a range of different uses on which we will consult in due course.

The new arrangements introduced by the Government new clauses and new schedule will be valuable. There is cross-party agreement on Hargreaves and the potential economic value of implementing his recommendations. It has the potential to unlock economic value and make use of things that at the moment, frustratingly for everyone, cannot be used lawfully. It has real potential, while at the same time safeguarding the rights and interests of the rights holder. On that basis, I hope that the Committee will support the new clauses.

Question put and agreed to.

New clause 11 accordingly read a Second time, and added to the Bill.

New Clause 12

PENALTIES UNDER PROVISION IMPLEMENTING DIRECTIVE ON TERM OF PROTECTION

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

Brought up, and read the First time.

Norman Lamb: I beg to move, that the clause be read a Second time.

The Chair: With this it will be convenient to consider amendment (a) to new clause 12, in line 3, leave out from 'implementing' to end and insert

'acts which may be done in relation to copyright works notwithstanding the subsistence of copyright.'.

Norman Lamb: I turn to new clause 12, which relates to the introduction of EU directive 2011/77/EU. The directive extends the copyright term of protection for sound recordings and performers' rights from 50 to 70 years. As the Committee will understand, directives such as this are usually implemented using secondary legislation, under the European Communities Act 1972. However, the 1972 Act places a limit on the severity of penalties that can be associated with legislation introduced under it, and in the case of copyright the penalties already in place in the UK are greater than those provided for by that Act. Most significantly, the maximum penalty is 10 years' imprisonment, rather than the two years permitted under the 1972 Act. We want to introduce the new directive and to retain the level of penalties we have in place in the UK, and new clause 12 allows us to do that.

It would be right to ask why we have not simply amended clause 56, given that the underlying policy intention of that clause is the same, namely to make a change to copyright law while maintaining the associated penalties regime. We considered that option and, on the basis of advice received from our lawyers, we believe it would be undesirable because combining the two clauses would have the unintended consequence of broadening the current narrow powers in clause 56 and enabling the Government to alter copyright term in a wide range of areas beyond the remit of the new directive, which is specifically about sound recordings and performers' rights. I am sure that the shadow Minister will be reassured to hear that we have sought to avoid that. The secondary legislation required to implement the detail of the directive will, of course, still be subject to further consultation with stakeholders and other interested parties.

I seek your guidance, Mr Bayley, because it seems appropriate for me not to comment on the amendment until the shadow Minister has had an opportunity to introduce it, after which I can respond. Is that correct?

The Chair: Yes, I think that would be sensible.

Mr Iain Wright: I shall not detain the Committee long, because I think we had a substantial debate on the matter on Thursday afternoon. We raised our reasonable concerns that clause 56 provided Henry VIII powers and that the European Communities Act 1972, which I quoted at length, did not address the concerns regarding the need to maintain the penalties.

I hear what the Minister has to say, and I am keen to make progress. New clause 12 goes some way towards addressing the concerns but, as he mentioned, it addresses only sound recordings. Many other aspects of the 1988 legislation will suffer from the same problem. My question, which is one of the reasons why we tabled the amendment, is how that will be dealt with. I mentioned on Thursday afternoon the bundling up of different measures, and I think the concern still remains. New clause 12 addresses a specific problem, but others will bloom and flourish, not necessarily as a result of the measure but certainly in conjunction with it. How will the Minister address the other different points that come about? I am interested to see how he will respond.

Norman Lamb: I was expecting at least a half-hour speech, and the shadow Minister has disappointed me.

Mr Wright *rose—*

Norman Lamb: Let me just make it clear that new clause 12 is limited to implementing the directive, not anything else, which I think was the point that the hon. Gentleman was making. In a sense, it addresses his concern about not creating powers that could be subject to abuse if they were too wide.

3.15 pm

The amendment appears to change the focus of the clause entirely, and as a result would not provide the legal means to implement the EU directive. I am sure that is not the Opposition's intention, but that is the effect of what they have done and they have to live with the consequences of their actions.

Mr Wright: So will you.

Norman Lamb: I am acutely aware of that.

The amendment specifies areas of the Copyright, Designs and Patents Act 1988 that could be changed under the new power, but those parts are not affected by the EU directive, which is primarily designed to extend the copyright term of protection for sound recordings and performers' rights from 50 to 70 years. We are committed to introducing the new directive and want to retain the level of penalties we have in place in the UK. New Clause 12 allows us to do that in a focused and specific way, without providing overly broad powers to the Secretary of State.

The amendment would not enable us to do that. Indeed, it would provide new order-making powers in entirely new areas—something I know the creative industry sectors are anxious not to see happen. If that is indeed what hon. Members want, perhaps we should debate that point. The shadow Minister will be answerable to the creative industry sector that is so concerned about extending the powers. I suspect that that is not what was intended and there may be something of a drafting error. On that basis, I hope hon. Members will accept that the amendment should not be moved.

Mr Wright: I understand what the Minister says. This is a broad issue of some concern, not only in the Committee and the House. It will gain momentum as we progress the Bill through Report and into the other place. What the Minister has said is reasonable, so let me go away and reflect on it, but I give notice that over the summer we will reflect further and will probably come back to the issue. On the basis of what he has said, I will not move the amendment.

Question put and agreed to.

New clause 12 accordingly read a Second time, and added to the Bill.

New Clause 13

LICENSING OF COPYRIGHT AND PERFORMERS' RIGHTS

'(1) The Copyright, Designs and Patents Act 1988 is amended as follows.

(2) In section 116 (licensing schemes and licensing bodies) after subsection (4) insert—

"(5) Schedule A1 confers powers to provide for the regulation of licensing bodies."

(3) After section 116 insert—

"Orphan works licensing and extended collective licensing

116A Power to provide for licensing of orphan works

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

(2) The regulations may—

(a) specify a person or a description of persons authorised to grant licences, or

(b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences

(3) The regulations must provide that, for a work to qualify as an orphan work, it is a requirement that the owner of copyright in it has not been found after a diligent search made in accordance with the regulations.

(4) The regulations may provide for the granting of licences to do, or authorise the doing of, any act restricted by copyright that would otherwise require the consent of the missing owner.

(5) The regulations must provide for any licence—

(a) to have effect as if granted by the missing owner;

(b) not to give exclusive rights;

(c) not to be granted to a person authorised to grant licences.

(6) The regulations may apply to a work although it is not known whether copyright subsists in it, and references to a missing owner and a right or interest of a missing owner are to be read as including references to a supposed owner and a supposed right or interest.

116B Extended collective licensing

(1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant copyright licences in respect of works in which copyright is not owned by the body or a person on whose behalf the body acts.

(2) An authorisation must specify—

(a) the types of work to which it applies, and

(b) the acts restricted by copyright that the licensing body is authorised to license.

(3) The regulations must provide for the copyright owner to have a right to limit or exclude the grant of licences by virtue of the regulations.

(4) The regulations must provide for any licence not to give exclusive rights.

(5) In this section "copyright licences" has the same meaning as in section 116.

(6) Nothing in this section applies in relation to Crown copyright or Parliamentary copyright.

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

(1) This section and section 116D apply to regulations under sections 116A and 116B.

(2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.

(3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.

(4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—

(a) the deduction of administrative costs;

(b) the period for which sums must be held;

(c) the treatment of sums after that period (as bona vacantia or otherwise).

(5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.

(6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—

(a) for determining the rights and obligations of any person if a work ceases to qualify as an orphan work (or ceases to qualify by reference to any copyright owner), or if a rights owner exercises the right referred to in section 116B(3), while a licence is in force;

(b) about maintenance of registers and access to them;

(c) permitting the use of a work for incidental purposes including an application or search;

(d) for a right conferred by section 77 to be treated as having been asserted in accordance with section 78;

(e) for the payment of fees to cover administrative expenses.

116D Regulations under sections 116A and 116B

(1) The power to make regulations includes power—

(a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;

(b) to make transitional, transitory or saving provision;

(c) to make different provision for different purposes.

(2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.

(3) Regulations may make provision by reference to guidance issued from time to time by any person.

(4) The power to make regulations is exercisable by statutory instrument.

(5) A statutory instrument containing regulations that amend an enactment may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(6) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament."

(4) Schedule [Licensing of copyright and performers' rights] (which inserts Schedule A1 to the Copyright, Designs and Patents Act 1988 and makes provision in relation to performers' rights corresponding to provision made by this section in relation to copyright) has effect.'.—*(Norman Lamb.)*

Brought up, read the First and Second time, and added to the Bill.

New Clause 17

REMUNERATION COMMITTEES AND NON-EXECUTIVE DIRECTORS

'(1) The Secretary of State will provide for a requirement that an employee representative should be a member of the remuneration committee of a relevant body corporate.

(2) The Secretary of State will provide for a requirement that companies must demonstrate that non-executive directors on boards and remuneration committees are drawn from a diverse background.

(3) Companies must demonstrate that they are widening their search for nonexecutive committees.

(4) Companies must report how they are widening their search for non-executive directors in their annual report.'.—(*Mr Iain Wright.*)

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 31]

AYES

Anderson, Mr David	Onwurah, Chi
Cryer, John	Ruane, Chris
Murray, Ian	Wright, Mr Iain

NOES

Bingham, Andrew	Ollerenshaw, Eric
Burt, Lorely	Prisk, Mr Mark
Carmichael, Neil	Smith, Julian
Johnson, Joseph	Wright, Jeremy
Lamb, Norman	

Question accordingly negatived.

New Clause 18

HIGH PAY COMMISSION

'(1) The Secretary of State will establish the High Pay Commission for the purposes of fulfilling subsection (2).

(2) The High Pay Commission will assess and make recommendations to the Secretary of State and to Parliament relating to—

(a) the level of directors' remuneration;

(b) directors' remuneration relative to the median of wages in the United Kingdom;

(c) the nature of remuneration packages provided to directors; and

(d) the relationship between directors' remuneration and performance of companies in the United Kingdom.

(3) The membership of the High Pay Commission shall be decided by the Secretary of State and subject to approval by the House of Commons.

(4) Membership may be, but not confined to, representatives from—

(a) businesses;

(b) business representative organisations;

(c) trade unions; and

(d) civic society organisations.

(5) The Secretary of State will provide resources as required to enable the High Pay Commission to fulfil its objects as set out in subsection 2.

(6) The High Pay Commission will, on an annual basis, prepare and provide a report to the Secretary of State on issues affecting directors' remuneration as set out in subsection 2 and make recommendations on the effective operation and reporting of companies' legislation relating to directors' remuneration.'.—(*Mr Iain Wright.*)

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 6, Noes 9.

Division No. 32]

AYES

Anderson, Mr David	Onwurah, Chi
Cryer, John	Ruane, Chris
Murray, Ian	Wright, Mr Iain

NOES

Bridgen, Andrew	Ollerenshaw, Eric
Burt, Lorely	Prisk, Mr Mark
Carmichael, Neil	Smith, Julian
Johnson, Joseph	Wright, Jeremy
Lamb, Norman	

Question accordingly negatived.

New Schedule 1

Licensing of copyright and performers' rights

'PART 1

REGULATION OF LICENSING BODIES

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

"SCHEDULE A1

REGULATION OF LICENSING BODIES

Codes of practice

1 (1) The Secretary of State may by regulations make provision for a licensing body to be required to adopt a code of practice that complies with criteria specified in the regulations.

(2) In relation to a licensing body that fails to adopt a code of practice that it is required to adopt under provision within sub-paragraph (1), the regulations may provide for a code of practice approved by the Secretary of State or by a person designated by the Secretary of State under the regulations to have effect as a code of practice adopted by the body.

2 Regulations under paragraph 1 may make provision as to conditions that are to be satisfied, and procedures that are to be followed—

(a) before a licensing body is required to adopt a code of practice as described in paragraph 1(1);

(b) before a code of practice has effect as one adopted by a licensing body as described in paragraph 1(2).

Licensing code ombudsman

3 (1) The Secretary of State may by regulations make provision—

(a) for the appointment of a person (the "licensing code ombudsman") to investigate and determine disputes about a licensing body's compliance with its code of practice;

(b) for the reference of disputes to the licensing code ombudsman;

(c) for the investigation and determination of a dispute so referred.

(2) Provision made under this paragraph may in particular include provision—

(a) about eligibility for appointment as the licensing code ombudsman;

(b) about the disputes to be referred to the licensing code ombudsman;

(c) requiring any person to provide information, documents or assistance to the licensing code ombudsman for the purposes of an investigation or determination;

(d) requiring a licensing body to comply with a determination of the licensing code ombudsman;

(e) about the payment of expenses and allowances to the licensing code ombudsman.

Code reviewer

4 (1) The Secretary of State may by regulations make provision—

(a) for the appointment by the Secretary of State of a person (the "code reviewer") to review and report to the Secretary of State on—

(i) the codes of practice adopted by licensing bodies, and

(ii) compliance with the codes of practice;

(b) for the carrying out of a review and the making of a report by that person.

(2) The regulations must provide for the Secretary of State, before appointing a person as the code reviewer, to consult

persons whom the Secretary of State considers represent the interests of licensing bodies, licensees, members of licensing bodies, and the Intellectual Property Office.

(3) The regulations may, in particular, make provision—

(a) requiring any person to provide information, documents or assistance to the code reviewer for the purposes of a review or report;

(b) about the payment of expenses and allowances to the code reviewer.

(4) In this paragraph "member", in relation to a licensing body, means a person on whose behalf the body is authorised to negotiate or grant licences.

Sanctions

5 (1) The Secretary of State may by regulations provide for the consequences of a failure by a licensing body to comply with—

(a) a requirement to adopt a code of practice under provision within paragraph 1(1);

(b) a code of practice that has been adopted by the body in accordance with a requirement under provision within paragraph 1(1), or that has effect as one adopted by the body under provision within paragraph 1(2);

(c) a requirement imposed on the body under any other provision made under this Schedule;

(d) an authorisation under regulations under section 116A or 116B;

(e) a requirement imposed by regulations under section 116A or 116B;

(f) an authorisation under regulations under paragraph 1A or 1B of Schedule 2A;

(g) a requirement imposed by regulations under paragraph 1A or 1B of that Schedule.

(2) The regulations may in particular provide for—

(a) the imposition of financial penalties or other sanctions;

(b) the imposition of sanctions on a director, manager or similar officer of a licensing body or, where the body's affairs are managed by its members, on a member.

(3) The regulations may include provision—

(a) for determining whether there has been a failure to comply with a requirement or code of practice for the purposes of sub-paragraph (1);

(b) for determining any sanction that may be imposed in respect of the failure to comply;

(c) for an appeal against the imposition of any such sanction.

(4) A financial penalty imposed under sub-paragraph (2) must not be greater than £50,000.

(5) The regulations may provide for a determination within subparagraph (3)(a) or (3)(b) to be made by the Secretary of State or by a person designated by the Secretary of State under the regulations.

(6) The regulations may make provision for requiring a person to give the person by whom a determination within sub-paragraph (3)(a) falls to be made (the "adjudicator") any information that the adjudicator reasonably requires for the purpose of making that determination.

Fees

6 (1) The Secretary of State may by regulations require a licensing body to which regulations under any other paragraph of this Schedule apply to pay fees to the Secretary of State.

(2) The aggregate amount of fees payable under the regulations must not be more than the cost to the Secretary of State of administering the operation of regulations under this Schedule.

General

7 (1) The power to make regulations under this Schedule includes in particular power—

(a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;

(b) to make provision for bodies of a particular description, or carrying out activities of a particular description, not to be treated as licensing bodies for the purposes of requirements imposed under regulations under this Schedule;

(c) to make provision that applies only in respect of licensing bodies of a particular description, or only in respect of activities of a particular description;

(d) otherwise to make different provision for different purposes.

(2) Regulations under a paragraph of this Schedule may amend this Part or Part 2, or any other enactment or subordinate legislation passed or made before the paragraph in question comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.

(3) Regulations may impose requirements by reference to guidance issued from time to time by any person.

(4) The power to make regulations is exercisable by statutory instrument.

(5) A statutory instrument containing regulations that amend an enactment may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(6) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

8 References in this Schedule to a licensing body are to a body that is a licensing body for the purposes of this Chapter or for the purposes of Chapter 2 of Part 2, and references to licensees are to be construed accordingly."

PART 2

PERFORMERS' RIGHTS

1 Schedule 2A to the Copyright, Designs and Patents Act 1988 (licensing of performers' property rights) is amended as follows.

2 In the heading of the Schedule omit "property".

3 In paragraph 1, after sub-paragraph (4) insert—

"(5) Schedule A1 confers powers to provide for the regulation of licensing bodies."

4 After paragraph 1 insert—

"Orphan rights licensing and extended collective licensing

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

(a) the performer's consent would otherwise be required under that section, but

(b) the right to authorise or prohibit the act qualifies as an orphan right under the regulations.

(2) The regulations may—

(a) specify a person or a description of persons authorised to grant licences, or

(b) provide for a person designated in the regulations to specify a person or a description of persons authorised to grant licences.

(3) The regulations must provide that, for a right to qualify as an orphan right, it is a requirement that the owner of the right has not been found after a diligent search made in accordance with the regulations.

(4) The regulations must provide for any licence—

(a) to have effect as if granted by the missing owner;

(b) not to give exclusive rights;

(c) not to be granted to a person authorised to grant licences.

(5) The regulations may apply in a case where it is not known whether a performer's right subsists, and references to a right, to a missing owner and to an interest of a missing owner are to be read as including references to a supposed right, owner or interest.

1B (1) The Secretary of State may by regulations provide for a licensing body that applies to the Secretary of State under the regulations to be authorised to grant licences to do, or authorise the doing of, acts to which section 182, 182A, 182B, 182C, 182CA, 183 or 184 applies in respect of a performance, where the right to authorise or prohibit the act is not owned by the body or a person on whose behalf the body acts.

(2) An authorisation must specify the acts to which any of those sections applies that the licensing body is authorised to license.

(3) The regulations must provide for the rights owner to have a right to limit or exclude the grant of licences by virtue of the regulations.

(4) The regulations must provide for any licence not to give exclusive rights.

1C (1) This paragraph and paragraph 1D apply to regulations under paragraphs 1A and 1B.

(2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.

(3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.

(4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including—

(a) the deduction of administrative costs;

(b) the period for which sums must be held;

(c) the treatment of sums after that period (as bona vacantia or otherwise).

(5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.

(6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision—

(a) for determining the rights and obligations of any person if a right ceases to qualify as an orphan right (or ceases to qualify by reference to any rights owner), or if a rights owner exercises the right referred to in paragraph 1B(3), while a licence is in force;

(b) about maintenance of registers and access to them;

(c) permitting the use of a work for incidental purposes including an application or search;

(d) for a right conferred by section 205C to be treated as having been asserted under section 205D;

(e) for the payment of fees to cover administrative expenses.

1D (1) The power to make regulations includes power—

(a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it;

(b) to make transitional, transitory or saving provision;

(c) to make different provision for different purposes.

(2) Regulations under any provision may amend this Part, or any other enactment or subordinate legislation passed or made before that provision comes into force, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Copyright Tribunal or conferring powers on it.

(3) Regulations may make provision by reference to guidance issued from time to time by any person.

(4) The power to make regulations is exercisable by statutory instrument.

(5) A statutory instrument containing regulations that amend an enactment may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(6) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament."

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

Brought up, read the First and Second time, and added to the Bill.

Question proposed, That the Chair do report the Bill, as amended, to the House.

Mr Iain Wright: May I thank you for your wise and open chairmanship during today's deliberations and the rest of the Committee's sittings, Mr Bayley? Through you, I also want to thank Mr Brady for his high-quality, often even punctual, chairing of the Committee, and Mr Caton, who inadvertently stepped magnificently into the role for one session after you could take no more of my ramblings about competition in the bus industry. The Committee has been serious about the need to scrutinise an important Bill and about the manner of its deliberations and questioning, but it has done so in a good-natured and even comradely fashion. The tone and spirit of a Committee is set by the Chairs, Mr Bayley, and its members' good nature and dedication to work has reflected the exemplary way in which you and Mr Brady have chaired us. I thank you for that.

I want to thank the Clerks, Mr James Rhys and Mr Steven Mark, who were enormously helpful, supportive and patient when I wanted to table incoherent and often contradictory—and possibly illegal—amendments. I would also like to thank the Doorkeepers, *Hansard* and the officials, who have worked hard and who I will be proud to have as my officials in a matter of months.

My hon. Friends the Members for Edinburgh South and for Newcastle upon Tyne Central have been formidable Front Benchers, ensuring that they will undoubtedly move from being shadow Ministers to actual Ministers in only a matter of time. They have scrutinised the Bill and questioned Ministers in a thoughtful, determined and even ingenious manner. My hon. Friend the Member for Edinburgh South is already having withdrawal symptoms from the Minister's book, having had to return it to the House of Commons Library.

May I thank the Government Whip and the Opposition Whip, who have ensured that the Committee ran smoothly and effectively? I would have liked to think that the Government Whip spent the weekend preparing for the final stages of the Bill, using his parliamentary management to ensure that all Government new clauses and new schedules were added, but a quick look at his website shows that he was in the pub—opening the Merrie Lion

[Mr Iain Wright]

in Fenny Compton and having a great time. We resent not being invited and not being there, and the Government Whip should therefore buy the first round of drinks after this sitting.

My hon. Friend the Opposition Whip is a strong supporter of manufacturing in his constituency, and particularly caravan manufacturers such as Fifth Wheel. I know that the two Whips are planning a caravanning holiday for next week, with the caravan stacked full of pasties and copies of "Fifty Shades of Grey"—as well as the Minister's book—for a lively, nay debauched, weekend in Rhyl. I also thank my hon. Friends the Members for Blaydon, for Rochdale, for Leyton and Wanstead, for East Lothian and for Swansea West for their dedication and commitment in challenging the Government and using their wide experience to try to improve this rag-bag Bill.

The hon. Member for Skipton and Ripon has made the Committee entertaining and provocative, and I welcome him back for this afternoon's session after his attendance at a branch meeting of a trade union of which I know he is shop steward. It has been a pleasure to work with all the Government Back Benchers, particularly the hon. Member for Newton Abbot, who I understand is not here today because she is in court charged with grievous bodily harm—of the Prime Minister, I think, last week.

The Minister of State started off as an iron fist in a velvet glove, and never deviated from that stance, albeit in his usual courteous way. He failed to inform the Committee that the day after Second Reading he turned 50. The Opposition wish him a happy half century. We would have thought that he would have mellowed in his advancing years, but that has not been the case.

Finally, I turn to the Under-Secretary of State. I have to confess that I did not really know him before the Committee, but with each session his charm, professionalism and good nature have become increasingly apparent, and I have become increasingly impressed with those characteristics. I particularly liked the way he understood perfectly the nature of our amendments, had some sympathy with them, and then resolutely failed to move his position. It is a tribute to his courtesy and his friendliness, and that of his private office, that on the day after I mentioned in Committee my concern about insolvency legislation, stretching our deliberation of schedule 17 part 3 to breaking point, his private office contacted me, asking when I would like a meeting about the matter. I am very grateful to him and his office for that.

This side of the Committee has felt that we have had to support the Minister when he has risen to his feet, because his own side has failed to do so, but the situation is even worse within the ministerial team. In the other place on 12 July, in response to a question from Baroness Bakewell on copyright legislation, Baroness Wilcox, the Under-Secretary of State, stated:

"In the other place at the moment,"—

in our own House—

"my honourable friend Norman Lamb is struggling with Clause 56, trying to clarify it and explain to people that they are worrying unnecessarily…By the time the Bill gets here, I am absolutely sure that things will be clear."—[*Official Report, House of Lords,* 12 July 2012; Vol. 738, c. 1247.]

That is not the most ringing of endorsements or the best show of ministerial collective responsibility and support I have seen.

Last week in Committee I claimed that the Minister's book was something like 480,000th in the Amazon list of bestsellers. I said that without having any empirical evidence—very much like the Government's proposals in the Bill—so I might have misled the Committee. To make amends, I went on Amazon at the weekend, and the Minister will be pleased to hear that his book is 1,879,043rd.

Ian Murray: How much?

Mr Wright: It sounds more like a figure for directors' remuneration than a placing in a bestsellers list, but the Minister might take more comfort from the fact that Paul Simon's "Graceland" is currently at No. 8 in the album charts. A review of the Minister's book on Amazon—the only review in fact—

Norman Lamb: The hon. Gentleman claimed it was from me.

Mr Wright: It is entitled "Dated but not bettered", and I cannot think of a better tribute to him.

The Enterprise and Regulatory Reform Bill is still, after 15 sittings, a ragbag Bill. It contains some things with which we agree but also missed opportunities, half-baked and ill thought-through ideas, and policy proposals dusted off the Whitehall shelf. The Bill's scope to play a part in ushering in a new, innovative, better-balanced, fairer and more competitive era for the British economy has been missed, and it is needed more than ever, given that yesterday the IMF downgraded its forecast for UK growth in 2012 by a greater degree than for any other developed nation, to only 0.2%.

The Opposition have tried to ensure that the Bill fulfils its potential, through reasoning, questioning and scrutiny, and it is a shame that the Government have not listened. However, despite our intense disappointment, I give my thanks to all Members. It has been a pleasure and a privilege to serve on the Committee, and I wish you, Mr Bayley, and other Members here, a very happy, relaxing and enterprising summer.

3.30 pm

Norman Lamb: Thank you, Mr Bayley. I thank the shadow Minister, the hon. Member for Hartlepool, for his generous remarks, and I share his reflections on how the Committee has conducted itself. This has been my first Bill as a Minister and it has been quite an experience. I have enjoyed it and have appreciated enormously the way in which both Government and Opposition Members have gone about the debate in a civilized and serious way, while at the same time managing to enjoy some good humour along the way.

I am sure we all agree that the Bill has been thoroughly scrutinised by the Committee. I am pleased that we have completed proceedings in the time allotted—in fact, we have time to spare. I thank Committee members for the constructive way in which they have engaged in the debate. Special thanks must be given to my hon. Friend the Member for Skipton and Ripon for his incisive and

regular interventions, which have kept Opposition Members on their toes and which, at times, have kept us all amused. I am most grateful to him for his contribution. I also give special thanks to my hon. Friend the Minister of State for his work on various elements of the Bill. His contribution is enormously appreciated. I thank the Opposition's Front-Bench representatives for the way in which they have gone about their task of scrutinising the Bill. Their approach has been appreciated.

We have had robust and well-informed consideration of every part of the Bill and the debate has been admirably steered under the excellent stewardship of Mr Bayley and his colleagues in the Chair. I am most grateful to them for their guidance throughout our deliberations.

I also pay tribute to the usual channels for their help and guidance throughout. I have learned an awful lot over the course of the Committee. The process has worked very well and we have avoided having to sit late. People have been sensible about the time taken for debate, and that has been very much appreciated.

Finally, but not least, I should like to recognise the hard work of *Hansard* in recording everything so accurately. I also thank the Clerks for their advice throughout and for their remarkable capacity to speak very fast, when the need arose, when giving the titles of various new clauses. That was appreciated and enjoyed by all. I also thank the Doorkeepers for keeping good order.

I also thank the officials in the Department for Business, Innovation and Skills for their extraordinary work in supporting both myself and my hon. Friend the Minister of State. I have been genuinely amazed by the quality of the advice that I have received throughout the Committee sittings and, indeed, beforehand when getting to grips with some complex stuff over the short period following my appointment. The work of civil servants does not often get appreciated, but it is enormously appreciated by everyone present, so I thank them and my private office staff for their work.

Ian Murray: I do not want to detain the Committee, but my hon. Friend, the former Minister, former accountant and current Member for Hartlepool mentioned the Minister's book. I have a confession to make, because I have misled the House on the book. We have rightly used the Minister's wonderful book at great length in this Committee, so it is only fair, given the vast number of Opposition amendments that the Government have accepted, that we return that generosity. Every Opposition member of the Committee has, therefore, signed the Minister's book for him, not just to increase its value, but to get it into the top million bestsellers of all time. I will reflect briefly on one of the comments made by a colleague, who will remain anonymous. My hon. Friend the Member for Blaydon—*[Laughter]*—has written on the book's cover:

"Norman, I haven't read it either. I hope it is as accurate as the focus usually is."

That is a direct correlation to a Liberal Democrat leaflet.

As I have said, I have misled the House, because the book in my possession, which has been amusing us throughout the Committee, is not actually by the Minister—I have only his book's cover. This book is "Unusually Cricket" by the right hon. Member for Saffron Walden (Sir Alan Haselhurst). We had to return the original book to the university of Liverpool.

Norman Lamb: Without its cover.

Ian Murray: That is only the cover. The Minister's book has created a bit of friction, but as my hon. Friend the Member for Hartlepool hinted, it has not created any eroticism. Therefore, instead of presenting him with the book by the right hon. Member for Saffron Walden, we will present him with the cover of his "Remedies in the Employment Tribunal" book, signed by everyone on this side of the House, and to make it a little better, we thought we would get a copy of "Fifty Shades of Grey" and use his cover as the dust cover. We give it to the Minister with our gratitude for all his kind remarks, and his unstinting sympathy for our amendments. We look forward, on record, to getting a strong review of the book on Report after he has read it over the summer.

Norman Lamb: May I express enormous appreciation for the kind gift? I will certainly keep that cover well over it. I just wanted to ask whether the university of Liverpool was aware that the cover of its book had gone missing. *[Interruption.]* Oh, the cover has been photocopied. That comes as an enormous relief. Thank you very much.

The Chair: I would like to say what an enormous pleasure it has been to serve with you on the Bill. The debate has been good-natured and well-informed, even on the occasions when we discussed the Bill itself. I would like to pay tribute to all members of the Committee and, as the Front-Bench teams on either side of the Committee have, to all the servants of the House and civil servants who have helped get the Bill so effectively through this stage of its proceedings.

Norman Lamb: On a point of order, Mr Bayley. I am extremely concerned, because my officials have just pointed out to me that in photocopying the cover of my book, the hon. Member for Edinburgh South appears to have breached my copyright.

The Chair: Not just that, but if the Bill makes further progress, the copyright period will extend yet further. On that note, I shall put the final question to the Committee.

Question put and agreed to.

Bill, as amended, accordingly to be reported.

3.38 pm

Committee rose.