PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

DEREGULATION BILL

Second Sitting

Tuesday 25 February 2014

(Afternoon)

CONTENTS

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Saturday 1 March 2014

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: Mr Jim Hood, †Mr Christopher Chope

† Barwell, Gavin *(Croydon Central)* (Con)
† Bingham, Andrew *(High Peak)* (Con)
† Brake, Tom *(Parliamentary Secretary, Office of the Leader of the House of Commons)*
† Bridgen, Andrew *(North West Leicestershire)* (Con)
† Cryer, John *(Leyton and Wanstead)* (Lab)
† Docherty, Thomas *(Dunfermline and West Fife)* (Lab)
† Duddridge, James *(Rochford and Southend East)* (Con)
† Heald, Oliver *(Solicitor-General)*
† Hemming, John *(Birmingham, Yardley)* (LD)
† Hopkins, Kelvin *(Luton North)* (Lab)
† Johnson, Gareth *(Dartford)* (Con)
† Maynard, Paul *(Blackpool North and Cleveleys)* (Con)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Onwurah, Chi *(Newcastle upon Tyne Central)* (Lab)
† Perkins, Toby *(Chesterfield)* (Lab)
† Rutley, David *(Macclesfield)* (Con)
† Shannon, Jim *(Strangford)* (DUP)
† Turner, Karl *(Kingston upon Hull East)* (Lab)
† Williamson, Chris *(Derby North)* (Lab)

Fergus Reid, David Slater, *Committee Clerks*

† attended the Committee

Witnesses

Janet Davis, Natural England's Stakeholder Working Group on Unrecorded Rights of Way

Sarah Slade, Natural England's Stakeholder Working Group on Unrecorded Rights of Way

Councillor Ed Turner, Local Government Association Environment and Housing Board member

Paul Raynes, Head of Programmes Finance and Localism, Local Government Association

Ian Bauckham, President, Association of School and College Leaders

Andy Grace, Principal, Boulevard Academy, Hull

Mark Hammond, Chief Executive, Equality and Human Rights Commission

Wendy Hewitt, Acting Legal Director, Equality and Human Rights Commission

Sara Higham, Policy Advisor, Federation of Small Businesses

Alexander Ehmann, Deputy Director of Policy & Public Affairs, Institute of Directors

Alexander Jackman, Head of Policy, Forum of Private Business

Professor Julia Black, Pro Director for Research, London School of Economics and Political Science

Public Bill Committee

Tuesday 25 February 2014

(Afternoon)

[Mr Christopher Chope *in the Chair*]

Deregulation Bill

Written evidence to be reported to the House

DB 01 Andy Howard

DB 02 John Trevelyan

DB 03 NASUWT

2 pm

The Committee deliberated in private.

Examination of Witnesses

Janet Davis and Sarah Slade gave evidence.

2.6 pm

Q112 The Chair: Good afternoon. Thank you for coming along and joining us, Janet Davis and Sarah Slade. Would you like to introduce yourselves briefly?

Sarah Slade: I am the national access adviser at the Country Land and Business Association. I have worked with it for about 15 years, dealing with all sorts of public rights of way and rural issues. I am a chartered surveyor by training. I am also married to a farmer. I have been on the stakeholder working group since 2008, which meets regularly about rights of way issues.

Janet Davis: I am a senior policy officer at the Ramblers. I have worked for the Ramblers for approaching 30 years. Throughout my time there, I have worked on rights of way issues, seen a number of Bills and their passages through Parliament and advised our volunteers and members of the public on rights of way issues. I, too, have been a member of the stakeholder working group since it started in 2008.

The Chair: Thank you. I think you know the rules of engagement. If you can keep your answers brief, that would be helpful. We have to finish by 2.30 pm. Our first questioner is Thomas Docherty. Fire away.

Q113 Thomas Docherty (Dunfermline and West Fife) (Lab): It is a pleasure to serve under your chairmanship, Mr Chope. The working group is still ruminating upon a number of issues. Do you anticipate that those would result in further proposed amendments to the Bill?

Sarah Slade: From our perspective we hope that they would. What is in the Bill at the moment deals primarily with historic rights of way, which is what the stakeholder working group was set up to deal with. We feel that there are issues with existing rights of way that the stakeholder working group did not have a chance to look at in its report. We have discussed some things quite extensively with the stakeholder working group and we feel that legislation is needed for some of those issues and it would be helpful to see them at this opportunity so that we can complete the picture.

Q114 Thomas Docherty: We are now into a live Bill process. What is your anticipated out date for proposed amendments? You look slightly puzzled. If further amendments were to be proposed, that would have to be done quickly to be debated in the House of Commons.

Sarah Slade: Yes.

Q115 Thomas Docherty: When do you expect to have reached conclusions on those issues?

Sarah Slade: From the CLA perspective, we have proposed amendments on the issues that the stakeholder working group is discussing. We do not see any conflict between those amendments and where the stakeholder working group is moving to. But I am not sure that the stakeholder working group has agreement on amendments as such; it is more about guidance, looking at it in the long term and things like that. We see that as being necessary to complete the picture.

Q116 Thomas Docherty: Do you think that you would be looking more at statutory guidance than primary legislation?

Sarah Slade: Some of it could be done by way of statutory guidance. We have discussed that in respect of user evidence and things like that, where I think we have reached agreement on what ought to happen. We have also discussed statutory guidance on a presumption for diversion and extinguishment, which would link with the existing provisions in the Bill.

The CLA view is that the danger with that sort of guidance is that it would not be robust enough, because the existing legislation does not entirely support that. Any guidance could be open to judicial challenge and we obviously want to avoid that. We feel it would be cleaner and neater to have the basis in the Bill and then supported by the statutory guidance that the working group has already agreed. We feel that would be the better way round.

Janet Davis: From the Ramblers' perspective, I do not envisage that the stakeholder working group itself will put forward amendments. Probably the Ramblers will not put forward amendments. I would like to say a brief word about the stakeholder working group. It was established with a very precise remit, which was to examine the processes for getting paths added to definitive maps.

Natural England set up the group in the context of the 2026 cut-off date for getting paths recorded on definitive maps. There was an acknowledgment and consensus within the group from the start that the processes for getting paths added to the definitive map needed to be looked at. That was the very narrow remit within which we examined rights of way legislation. It was the definitive map process and trying to improve that in preparation for the cut-off date.

The wider issues that the stakeholder working group has talked about since it published its report are still the matters under discussion, but they will not necessarily be in part of the Bill. We think it is important to carry

on talking about them, because there are some key issues to do with the diversion of rights of way, but they will not necessarily be put forward as part of the Bill.

Q117 Thomas Docherty: Looking ahead 12 years to the 2026 deadline, do you think the present system will have to change if we are to ensure that no unrecorded rights of way fall off the edge? You will probably be aware that there is a difference of opinion about unrecorded rights of way, particularly with the use by the automotive industry for rallying and so on. Can you comment on whether further legislation is required or amendments needed?

Janet Davis: The group takes the view that the system for getting paths recorded on to definitive maps does need some amendment. That is the purpose of the clauses in the Bill—to make the process less confrontational, to speed it up and, hopefully, cost local authorities less money. It would enable them to reject inadequate applications where the evidence is not good enough and would give a raft of proposals to help them negotiate alternative routes where a claimed route is not suitable for present land use.

There is no doubt that those changes are needed if we are not to lose paths when we get to 2026. There are additional things that are not in the Bill but, as Sarah said, are to be covered by guidance and secondary legislation to save additional groups and classes of route at the 2026 cut-off date. For example, there are a lot of urban paths that do need to be saved. A provision that will come forward later in regulations will prevent paths that are already shown on the local authorities' lists of streets being extinguished in 2026. Yes, absolutely, we do need this legislation to prevent the loss of rights of way when we get to a cut-off date.

You mentioned motor vehicles in the countryside. That is an issue that the stakeholder working group was not charged with looking at. However, I think many members would be familiar with stories of problems associated with motor vehicles using the countryside. Possibly further legislation will come forward on that, but as I said, it was not something that the stakeholder working group looked at, and certainly not something that I could put my hand on my heart and say there will be consensus about. Among the user group representatives were representatives of people who like to use public rights of way for motor vehicular recreation.

Sarah Slade: We think that the changes that are coming forward in this Bill will help, as Janet has said, in meeting the cut-off date, so it is important that it comes through. For us, having the cut-off date there is key. By that day, it will have been 75-odd years since the process started, which we feel has been enough time to say that we have captured all the rights of way; 75 years is plenty long enough for anybody to get them on the map. Yes, it might be a rush at the end, but that is what needs to happen. The changes, which we have all agreed are speeding the process, are important.

There was a lot of discussion about motor vehicles previously. I think that we need to know what is coming forward. As Janet said, it is not something that we have discussed in the stakeholder working group. We know that there are concerns among our membership about vehicular use of ways in the countryside. That might need addressing, but it is a question of how it is going to happen.

Q118 David Rutley (Macclesfield) (Con): I hope that the courtesies have been observed that we talked about earlier. That is tremendous. Some of the points that I wanted to raise have already been covered. It is a credit to the working group that bodies as diverse as the CLA and the Ramblers are working closely together. There seems to be a broad consensus that this is the right way forward. It would be good to hear from panel members whether that is your continued view, given the passage of time.

My other question is whether you can help those of us who were not on the Joint Committee and who are not as familiar with some of the issues as those who have been involved with it and been in dialogue with you before. How will the proposals help with the mapping process?

Sarah Slade: Yes, there is still a consensus with regard to the historic proposals, which deliver benefits for landowners as well as users. I think the consensus remains on those issues. As I said earlier, we feel from our perspective that there are issues that the stakeholder working group did not really get its head around; Janet has talked about the narrow focus that it had. Our concern is that people out there who have land, gardens and houses affected by rights of way will not necessarily get the resolution that they need from the proposals put forward now, which strikes us as a missed opportunity, but there is consensus in what the group does.

In terms of what it does, it is speeding up the processes, giving greater flexibility to local authorities. It gives them power to reject irrelevant objections and a greater baseline test, so that when applications are made to put a right of way on the definitive map, they must jump a certain barrier; they cannot come in with a low level of evidence. It allows local authorities to deal with administrative errors and tidy up the process. A very important thing from our perspective is that it gives an ability to negotiate orders. When an order comes through, if a right of way passes through an area where it causes particular difficulty, such as a farmyard, it gives the authority the opportunity to negotiate to go around it while maintaining the route. That is very useful. It is something that cannot happen now, so it is a useful process for moving on.

Picking up those things, all that we are doing with the other rights of way that are already out there is looking for some consistency, but those issues are quite useful in terms of where we are going with the orders that are going through, as a complete package. We have stressed that the stakeholder working group agreement is a package that cannot be broken up. That does not mean that it cannot be added to, but it should not be broken up. It works and hangs together overall, speeding up the process and making it more efficient. That was our aim and what we were looking to do. We hope that it will achieve that.

Q119 Jim Shannon (Strangford) (DUP): I want to ask a question relating to the discussions that you have had with the Country Land and Business Association, the Countryside Alliance, the British Association for Shooting and Conservation and other shooting groups. I am keen to get your opinion on how you can work better with those shooting groups to ensure that they can enjoy their sport and that safety is paramount. My impression of shooting organisations and groups is that

[Jim Shannon]

they are not confrontational—they want to get on with people—but they also want to enjoy their sport. Can you give us some indications of what your discussions have been with those organisations?

Janet Davis: I think I can safely say that we have not had any discussions with organisations representing field sporting interests. Sarah's organisation has some interest in those matters, but such organisations were not a component of the stakeholder working group and it was not an issue that has come up in—I will say it again—the very narrow remit that Natural England and the Department for Environment, Food and Rural Affairs gave to that group, which was to look at the processes for getting public rights of way added to the definitive map. That is what we have done.

Q120 Jim Shannon: With respect, it seems to me unusual not to have had any discussions with three organisations that have a substantial numbers of members across the United Kingdom who have an interest in the land that they use for recreational sport, and the impact that the process might have, for instance, on their having the right of way through a piece of land on one of their shoot days. Those are critical issues for such organisations. I am keen to see whether those viewpoints have been taken on board. I would be disappointed if they had not been, for whatever reason.

Sarah Slade: The CLA obviously represents landowners and business owners in rural areas, and we represent approximately 60% of the rural land in England in Wales, which is quite a substantial amount. I have had discussions with BASC, but not specifically about this issue. I have periodic discussions with the organisation about other rights of way issues and it has not raised anything on this with me, so my assumption is that they are content with it. All of us, as stakeholder members, are quite open to people mentioning anything to us and raising anything with us. BASC does not sit as a member of the group as we are currently constituted.

Q121 Jim Shannon: Is the onus then on the CLA and the Countryside Alliance to contact you, or could I ask you to contact them?

Janet Davis: Sarah is the CLA.

Jim Shannon: And the Countryside Alliance?

Sarah Slade: We are not the Countryside Alliance, obviously, so the onus would be on it if it wanted to raise anything with us. We have periodic discussions with it, but it has not raised anything specific with me. I have not approached it, because that has not been the way in which the group has worked.

Q122 The Parliamentary Secretary, Office of the Leader of the House of Commons (Tom Brake): I want to come back to the possibility of amendments. Janet Davis, you have said that the Ramblers would not be pushing any amendments. Sarah Slade, you mentioned things such as vehicular access and whether there was a way of resolving that, which might or might not involve amendments. Is the CLA considering tabling amendments, or might other members of your working group be thinking of putting forward amendments?

Janet Davis: I am not aware of other organisations planning to put forward amendments, but that is always possible. We will obviously look at any amendments that other organisations put forward and decide the Ramblers line on those. It is Ramblers policy that there should be greater controls on motor vehicles in the countryside, particularly in national parks. We are not taking the opportunity of this Bill to push on that front, but if anybody put forward amendments on that, we would look at them with a great deal of interest and decide whether we wanted to put our weight behind them.

Q123 Tom Brake: I was not thinking exclusively of amendments to do with vehicular access. There may be others. I would have thought that as a working group, you might collectively have identified areas where some of the different organisations in the group might want to push a particular agenda.

Sarah Slade: I think it is common knowledge that CLA will seek to table amendments. They will not be specifically on vehicular access, but if amendments come forward on that we, like the Ramblers, will have a view on those. We will probably be of a similar view to the Ramblers on that aspect.

Our amendments would be more about the things that we have been discussing on the working group, like making sure that the quality of user evidence that comes forward when the claim is made is better, that claims are made within a particular time limit, and that if paths go through gardens, it is possible to put a gate on them—that is not possible at the moment. We think that those are just sensible things that ought to happen. We talk about the ability to make diversions—things like that. There are some measures like that in the Bill, but they do not quite go far enough. If a path goes through a garden, as they frequently do, we would like a presumption that it would be easy to move it out of there. Those are quite small and simple things, but they are the sorts of things that we will look for as we move forward. We have been discussing them in the stakeholder working group.

Q124 Tom Brake: That is what I was going to ask. Is your starting point that you try to get agreement within the stakeholder group to go forward with those proposals, but if you do not get it, you go forward with them anyway?

Sarah Slade: We have been trying. We have been discussing those things for some time on the stakeholder working group. I think it is fair to say that we have made a lot of progress and reached a certain amount of agreement. That of itself has informed what we will put forward, but if the stakeholder working group does not feel able to table anything, we will, as a separate organisation.

Q125 Tom Brake: Have you been able to make any assessment of whether that runs the risk of unpicking the whole package?

Sarah Slade: They are very much something that is separate from it. They do not detract from what we are asking through the package as a whole. The package as a whole is to do with historical rights of way, and that sits there regardless. We were looking for something in addition to that, to tidy up, as I said earlier, the bits of

rights of way that the stakeholder working group did not look at initially. It is very clear that we are looking to improve what we already have in the Bill, so that the good things there will apply to other rights of way as well, and will not be narrowly based.

If we get to the end of the process and come out the other end with the Bill that we have, our feeling is that we might look at it afterwards and think, "Why didn't we give people the right to put a gate on their garden, or to move a path away, when we had the opportunity? That seems a sensible thing to do; why didn't we do it?" Our feeling is that these are small things that we are seeking that would make things more rounded, and better for everyone.

Q126 Tom Brake: Is that your view, Janet Davis?

Janet Davis: As Sarah says, the stakeholder working group made its recommendations to Ministers back in 2010. Since then, it has continued to meet, and as she says, we have moved on to look at other issues, such as diversions—diverting paths out of gardens and farmyards. We have made considerable movement on that front, in that we have come up with a form of words that form advice to local authorities, explaining to them that it is perfectly possible to move a path out of a garden or farmyard using current legislation. The Ramblers would not be particularly happy about a move to change the primary legislation on diversions in general. If country landowners come up with a form of words to deal with that, we will obviously look at it, both in the stakeholder working group and as a separate organisation.

We should not forget the local authorities' role in this; there were five representatives of local authority bodies on the stakeholder working group. Obviously, all of this is immensely important to them, because they are the poor people who have to deal with this. They are piggy in the middle in a lot of cases of claimed paths. They have played a really important role in this, and they want this to go forward. They see it as a way of saving and shortening local authority resources for this kind of thing. We would listen very carefully to what they had to say about any new proposals that came forward as amendments.

The Chair: Thank you very much indeed for coming along and helping us with your evidence this afternoon.

Examination of Witnesses

Paul Raynes and Ed Turner gave evidence.

2.29 pm

The Chair: Good afternoon. We have two representatives from the Local Government Association. Councillor Ed Turner first: could you please introduce yourself?

Ed Turner: My name is Councillor Ed Turner, representing the LGA. I am the deputy leader of Oxford city council.

Paul Raynes: I am Paul Raynes. I am an officer of the Local Government Association.

Q127 Thomas Docherty: If I can talk first about the reduction of the qualifying period for the right to buy, what assessment has been made of the impact on local authority finances of reducing the period? Specifically, what estimate, if any, has been made of the impact on the ability to build fresh housing stock?

Ed Turner: The change will make life more difficult for local authorities in one immediate way. Clearly, it is likely that more stock will be lost, and then there is a difficulty delivering a replacement. We are struggling to fund so-called like-for-like replacements, both in terms of getting immediate delivery—a property is lost under the right to buy and only some years later will that property be replaced—and it is unlikely to be replaced at the same level of rent. Of course, this situation is going to be more acute in areas with the highest housing need, because it is going to be harder and more expensive to find a site. In that respect it is difficult.

In addition, local authorities that retain their housing stock have business plans based on rental income from those properties, but they do not see that rental income again. Their overheads as a local authority do not reduce. They have still got to manage their stock, and there is no appreciable reduction in workload when a property is lost through the right to buy, although that rental income is lost. That is very difficult, particularly when substantial amounts of borrowing are secured against that rental income. I suppose the third impact is in the future. If there are fewer properties available to nominate for people in housing need, that brings with it an increased cost of homelessness—the financial cost to local authorities, but also a social cost.

Q128 John Cryer (Leyton and Wanstead) (Lab): Following on from what you said, I think the ratio between the number of council homes being sold to those being built is about 7:1. Do you think that will widen over the next few years if this change goes through?

Ed Turner: This change would undoubtedly make the situation more difficult. Whether or not that ratio changes slightly—there may be some new builds which will come through the pipeline—undoubtedly we will lose more than we gain. Those properties that we gain will also be at higher rent levels, because there is no chance of securing a property at a social rent. Most of the properties we lose will be social rented properties.

Q129 John Cryer: Most of my constituency is in Waltham Forest in the east end of London. The housing waiting list is something like 24,000 and it is likely to get higher. Do you think this measure will increase the rapidity of the increase?

Ed Turner: Undoubtedly, this measure will make it more difficult for those on your waiting list. There is a daft situation whereby the properties that are lost will after a time be sold on into the private rental market. People who were hoping for that council property will instead find themselves renting a remarkably similar property—perhaps the same property—but at a much higher rental level. Of course, that also brings with it pressure in terms of increased housing benefit costs.

We think you could finesse this, and I think we will be coming forward with a suggested amendment giving local authorities the ability to set right-to-buy discounts. There is an issue about the qualifying period, but that is less important than the overall level of discount. If you were to give local authorities, and through them local people, the ability to set a discount, you would be able

[John Cryer]

to respond to the degree of housing pressure that people face, as well as a judgment about the right thing to do.

Q130 James Duddridge (Rochford and Southend East) (Con): Forgive me, I do not know how the LGA works. As a Labour councillor, are you representing a Labour position or the LGA position? I genuinely do not know whether the officer positions are mixed and this is a common position. How does it work?

Ed Turner: We discuss all our policy positions in policy boards, and the view of the LGA is that this is an area that should be localised and left to local authorities. It is not a party political position. It is something around which I think there is complete unanimity: local authorities should be able to set the level of discount, and the same thing should apply for qualifying periods as well. There may well be local authorities that think they can deliver one-for-one replacement very quickly and are keen to have the receipt. Then they could go for a really high discount and a really low qualifying period. Equally, there may be local authorities that have it the other way round, so it is a cross-party thing.

Q131 James Duddridge: As a supplementary, I was unsure whether three years was right. I was thinking of a lower threshold—perhaps two years; other people might think of four years. In an ideal world, where would you at the LGA set it? Would you have the change but perhaps go beyond five years? I am thinking of tabling an amendment around two. If you were in my position, would you increase that to seven, nine, 10?

Ed Turner: We certainly would not table that amendment. We would leave it to local authorities to make that judgment, rather than determine it centrally from Westminster and Whitehall.

Q132 James Duddridge: What do you do in Oxford?

Ed Turner: Well, we would have to talk to our council colleagues. In Oxford, we face acute housing pressures. In addition, we have lost a lot of our stock under the right to buy. We face a homelessness crisis. I am pretty sure that we would extend the qualifying period and would do so with support from people across the city. Equally, other authorities take a different view, and that is the beauty of localism.

Q133 Thomas Docherty: On the issue of replacements, could I tease out of you what impact, if any, has been assessed on whether or not you would see like-for-like replacements? Or would you see smaller properties being built because perhaps the funding streams are of that effect within your business plan?

Paul Raynes: If I could have a go at that; it is one of the reasons that the basic LGA position is that the whole financial package of discount and qualifying period and so on should be looked at locally. The answer will vary from place to place depending on a range of factors. What in effect happens is that when you get a receipt from a right-to-buy sale there are deductions from that for the transaction costs to pay off debt on the property.

The Treasury takes 75% of what is left, against what would have happened on a kind of counter-factual forecast. What is left after that is what is available for building a replacement. You are allowed to use only a 30% receipt against a replacement and are required to borrow the balance of 70%. It entirely depends on a whole load of local market parameters what your ultimate receipt is going to allow you to do in terms of replacement.

To give you an illustration, if you work through the numbers in the consultation document from the Department for Communities and Local Government, it says that the replacement you would be able to build with the receipts they illustrate would have a build cost about half the open-market value of the property that was sold. Does that help?

Thomas Docherty: Yes.

Ed Turner: To follow up on the last question, we are more likely to lose larger properties than small ones through right to buy. That is the experience. Of course, the rent level on newer properties would likely have to be higher to cover the borrowing costs.

Q134 Chris Williamson (Derby North) (Lab): Councillor Turner, you suggested that one consequence of this policy would be an increase in the number of people going into private rented accommodation, because there would be fewer council houses available. Has the LGA made an assessment of the cost to the public purse of requiring more people to rent in the private sector rather than being able to access council housing?

Ed Turner: We can write to you, I am sure, with a figure based on some estimates, but clearly, particularly in areas with greater housing need, there is likely to be a significant disparity between a market rent and a social rent. In the long term, the implications for the Treasury are going to be quite substantial. We will be driving up the housing benefit bill if we increase the rate at which we shed social rented stock.

Q135 Chris Williamson: At the moment, according to the House of Commons Library, about £9.5 billion is spent on housing benefit in the private rented sector. It would be helpful if the LGA could let us know what additional cost will be added by this policy going forward. Do you know how many people are currently on the housing register across England, and do you know what the likely increase in that number would be as a consequence of fewer council houses being available because they are being sold more quickly?

Ed Turner: I do not have to hand a figure as to how many people there might be on the housing register in England, and in any case there might be some double counting there. However, it is an acknowledged fact that there is a tremendous shortage of housing across the country, and I think it is acknowledged that we are not building at the rate we need to, so the number of people in housing need is going to increase. Clearly, if the number of nominations for council properties dwindles, the situation can only get worse.

Q136 Chris Williamson: Finally, we are considering the Deregulation Bill—do you consider this to be a deregulatory measure?

Ed Turner: No, it does not look to us to be a deregulatory measure. A deregulatory measure would be to leave this level of discount to local authorities and stop recycling receipts in a complex, convoluted way, with lots of restrictions through the Treasury.

Q137 Andrew Bridgen (North West Leicestershire) (Con): In my constituency, following the ending of the spare room subsidy it is clear that we have too many four-bedroom council properties and not enough with one and two bedrooms. Do you agree that the Bill could be a catalyst for rebalancing that stock, bringing it back by releasing larger properties on to the market, getting the receipt, and being able to replace them with more one and two-bedroom units, which are obviously what people need?

Ed Turner: The question has already been posed about whether you might see smaller units being built and that being primarily driven by costs—that is certainly possible. I must say that I would not necessarily recognise the picture that there is a greater shortage of smaller accommodation than family-sized accommodation.

Q138 Thomas Docherty: I would like to bring you back to the business plan because you touched on it earlier. Will you say a little more about what estimate the LGA has made of how the change—going down to three or even two years—would affect the housing revenue account business plans?

Ed Turner: Paul may be able to add to this answer. It is clearly a finger-in-the-air issue because you do not know how many people will come forward. If anything, I think we have found that the revitalised right to buy has not taken off as people would perhaps have expected, because council tenants are on average rather poorer than they were in the 1980s when the policy did take off. They are also probably less able to access mortgage finance.

In terms of councils' business plans, every council borrows and made a payment to the Treasury in order to buy itself out of the national housing revenue account position. So you will have a business plan predicated on rental income from a certain number of properties. If you are sensible, you will have allowed for some to have been lost through the right to buy. If the number you are losing goes up, that will clearly leave you with a shortfall that you will have to find from somewhere.

The other thing is that it makes investing in new-build property a riskier business. As a council, you are going to find it harder to win the argument for building new properties if you are required to sell them off at a substantial discount only a few years later and you also lose out on the rental income. That is another reason why some councils doing an assessment of the risk might go for a lower discount. Equally, some will be comfortable with that risk and go for a higher one. That is what localism could achieve.

Q139 The Solicitor-General (Oliver Heald): The number of people who have the right to buy sooner is 2,700. Do you acknowledge that there is a huge desire among tenants to own their own home?

Ed Turner: That is an interesting question. Perhaps the right to buy sales would have been higher had that desire been overwhelming, but equally there may well be people who would really welcome it. I think that the local authority is best placed to make that trade-off. Are we concerned about the lengthening of our waiting lists? Are we concerned about homelessness? Are we concerned about the ability to invest? Or are we concerned about helping people to realise that aspiration? That is an entirely legitimate and sensible debate for councils to have, which is why we would suggest setting them free to do so by making this a matter for local authorities to decide.

Q140 The Solicitor-General: But the aim of the policy is to allow all these people this opportunity sooner. That would be an additional 2,750 people, it is estimated, in 2014-15, who would get the chance to own their own home—and on the basis that the receipts would make possible a one-for-one replacement of every additional right-to-buy unit sold. If that is the policy, do you disagree with it?

Ed Turner: We would certainly disagree with the one-to-one replacement, which I think Paul has covered in his comments of a few moments ago. One-to-one replacement is not possible in that way. We think we are able to fund, give or take, about half a house. That is not one to one. On top of that, the rental income would be higher; so it does not look like one-to-one replacement.

Paul Raynes: If, for the record, I could add to that: I think Councillor Turner was saying that it is not that we disagree with the ambition of one-to-one replacement; it is more the likelihood of that actually happening. I think that the Minister will acknowledge that the Government's policy is that the one to one should be in aggregate, at the national level, so even within the policy it is acknowledged that there will be places where one to one is too difficult to deliver.

Q141 The Solicitor-General: So we agree.

Ed Turner: If the aim of the policy is to deliver one-to-one replacement, that is great. I think most local authorities would want replacement in their areas under comparable rent levels, rather than in other areas that probably have lower housing need, at higher rent levels. What we are questioning is whether the policy is deliverable within the current framework. We are certainly happy to offer some suggestions to make it more deliverable. That would mean more receipts going to local authorities and fewer to the Treasury.

Q142 The Solicitor-General: Between April and September 2013 there were discussions between local authorities, housing associations, the LGA, London Councils, the Council of Mortgage Lenders, the Financial Conduct Authority, the Building Societies Association and the National Housing Federation about the proposals. Is that correct?

Paul Raynes: I think we both of us come later to this discussion than that.

Q143 The Solicitor-General: So were you there at those meetings?

Paul Raynes: I certainly was not.

Ed Turner: I was not personally there, no, and I am not aware of those meetings having taken place, but we can certainly ask back at the Local Government Association headquarters, and drop the Committee a line, if that would be helpful.

Q144 The Solicitor-General: Because there were no concerns raised on the clause during those discussions; and I was just going to ask you why not, if you are so much against them.

Ed Turner: I can do no better than raising our concerns now.

The Chair: Does anyone want to ask any questions about clauses 54 to 57?

Q145 Chris Williamson: Clause 54 is "Repeal of duty to prepare sustainable community strategy". I just wondered what you think the impact of that clause will be on local authorities around the country.

Ed Turner: In practice, I do not think we would see an enormous impact, because local authorities will prepare whatever strategies they need, and this is possibly an element that has had its day. The arrangements for local partnerships have changed in recent years. For example, there are the local enterprise partnerships and health and wellbeing boards, and there may well be a slightly different set-up in terms of strategies. It probably makes more sense, then, just to decide at local level what sort of strategies are needed, rather than having it prescribed in legislation.

Q146 Chris Williamson: Do you think, then, that that particular provision of the existing legislation has not really made much difference?

Ed Turner: We think it was probably of its time, and things have moved on, so we would be content to see it go.

Q147 Chris Williamson: So you think that local authorities would probably still produce their own where appropriate, do you?

Ed Turner: Whether they call the strategy a sustainable community strategy, or they have other strategies, I think they will produce what they need. Within the changing landscape of local partnerships they may well have slightly different names. Some will, of course, stick with this. That is up to them.

Q148 Chris Williamson: Moving, if I may, to clause 57, which is "Repeal of duties relating to consultation or involvement", do local authorities or the LGA welcome that?

Ed Turner: Local authorities are passionate about involving people and, to be honest, whether that happens meaningfully will not be determined by clauses in legislation. It will be determined by whether people ask questions with an open mind or a closed mind, and whether people make the best effort to involve all sections of the community. We have great examples of councils across the country running really good consultations using new media and different forums, sometimes going out to people through the internet, and doing telephone surveys. There is a whole range of ways in which we can involve people. In truth, whether or not there is a statutory duty is neither here nor there, because this is something that councils really should be absolutely passionate about anyway. Of course, if they are not and they do not consult and they get it wrong, they can be held to account at the ballot box.

Q149 Chris Williamson: So are you neutral as to whether it will lead to more or less consultation?

Ed Turner: I am sure that councils would always want to do more, but it is also about the quality of consultation and the open-mindedness when listening to the results. You can do umpteen consultations on issues where your mind is already settled and very little will be achieved. The appropriate decision there should rest with the local authority and, if it messes it up, the electorate can fight back at election time.

Q150 Chris Williamson: Does the LGA have concerns about any risks associated with this?

Ed Turner: Not that I have been made aware of.

Paul Raynes: No, as Councillor Turner says, the LGA view is that we have great confidence in councils as democratic bodies to engage with their residents in a fair way.

Ed Turner: Sure.

Q151 Chris Williamson: What do you think will be the overall effect of this part of the Bill?

Ed Turner: It will not make an enormous amount of difference, because councils will continue to consult people as far as they can and in whatever ways they can. The statutory duty really is not the issue.

Paul Raynes: It probably will allow some places to get rid of some pointless and costly compliance that had no value in improving engagement but was being done merely on legal advice to ensure that some hoops had been jumped through.

Q152 Chris Williamson: What would your advice be to local residents who, once this measure goes through, felt that they were not being consulted and did not have a statutory requirement to turn to when saying to their poorly performing local authority that they did not think that its consultation was sensible? What could they do and where could they turn?

Ed Turner: They should turn to their elected politicians and hold them to account through democratic means. That has got to be a better way of resolving such disputes, rather than pursuing a court case on the basis of whether a consultation was adequate.

Q153 Caroline Nokes (Romsey and Southampton North) (Con): I am following on from that point on consultation. One of the frustrations that local communities often have is not that consultations in themselves necessarily take a long time, but that any information and results fed back can come a long time after that. I take it from Mr Raynes's comment that we could see this measure as something of a positive if it was able to streamline and bring forward responsive decision making a lot more quickly.

Paul Raynes: Yes. I think the LGA view is that this creates more space for real and lively engagement and not things that are simply driven by following the rule book.

Caroline Nokes: Thank you.

The Chair: If there are no more questions, may I thank you both for coming along and helping us with your evidence? We now move on to panel 8: the Association of School and College Leaders and the principal of the Boulevard academy in Hull.

Examination of Witnesses

Ian Bauckham and Andy Grace gave evidence.

2.53 pm

Q154 The Chair: Good afternoon. Thank you for coming along. Can you introduce yourselves, please?

Ian Bauckham: My name is Ian Bauckham. I am the president of the Association of School and College Leaders, which represents secondary school heads, deputies and assistant heads. I am the head teacher of a secondary school in Kent.

Andy Grace: I am Andy Grace, the principal of the Boulevard academy in west Hull.

Q155 James Duddridge: Will you explain your position on determining school dates? I know that neither of you represent special needs schools, but I am keen that there should be lots of flexibility, because fixing school terms is not right for every school.

Andy Grace: The Boulevard academy, in addition to operating an extended school day and Saturday mornings, has a longer summer term by two weeks, so the academy effectively has a four-week summer holiday, rather than six.

Q156 James Duddridge: So flexibility works for you.

Andy Grace: The total amount of time that we have is more than 300 hours in an academic year, in addition to what we would normally expect. That is the equivalent of six additional teaching weeks. Over the five years that a youngster is at the academy, that is almost an extra school year of teaching and learning time.

Ian Bauckham: The point of view of our association is that we are in favour of all secondary schools having the same freedom to set term dates within the 195 contracted days as academies and some other schools have already. We are in favour of the regulation being removed. We think it would be helpful for local authorities to continue to provide benchmark term dates so that the schools in a given area that want to align their term dates have a reference point. However, in principle we are in favour of schools having the same freedoms as academies.

Q157 Thomas Docherty: Following on from those questions, what assessment, if any, has been made of the impact that varying term dates will have on working parents? Specifically, if schools were to have a different set of dates for primaries and secondaries, what effect will that have on child care? Have you had that discussion?

Ian Bauckham: Absolutely. That consideration is at the top of the list. Most of our members say that when they are fixing term dates for their schools, if they have the freedom to do that already, they take into account the views of parents. That might happen, for example, in a federation of primary and secondary schools in a given area, so it spans the age range, and term dates are aligned in that way. At the end of the day, head teachers often say that when they consider varying term dates they consult with their parents, and they decide to proceed or not proceed based on whether the parents are in favour of it or not. The voice of the parents in the school, who are represented by parent governors on the governing body among other things, helps head teachers reach a decision that is in the best interests of their local community.

Q158 Gareth Johnson (Dartford) (Con): May I ask you whether you have considered the impact on parents who have two children who go to schools in different areas? Take Kent, which is a rural area. If one child goes to school in Kent and another goes to school in London, and those two regions set different timetables, how will that impact on the parents who have to cope with the two different term dates?

Ian Bauckham: That is potentially problematic for a family in that situation. However, it could be problematic now, because term dates are set not by the national Government but at a local authority level, even for schools that are still bound by locally determined term dates. If a parent chooses to send their children to schools across local authority boundaries they can already find that the term dates do not coincide. It is not clear to us that a change in the regulation would alter the current situation.

Q159 The Solicitor-General: In terms of the term dates, what has the experience been with academies, free schools and voluntary-aided schools, which already have control of their term dates? Has parental pressure meant that they have tended to stay co-ordinated, or not?

Ian Bauckham: They have in our experience tended to remain co-ordinated. There has been some experimentation, and there have been some examples of schools that successfully departed from standard term dates in the interests of their communities. However, the vast majority have stayed broadly within locally determined dates, within a day or so, precisely for the reasons that have been alluded to this afternoon.

Q160 The Solicitor-General: Mr Grace, how has it gone? Obviously, some parents must have been surprised—or perhaps not. Have you had any unexpected effects? How does it seem to be working?

Ian Bauckham: No unexpected effects at all. The academy opened in September 2013 and recruited families and youngsters in the full knowledge that we would operate a longer summer term. It has very much been done on an elective basis. I echo Ian's comment that we are, if you like, leading the way on this approach in Hull. We have not created a compromise for other families, but I would echo Ian's comment that we would look for a local agreement in terms of term dates. We happen to extend our summer term, but if there was a consensus of opinion that we started back earlier then we would fall in with the local pattern.

Q161 The Solicitor-General: Have you identified a particular need in a particular part of Hull for extra hours? What is the reason for this and the background to it, and what is the nature of the academy that you are running?

Andy Grace: The academy exists in an area of particular social challenge. Literacy and numeracy are clear issues for youngsters if they are to secure economic futures for themselves, so the extra time that we are able to create is there to enhance literacy and numeracy and to accelerate youngsters' progress. We have got some very strong evidence at the moment that that is the case.

Q162 The Solicitor-General: What is your age range?

Andy Grace: Eleven to 16.

Q163 The Solicitor-General: It is early days, but are you finding that you are able to get quite a lot further on the basic skills as a result of the extra hours?

Andy Grace: That is right. Our evidence at the moment, six months into the academic year, is that youngsters are exceeding their targets for literacy and numeracy at all levels. I am very pleased and very proud of the youngsters.

Q164 The Solicitor-General: Are you using particular teaching methods to achieve that? Are you an advocate of phonics, for example?

Andy Grace: Not phonics per se, and it would not be right to say that we are pursuing a primary-based curriculum; our youngsters want a secondary education. What we have done is to create some focus on literacy and numeracy. That is the rate by which we measure youngsters' progress. We look to other subject content to contribute in those terms rather than to stand alone.

Q165 The Solicitor-General: I only meant in terms of bringing on the ones who are a bit behind. That is fascinating. In terms of some of the other reductions of burdens, do you have any views, Mr Bauckham, on the removal of the requirement for home-school agreements so it will be much more of a discretionary thing? Did you want to say anything about behaviour policies, and the fact that they will be discretionary?

Ian Bauckham: I am happy to comment on both of those. On home-school agreements, first of all, we are in favour of the removal of the requirement for home-school agreements, but that does not mean that we are not in favour of home-school agreements. We believe that it is right for the leadership—head teacher and governing body—of individual schools to establish the best way to create positive working relationships between families and schools. That may be something that is close to the current format of a home-school agreement, but there may be different and innovative ways of doing that. We would want individual schools to have the freedom to find the best way for themselves.

Q166 The Solicitor-General: The only other matter I was going to ask you about was the guidance requirement, where the Secretary of State's guidance had to be followed on appointment, discipline, suspension and dismissal of staff. Obviously, that will become discretionary as well, in the sense that there will be guidance available but it will not be statutory. What is your view of that?

Ian Bauckham: We are in favour of its being discretionary as long as there is still guidance there for schools to follow. Did you want me to say anything on the behaviour question that you asked earlier?

The Solicitor-General: Yes, of course. Sorry, I got over-excited.

Ian Bauckham: We did have concerns about the creation of a duty for head teachers rather than governing bodies to set a behaviour policy for a school. Our main concern was the possibility of conflict being created between a head teacher and a governing body in the case, for example, of an appeal against a serious sanction such as exclusion. I understand that some work has been done on that, and the wording goes some way towards addressing our concern. We are happy with that wording as far as it goes. Our basic view is still that we believe it would be preferable if governing bodies had an obligation to approve a behaviour policy, but we recognise that progress has been made in the light of the concerns that we expressed earlier.

Q167 Thomas Docherty: Can I just bring you back to the school calendar for a moment, and the point earlier on about decision making? As I understand it, the intention will be that the governors will as a body make that decision. I would imagine—I know it is true for my own household—that there is quite a strong debate on both sides when it is discussed. Is this a decision power that governors welcome? Is there merit in looking at using a referendum of parents within a school or within a group of schools before they make a decision? Can I get your thoughts on those two questions?

Ian Bauckham: I will say something about whether governors welcome it or not, because that would depend on the governing body. Governing bodies that have a mindset that embraces autonomy, freedom and innovation would welcome it, while governing bodies that are a little more timid or more risk-averse would probably be nervous about it. A referendum is certainly a possibility. My experience as a head teacher has been that if a significant change is proposed and parents are made aware of it and an expression of views is invited, you quickly get a sense of what the parent body is thinking.

I attempted to vary my own term dates a few years ago, when I was in a voluntary-aided school, which could always do that. I put an announcement on the school website to say, "Here is a proposal. It is up for discussion and I am happy to hear views." Within 24 hours, I knew that there was no chance of going anywhere with it, because parents were clear that many of them had children in primary schools or in schools elsewhere in the local authority or over the boundary in East Sussex. They did not want a variation, so I said, "Fine, we'll leave it as it is." I think that is what head teachers will do. The regulations allow a formal referendum. That seems to me to replace one regulation with another, but it is a strategy that a head could use if they wanted.

Q168 Andrew Bridgen: Andy Grace, I applaud the efforts you are taking to address the particular educational challenges that you are focusing on. I am fascinated to know how you managed to get the extension of the school week and the school year through your staff.

Andy Grace: It was due to unique circumstances—the academy was established from September 2013, so I was able to appoint staff to the academy knowing that that would be the set-up.

Q169 Tom Brake: I want to ask you a question about apprenticeships, but do not worry if you are not up to speed on it. One of the proposals in the Bill is to give employers a greater say in the structuring and content of apprenticeships. I was wondering from your experience whether that is the sort of thing that you would support or whether it is outside your remit.

Ian Bauckham: My briefing note says that we are in favour of that, but I cannot say a lot more than that, because it is not an area of particular expertise. Apologies.

Andy Grace: I could offer a comment based on the track record of vocational education and qualifications. As a head teacher, I definitely welcome apprenticeships

in principle. I have taken the opportunity this week to appoint someone on an apprenticeship, and I am very much looking forward to their contribution. They offer a clear sight of a future employment opportunity, and that is very much to be commended.

Tom Brake: Good. I am very pleased to hear that.

Q170 David Rutley: Most of the questions have been answered already, but like my hon. Friend the Member for North West Leicestershire I am pleased to see the progress that you are making in Hull with your changed approach. As a matter of information, did you also have a change in the school day and the hours that you operate? Can you give some clarity on whether you think the model can be used elsewhere? How would you have other staff members get involved? Does there have to be a clean break every time before staff members are willing to accept a longer day or a longer year?

Andy Grace: First, in terms of the format of the school day, youngsters start at 8.20 am and conclude at 4.30 pm. Committed staff have always worked those hours and probably longer. I have no difficulty—in fact, it is the contrary—in recruiting staff on that basis. It is down to individual choice. We made sure that the job descriptions were clear and that the terms and conditions of service were explicit. Teaching staff have a choice over whether they choose to join our organisation.

The Chair: Thank you very much for helping us with your evidence. We now have a gap, because the next witnesses are not due until 3.45 pm. I propose to suspend the sitting until then.

3.10 pm

Sitting suspended.

Examination of Witnesses

Mark Hammond and Wendy Hewitt gave evidence.

3.45 pm

Q171 The Chair: Good afternoon. Would you begin by introducing yourselves, please?

Mark Hammond: I am Mark Hammond and I work as the chief executive at the Equality and Human Rights Commission.

Wendy Hewitt: I am Wendy Hewitt. I am the acting legal director at the Equality and Human Rights Commission.

Q172 Chi Onwurah (Newcastle upon Tyne Central) (Lab): Thank you for coming to give evidence. On clause 2, in your written evidence to the Joint Committee you said that tribunals' power to give wider recommendations can stop some cases coming to tribunal. Will you explain how that works? What additional benefits do you believe that this clause brings?

Wendy Hewitt: At the commission, we receive employment tribunal decisions relating to discrimination under the Equality Act. When we receive them, we look to see what we can do with the employers. It is invaluable to us if the tribunal has taken the time and effort to analyse exactly what went wrong in the company to lead to the discrimination and then made a recommendation about how that could be obviated, and how the company could put it right to ensure that it does not happen again, whether by training staff, revising some policies or having a new harassment procedure, or things like that. From that, we know what companies should be doing, and they know what they should be doing so that they do not end up in the employment tribunal again.

Q173 Chi Onwurah: So you see a wider benefit from these recommendations, which is not disproportionate to the burden that they might incur?

Wendy Hewitt: In our view, from what we have seen of employment tribunals' decisions in which they have made recommendations, the tribunals have certainly listened to the employer about what is valid. Employers are entitled to make representations. The recommendations would appear to us to be proportionate and involve reasonable steps to tackle the problem that has been identified. I hope that they would not be disproportionate —they certainly did not appear so to us.

Q174 Chi Onwurah: Moving on to clause 61, again in evidence to the Joint Committee you expressed concerns as to how the growth duty might impact on your primary duty, specifically your A status as a human rights body. Could you elaborate on that for us?

Mark Hammond: Certainly. Perhaps I could add a few words and then ask Wendy if there is any more detail. As you may know, the assessment of the A status is a function of the United Nations human rights system. They look principally at what is known as the Paris principles, which national human rights institutions are expected to comply with. Compliance with the UN system is more of an art than a science. There are national human rights institutions in many countries that are assessed under it and a number achieve A status and they are of very different natures. It is not possible to be prescriptive about exactly how much funding, the particular status and how the legislative requirements of the NHRI are set up.

We are also conscious that over the EHRC's existence the UN and the ICC have looked at our status two or three times because of a variety of different concerns raised in the past, including when the Government made some changes to our powers under the Act. All of those have been resolved, but we are cautious that any further changes that in the UN's view might be seen as undermining our independence could trigger further concerns and perhaps a further review of the status.

Q175 Chi Onwurah: When you refer to undermining your independence, the concern is that the duty to promote growth would be seen as not in accordance with a duty to promote and protect human rights. Do you see human rights that have an economic value, as you say? Would you see yourself able to trade off critical human rights against economic growth? In terms of implementation, who in your organisation would be responsible for assessing what growth implications there were and how to trade them off against human rights? Do you have any economists who would take on that role?

Mark Hammond: We certainly do not have enough economists. That is one area where, not least because of the growth duty and other regulatory issues, the organisation is looking to strengthen its skills base. For me, the machinery of it internally is that we are very committed to working with the private sector constructively and in dialogue in everything we do.

[Chi Onwurah]

Our board is taking our business plan for next year at its meeting this Thursday. There is a clear statement in the business plan that we take the principles behind the growth duty and the regulatory impact work very seriously and wish to ensure that everything we do that might affect the private sector is done with consultation and dialogue and in a way that does not impose unnecessary bureaucracy or complexity on the private sector. The principles that lie behind the growth duty are ones that my board is entirely committed to.

The issue arises not so much because there is any clear clash between actions we might take in our regulatory and other functions and an adverse impact on growth, but because of the way that the UN system and those who assess the Paris principles see these things, whereby they do not wish national human rights institutions to have their discretion fettered in any way. That is obviously an ideal and there are many things that we need to do. They might well see the imposition of the growth duty as an additional layer of decision making as a problem.

Wendy Hewitt: I would add in relation to the first part of your question that, of course, certain human rights are not subject to and cannot be dictated to by economic circumstances, such as the right to life, the freedom from inhumane and degrading treatment, and not to be subject to forced labour. There are human rights that we do have to promote and encourage public authorities to comply with. In that sense, it would be intrinsically incompatible for us at that point to pay due regard to economic growth.

Q176 Chi Onwurah: For example, forced labour might support growth but that would not be something you would choose to trade off?

Wendy Hewitt: That is right.

Q177 David Rutley: Returning to clause 2 for a minute, could you be a bit more explicit for those of us who were not involved with the Joint Committee? What specifically are your concerns about this, and how do those concerns fit with your role as the UK's equality protection regime?

Wendy Hewitt: We are in the unusual position of being both the national equality body and the national human rights institution for Great Britain, so we have a combined role. In many parts of Europe, those two bodies are separate—the equality body and the national human rights institution. We believe that, as a result of the combination, we are in a much stronger position and much more effective, because many of the things that we enforce do relate both to equality and human rights. Of course, a major human right is the right to non-discrimination, so much of our work—stop-and-search work with the police is one good example—is obviously a matter both of equality and human rights.

We can comply with the growth duty in relation to our equality work, and that is not a problem; most of our equality work does not fall squarely within the regulatory functions here, and we do not impose a regulatory regime. All that we do is make sure that the law that Parliament has set in the Equality Act is complied with.

Q178 David Rutley: I am sorry; the question was more focused on clause 2 and the point about making wider recommendations.

Wendy Hewitt: I am sorry. In that case, your question is how that fits in with our work.

Q179 David Rutley: No. You have some concerns. Would you explain to those of us who were not on the Joint Committee exactly what they are, and how that fits with your role of providing the oversight of the equalities regime in the UK?

Wendy Hewitt: Our concern is that it is too early to say; the evidence is not there as to whether the recommendations are having the desired effect in increasing and promoting equality in this country. There is a very limited amount of cases that ultimately go to the employment tribunal, and in the end there are quite a limited number of recommendations made every year. So it is not a big point, but our view is that it does assist us because a tribunal has heard, over a number of days, everything relating to that company—has heard all the facts, has considered all the systems and how the discrimination arose in the first place, and then has reached a solid view on how that should be put right.

Q180 David Rutley: Any other thoughts?

Mark Hammond: Does that answer the question appropriately?

David Rutley: Yes. I am really asking whether that is your thought, as you are the one that is raising the concerns.

Mark Hammond: As Wendy has tried to explain, I think our view is twofold. First, this is not a major regulatory burden, because the number of instances in which this arises is not great. Secondly, where, as Wendy said, considerable effort has already been made to analyse why a problem of discrimination has occurred and remedies have been brought forward, those remedies may be useful in other circumstances, and therefore to take away what is not a great burden will reduce the opportunity that that creates.

Q181 Kelvin Hopkins (Luton North) (Lab): Earlier in this Parliament, I was chair of a Back-Bench group of Members seeking to protect employment tribunal rights for employees. During that time we had representations even from the CBI on behalf of employers, saying that it thought the Government's chipping away at tribunal rights was wrong. Was the thrust of your point at the beginning of your presentation that making wider recommendations and keeping employment tribunals with a wider remit actually is beneficial to employers and to companies, and is not just simply important for employees?

Wendy Hewitt: Essentially, that is absolutely right. The main focus of companies is to avoid ever having to go back to the employment tribunal, and the employment tribunal has carefully considered, with the benefit of some knowledge that the employers probably do not have, how they can achieve that. So, yes.

Q182 Kelvin Hopkins: On Mr Hammond's point about the growth duty, is not "growth duty" just a euphemism for shifting the balance of power between employees

and employers, on the assumption that the greater the power of employers, the more profit they will make and the better the economy performs? Does this not contrast markedly with a country like Germany, where employee rights are much stronger and in fact they have a much stronger economy?

Mark Hammond: I am not sure that we are really qualified to answer that question. I think the issue for us on the growth duty is, as I say, absolutely not that we do not recognise the importance of making all the decisions and actions we are involved in affecting private sector companies as efficient, effective and unbureaucratic as it is possible to be. The board is completely committed to that. We have this particular position that we are probably the only regulator that might be in the schedule to the Bill who has this external body in the UN assessing our status and our relationship with the legislature and the Executive. That is a very particular issue that we have.

Q183 James Duddridge: First, I think it is fantastic that the board is already considering the growth duty, which I think is "have regard to" rather than "promote", unless things have changed since the Joint Committee I served on. In many ways, that indicates to me that things are already working, if that is the impact it is having on other organisations. But at the end of today, the Bill will not become law. There is quite a time period ahead and I am confused. You have this external body, the UN, which looks at the Paris declaration and judges you against that. I can see why that happens, but there is this word hanging out: they "might" do this. Is there not some proactive way between now and what will probably be a year until this Bill as a whole comes into law, when you can either sense-check the exact form of words with them, or amend the Bill to get an exact form of words, a kind of notwithstanding obligation amendment to perfect it. Why is there the ambiguity?

Mark Hammond: I think you are right. The UN system certainly moves more slowly than the legislative system and we would be subject to the regular review process this autumn. That is where concerns might be picked up in the UN system. I should say that we have been working very closely with officials in BIS and the Government Equalities Office, both since the Joint Committee's discussion and before that, on the sort of concerns we are raising, which are fully recognised as important by officials in both Departments. They are absolutely clear that there should be no accidental or inadvertent loss of status for us and the UK through the process of the legislation.

There are various ways in which that can be mitigated, which start from us not being in it and end up either with guidance or with particular definitions, or what might be said on the Floor, which ensure, exactly as you say, that when the UN comes to look at the issues that have been raised by the growth duty in the Act, the situation is mitigated. The point we would stress is simply for us the quite limited nature of the regulatory functions which are actually covered by the growth duty and the risk around the A status and what the trade-off is. Essentially: are the actions that will be imposed on us proportionate to the risk that might be involved with the A status?

Wendy Hewitt: I might add that the first thing that occurred to us when the growth duty came to our attention was, should we go and ask them exactly what you have said: "What impact would this have on our status?" The difficulty we have got is that it is a very obscure process. I think it is fair to say that it seems to apply different standards to a country such as the UK, which it expects to uphold human rights to the highest possible standard, than to some other countries. The process by which they accredit people is also very obscure. It is a peer review system, so there is no one body that we can go to and check what their view is. Our concern is that this may be a tipping point, given that they have called us in twice before, when we were not expecting it, for things that were certainly no greater than this.

Q184 Tom Brake: Ms Hewitt, to follow up on what you just said, are you implying that it will be Zimbabwe that agrees whether what we are doing is appropriate?

Wendy Hewitt: I will have to clarify for you which group of countries are on the ICC at the moment.

Q185 Tom Brake: Is it clear to you—I think you have indicated that it is not—precisely where within the UN the decision takes place? You have referred to a meeting coming up. Is that the point at which you expect complete clarity?

Mark Hammond: There is something called the International Co-ordinating Committee. Within that, there is an accreditation committee. Within that, as in all parts of the UN system, there are geographical groupings that are essentially continent-based. They are all represented in various ways as the UN allocates seats. Exactly who would be on the accreditation committee at any given time is not something that we could predict today.

Q186 Tom Brake: But you would expect that whoever sits on that accreditation committee would be able to give the go-ahead or not, or confirm or otherwise the status?

Mark Hammond: If the committee has concerns drawn to its attention, the committee may authorise a review of the status of the country concerned, at which point I think I am right in saying that your status is then formally suspended while the review process goes forward. There might then be a visit to the UK by some of those involved, and they would look at a number of things. Or, at the other end of the spectrum, as happened 12 months ago around the reforms that Theresa May introduced to our powers, there would be an exchange of correspondence between us, the Minister and our chair. That resolved the matter. As Wendy says, unfortunately, exactly where on that spectrum of actions it might fall is honestly unpredictable at this point.

Q187 Tom Brake: I am pleased that you have made it clear that you are committed to the principle of the growth duty. I do not know whether you have had an opportunity to look at the draft guidance.

Mark Hammond: Yes.

Q188 Tom Brake: So you have seen that. On page 5, under "Purpose of the duty", it says:

"The duty requires that economic growth is a factor to be taken into account alongside regulators' other statutory duties. The duty does not set out how economic growth ranks against

[Tom Brake]

existing duties as this is a judgment only a regulator can and should make. The duty does not oblige the regulator to place a particular weight on growth."

Have you been able to assess whether that does in fact fetter your discretion in any way? Reading it, it seems to me that it is very flexible and that the regulator ultimately decides the priority given to the different functions.

Mark Hammond: We have certainly looked at the guidance in detail, and we are grateful for the clarification of intent which comes through in the guidance fairly clearly. What is intended is to add to, not subtract from, the role of regulators. Colleagues and others have done a good job of clarifying that. When we reported on it to our last board meeting, we were positive about the constructive nature of the guidance. Of course, it is only guidance. In terms of the discretion, we would not know for sure until, for example, someone brought a judicial review against us for some action, whether or not the guidance held sway, but we would certainly say that the guidance has been a positive development.

Q189 Chi Onwurah: How deregulatory is the growth duty for you? We have heard that you will need to take on additional economists to meet it, and that it is going to open you to what seems like an entirely byzantine process of reaccreditation, which may take some time and therefore will take resources. We hear also that it is to add to rather than subtract from your regulatory duties. Is this a deregulatory measure for you?

Mark Hammond: I am sure it is deregulatory in its intent and its overall effect on the private sector. On whether it is deregulatory in terms of regulators, I am not sure I have seen an assessment.

Q190 Chi Onwurah: Will it require more resources on your part? You said earlier that you will need to take on more economists to be able to assess what the right kind of economic growth is, and that you might need to be reaccredited, which will also take more resource. Is it going to reduce your activities or add to them?

Mark Hammond: I think it will mean, for us as an organisation, that we need to put greater effort into ensuring that anything we do with an impact on the private sector is fully assessed for that impact, and that it is positive and contributes to the overall objectives that we have as a regulator and as an organisation. If the growth duty is enacted, will it lead us to have to do some more work? Yes. I think that, presumably, the intent is that all bodies of all the non-economic regulators affected do take these issues more seriously and do put more effort into them.

Q191 Chi Onwurah: I think I should declare an interest, having worked for an economic regulator for six years. This does not make you into an economic regulator, it is just asking you to look at economics as part of what else you are doing. In that case, you are doing more work and putting more effort in, but as you are not an economic regulator it will be interesting to assess whether the benefit of that will come through in economic terms.

You said that you will be looking to ensure that what you do does not have a detrimental effect on the private sector, but you said earlier that that is what you do already—to ensure that the impact on the private sector is proportionate to your other duties. So I am finding it quite difficult to see what you are actually going to do differently, though it is clear that you will need more resource and more effort to do it.

Mark Hammond: If I can just walk it back perhaps half a step. What we do as an organisation, in terms of assessing how our regulatory functions impact on the private sector, has been changing for 18 months to two years. It is an approach that we have changed and sought to change positively for some time, in response to—as the growth duty itself responds to—the recession and the problems that the economy has had over the last few years. It would be remiss of any organisation in our sort of position to have carried on doing everything exactly the same way until the growth duty came along. We did not need, as it were, that reminder to be conscious of our impacts on the private sector and the costs we might be imposing.

When you have a legislative enactment, such as the growth duty, you inevitably have to take that in a slightly different light than any voluntary measure or change that you have done in the organisations, working of your own accord. We would have to take a more considered—a more formal—view of some decisions we took. That would mean that our board would have to take more time and more consideration of those issues.

Q192 Andrew Bridgen: On clauses 61 to 64, on the growth duty, you are saying that your interaction with the private sector is efficient and unbureaucratic, with as simple language as possible. That is fantastic, but other regulators may not be doing that. I do not think it would place an amazing burden on your organisation, and it should not.

You also have this UN peer review, making sure that it is not going to do that, because you will have to comply with that, hopefully. But I find an amazing contradiction between that and your accepting—you have said you would not like to see any of your discretion fettered in any way. I presume that means carrying out your duties and actions. Yet you fully support allowing tribunals to make wider recommendations to employers, who are responsible.

You said that, in a tribunal, all the systems of a company are analysed in a few days. I can assure you, having been to a few tribunals myself, that that is not the case. There is a snapshot there. In a few days in a tribunal, they do not have the knowledge of somebody who has run a company for many years.

Surely, the private sector will have its discretion fettered considerably by those wider recommendations. Where is the equality in that?

Mark Hammond: As I understand the function of the wider recommendations, it is to help businesses or other organisations ensure they do not make the same errors that might have arisen as a result of the tribunal judgment in a particular case.

Q193 Andrew Bridgen: But the growth duty is to try and help you to be efficient and as unbureaucratic as possible, when dealing with the private sector. So what is the difference?

Mark Hammond: I am sorry, Mr Bridgen; I am not entirely following.

Q194 Andrew Bridgen: Well, you are supporting recommendations being made, but you are saying that Parliament cannot recommend that you take account of economic growth, because you do not need to—but that the private sector does need to and it is responsible. It is having its discretion fettered. Somebody running a company might say, "Well, okay, I've lost a tribunal. I'm going to take that on board and do it this way." But that might not be the recommendation, if a wider recommendation was made by the tribunal, which does not have as much knowledge of that business as the business owners and directors. You cannot accept that.

Mark Hammond: I understand the point. I think it is reasonable for us to take the view that we have that we do not think the evidence of serious regulatory burden on the private sector through wider recommendations is particularly compelling. We believe that there is a benefit to maintaining the opportunity for tribunals to make them.

Kelvin Hopkins: Very briefly, the recommendation is not mandatory, is it? It is just a bit of advice, in a sense, is it not? If the employer chooses to ignore the recommendation, surely it can do that.

The Chair: That is not a question; that is a comment. I once again thank Mr Hammond and Wendy Hewitt for coming along.

Examination of Witnesses

Sara Higham and Alexander Ehmann gave evidence.

4.16 pm

Q195 The Chair: Good afternoon and thank you very much for coming along. As you know, we are running a little ahead of schedule. May I ask you to introduce yourselves briefly?

Sara Higham: My name is Sara Higham. I am policy advisor at the Federation of Small Businesses. I cover regulatory reform and education and skills.

Alexander Ehmann: I am Alexander Ehmann. I am deputy director of policy and public affairs at the Institute of Directors, with specific responsibility for regulation for the purposes of this sitting.

Q196 Toby Perkins (Chesterfield) (Lab): Your two organisations would certainly consider themselves to have a duty towards growth, and in the current economic situation we Members of Parliament certainly consider ourselves to have such a duty. To what extent is it possible for an organisation to be the most effective regulator it can be and at the same time have this growth duty? To what extent is there a compromise between the two?

Sara Higham: From the FSB's perspective, the crucial element of the growth duty is about improving the relationship between the regulator and the business community, ensuring that there is co-operative engagement between the two and that they can work together as much as possible. It is also about ensuring that regulators work with each other, for example to ensure that they do not carry out lots of inspections in a similar time period—they can co-ordinate where possible.

There are also more practical issues such as making sure that advice and guidance are as useful as possible for small businesses. For example, we know that only 8% of small businesses go to a specific regulator for advice and guidance, but we think regulators could be a useful source of assured guidance. If you were therefore to improve the relationship and give businesses the confidence that the regulator is there to help them with their compliance as much as possible, we believe that that would help with what we call compliant growth. We think that those sorts of elements can help to improve the relationship and improve a business's ability to be compliant and therefore to grow in the long run.

Alexander Ehmann: I would simply add that it is useful to have an explicit duty to be mindful of growth, and I think that that is how I would characterise it. Everything that I have seen of the draft guidance that accompanies the Bill and the underpinnings of the proposed duty strikes me as simply ensuring that, where possible, the mutually compatible nature of growth-enhancing policy frameworks and consumer protection or other regulatory duties can be brought together effectively. That is useful because where previously regulators perhaps had purely the consumer protection—or other element—of their duty to consider, almost whatever the cost to growth, that could produce, at least in theory, quite different outcomes to when a growth duty is part of the considerations.

Q197 Toby Perkins: You, Sara, suggested a couple of very sensible ways in which the duty might well be interpreted, but that was your interpretation. Obviously, that will not be specific because of the way the Deregulation Bill is written and the fact that it could include a vast array of different organisations. We all hope that regulation as we think of it here is the way it is interpreted out there on the ground. However, as we know to our cost, it does not always work that way.

We all want a collaborative relationship between regulators and the organisations they regulate. Do you foresee potential for a regulator to regulate on the one hand and on the other for organisations to say, "Hang on a second; you can't do this because if you regulate in this way you will hamper our capacity to grow." I am thinking of an example. We have been working closely with the FSB on a campaign to introduce a pub companies regulator. When the duty for growth has been introduced and the pub company regulator eventually makes its way out of the present Government's or a future one's policy framework, I can imagine the pub company saying, "Hang on; as a regulator, the way you are regulating is hampering our growth." If we could have it the way you described it, that sounds great, but do you see the potential danger and why some organisations are worried that it will lead to alternative tensions in the regulatory relationship?

Sara Higham: Our understanding of how the Bill will work is that there will be a duty only to consider growth among other considerations, such as its consideration as a regulator to regulate and ensure compliance. It is about ensuring that it thinks about achieving compliance as an end result. Businesses and everyone want to achieve compliance, and it is about the best way to do that and to consider the cost-benefit analysis of ways in which it can achieve that aim. We understand that regulators have discretion to make that sort of

[Toby Perkins]

call. It is not black and white, but it is part of its consideration process. We hope that we would not get to that situation.

For us it is about the culture change and making sure that regulators, as Alex said, think about this as part of their everyday decision-making process at a macro level and a micro level, so you know how they do their policy, but also the way in which they do implementation. There are loads of good examples of ways in which they can do that and ways in which the FSB could advise them on what we think would help in terms of training and so on. We hope that that would be the outcome.

Alexander Ehmann: My observation is that time will ultimately tell with this duty, but as has been said and from what I have seen of the draft guidance particularly, it is not overly prescriptive about what must or must not be done to be considered effective consideration of growth. There is a range of different ways in which regulators can do this, and the onus is on them to demonstrate how they have done so. Clearly, business stakeholder communities will say whether they think that is satisfactory and will challenge, perhaps helpfully, through the process. That will be useful but, critically, regulators will have to think quite hard about how they are showing that they are giving some consideration to growth.

I suppose there is a possibility that things could escalate in the sense that unsatisfactory fulfilment of the growth duty, from the view of the business community, could well be an area of disagreement between the regulator and the regulated businesses and could be used as a challenge perhaps right up to judicial review. I concede that that is a possibility, but given the way the guidance is drafted, it strikes me as difficult to assess what is a minimum level of reasonable growth consideration.

Q198 Toby Perkins: When you mention the potential of being open to challenge, what would be the challenge for a business that felt its regulator was not considering the duty of growth strongly enough? You mentioned potential judicial review, but what would be the steps before that when businesses would be able to take advantage of the new-found duty the regulator will have on their behalf?

Alexander Ehmann: In a sense, I think the growth duty, by definition and in the way it is implemented by regulators, should in most cases have a response mechanism. The fact that there would be some apparatus in the regulator to allow for an effective challenge—for example, if the regulated community did not feel that the regulator had given enough consideration to growth and the impact on business—strikes me as an indicator that growth is being considered. It would allow the business community to voice its concerns, and effective feedback mechanisms are a part of that.

Sara Higham: Might I add that there is now a consideration of how different regulators ensure that they have a good appeal system for small businesses? I know that there has been a recent proposal for a small business appeals champion with all regulators. We hope that through processes such as that we can get a clear understanding of the ways in which members can properly and openly appeal.

Q199 Andrew Bridgen: I should declare that I am a member and a former regional chairman of the Institute of Directors. The regulators cost billions of pounds a year to run, which is generated from taxes from the private sector. Do you agree that businesses want compliance, because non-compliance by some businesses is unfair competition? Do you agree that if there were a better relationship between business and regulators, businesses would approach regulators for help with compliance and there would be huge savings on expensive consultants who may or may not give the right advice? The proposal is about culture change. It has the potential to create a more symbiotic relationship between regulators and business, which would be good, as opposed to the antagonistic relationship that we sometimes see at the moment.

Sara Higham: I would certainly agree. At the FSB we often talk about compliant growth as the ultimate aim of things such as this duty and the work we do on regulatory reform. On the savings on advice, I indicated earlier that only 8% of our members go to a regulator for advice and guidance, and we would like that number to increase. Something that gives them confidence that the regulator is there to help and support them will help them to do that.

Alexander Ehmann: I absolutely concur with the observation that the proposal should ease burdens on business and lead to a better relationship. The only thing I would add is that if it is implemented properly—I have every confidence that it will be—regulators, by understanding more fully the growth impact that their policy interventions may or may not have, will be able to strengthen the measures that will enhance growth and step away from the more burdensome interventions that may curtail it. Understanding the impact of intended policy interventions on growth will hopefully enable greater levels of growth. That has to be a positive thing for the economy overall.

Q200 Andrew Bridgen: Would you also agree that if there were a closer relationship between the regulators and the businesses that they regulate—if there were more understanding and trust between them there would perhaps be more co-operation—the intimate knowledge that the regulators would have of the businesses would allow them to better target their regulations?

Alexander Ehmann: I have no doubt from my experience of previously working in a regulator that a decent relationship with your regulated business community means that you will be much more aware, for example, of upcoming technological innovation or other types of innovation that may have regulatory implications. That allows you to be more fleet of foot. Your point about targeting and enforcement is good. Frankly, the businesses that I represent—I dare say this is true of Sara—are keen to point out businesses that are not complying and are trying to get around the rules. There is no better intelligence base than the good elements of the regulated community that allow you to pick up on that intelligence.

Q201 Thomas Docherty: You have obviously seen the list of the regulators to be covered. I am curious, because two on the list are the Office for Nuclear Regulation and the Drinking Water Inspectorate. Given your enthusiasm for the proposal, perhaps you can tell us how you think the Office for Nuclear Regulation,

which is responsible for ensuring that nuclear power stations do not blow up, and the Drinking Water Inspectorate, which is responsible for ensuring that our water is clean, will benefit from a growth duty.

Sara Higham: From the FSB's perspective, as I said earlier, the vision is to help improve the relationship between the communities involved in regulatory functions. However, we have not necessarily gone through the list and said who we want to be in or out.

We recognise that some regulators may need to be out of the growth duty. If there is a clear reason for that, we will understand, but we would like that to be openly understood—that this is why that regulator, for whatever reason, is out of the duty. We understand that in some circumstances that might be necessary. Our presumption would be that all will be in, unless we are given the reason for them to be out.

Q202 Thomas Docherty: So the FSB does not have an ideological view that all regulators should be in—I do not want to put words into the panel's mouth, Chair, but would it be fair to say that it should be horses for courses? Where there is a clear argument for, they should be in, but where there is not a benefit, they should not be in.

Sara Higham: Our presumption is that they would all be in, unless a very good reason is given for them to be out, and the reason ought to be public and well understood—so that we know why that regulator is not in the exemption and that it is well explained.

Q203 Thomas Docherty: Just to finish off and to be quite clear, you do not have a problem with specific regulators being taken out.

Sara Higham: We understood that some would probably —maybe—need to be taken out.

Thomas Docherty: That is helpful.

Alexander Ehmann: I have a slightly different perspective. All regulators should ideally be included within this duty, because the way in which the duty is drafted is, as I say, relatively light touch. I do not believe that any regulators, however technical or essential the delivery of their service, could not be minded to consider the impact of their duties and activities on growth.

Now, in relation to the nuclear industry or the water industry, which are not primary concern regulators for the majority of our membership, no one is suggesting in any sense that the growth duty applying to these regulators should in any way trump their broader duties. In fact, the draft guidance is very clear that this does not in any way subjugate or lower the priority accorded to other activities that the regulator should undertake. I would argue that all Government, all agencies and all regulators could have a mind to growth without any negative effect.

Q204 Thomas Docherty: It is always a treat when Mr Bridgen and I agree on something—

Andrew Bridgen: Don't be so sure yet.

Thomas Docherty: But given that the cost of regulation is borne by taxpayers and that most people in the room would probably agree that there is no obvious reason why the Office for Nuclear Regulation could find a way of further supporting growth, all this will do is to put a further cost on the regulator, because there is no obvious saving for economic growth that the ONR, for example, can—

Alexander Ehmann: Well, I do not know enough detail about the nuclear regulatory area to be able to exhibit a comment on whether the ONR is doing enough or could do more. Purely thinking about that area as an example, however, it seems to me that having consideration to competition and the potential for viable businesses to be able to act in that space are an important component in nuclear generation—not at the cost of health or anything else, but as a factor that would need to be considered.

You mentioned the taxpayer burden. I would argue that growth is in everyone's interest, because it diminishes the taxpayer burden. By definition, if we have greater economic activity, that will diminish the amount that we all individually have to pay by increasing economic activity.

Q205 Kelvin Hopkins: Growth depends crucially on skills and on the numbers of people with the necessary skills. We in Britain are desperately short of skills in a wide range of areas and in particular in manufacturing and engineering.

To give just a little example, Luton, which I represent, used to have hundreds if not thousands of toolmakers in the manufacturing sector. There is a company that makes parts for Jaguar, but I cannot find one toolmaker. That is how poor it is. In broad terms, will the Bill make it more likely that we will generate those skills and bring forward the numbers that we need to service our industries?

Sara Higham: Are you looking forward to the part on apprenticeships?

Kelvin Hopkins: Yes.

Sara Higham: In terms of what clauses 3 and 4 intend to do, from our perspective it is about improving the quality of apprenticeships in the long run. We very much look forward to what we want the apprenticeship system to look like in 10 years' time. That is what we want to see as our far-off version. We hope that the recommendations will improve the quality. In principle, we agree with those in terms of both the development of the apprenticeship standards and putting the funding in the hands of the employers, with the direct employer funding.

We have, as you will have seen from our written evidence and consultations with Government, pointed to rules that would ensure that the implementation worked well, because it is often down to the implementation. If, for example, we are considering clause 4, which looks at the direct funding reform, we agree with the principle. We would like to see a more demand-led system where the business becomes the customer buying the apprenticeships to improve the skills within their business, which is so crucial.

To ensure that that works in practice is really important and we have a couple of caveats within that. As much as possible, we should not significantly increase the costs for small businesses and it should not be overly bureaucratic. We would not like a payment-by-results element, because that could damage the image of apprenticeships. There are some bits around implementation that we need to

[Kelvin Hopkins]

take some care and caution with, but, in terms of the principles, in the long term we think that they will improve the quality of apprenticeships.

Q206 Kelvin Hopkins: With this shortage, one of the problems SMEs have is that they train apprentices but quickly lose them to higher paying, larger companies. I know of cases of small motor repair businesses who had apprentices and, as soon as they were trained, the big companies who do the insurance work took them. For them, poaching skilled workers from other companies is easier than training apprentices, as long as they pay a bit extra. Will any of the Bill help to overcome those kinds of problems?

Sara Higham: We certainly do hear from members that poaching is a fear and something that might put businesses off wanting to engage with apprenticeships, but we know that 29% of our members have at some point taken on an apprentice and 11% plan to do so in the next 12 months, which is great. Actually, the clauses in the Bill hope to improve the quality of the long term so that businesses will see it as an important investment and hopefully retention rates will follow from that. It may happen that sometimes apprentices move on, but, making a better quality system for everybody will improve the skills both in those businesses and the sector as a whole.

Q207 Kelvin Hopkins: Is not what is proposed in the Bill and what that will do too little, too late? Should we not be much more radical?

Sara Higham: We agree with the vision of these clauses. We wrote a paper back in 2012 in which we set out a vision similar to what the Government have proposed, which is good news from our perspective. Implementation is really important and we need to take time to ensure that we get the implementation right. We would like to achieve an apprenticeship system that can last for decades to come.

In the past 20 or 30 years, we have seen the apprenticeship system change quite a lot and small businesses find that quite difficult, because they do not know what that means for them or how to engage. That can put them off. We would say that the vision is right and we need to get the implementation right as much as possible first time, so let us take our time to get that right so that we have a system for our members for decades to come.

Q208 Kelvin Hopkins: How do we compare with the continent of Europe in these matters? I think we have got a long way to catch up. Will we catch up?

Sara Higham: We hope so.

Q209 David Rutley: Moving on to slightly different territory and clause 1 in particular, I wanted the views of both your organisations on the key subsection that will enable the self-employed to step out of health and safety regulations entirely in certain categories. Is that a good thing?

Alexander Ehmann: The short answer is yes. Health and safety is an area of regulatory concern for our members. It is not the top priority, but it is one of a number. The burden is greater on the smallest businesses. Taking that in combination with the fact that those businesses tend to have a much lower risk of causing any injury or harm to people on the whole, I think that that is a proportionate way of addressing the issue.

Clearly, that is something that needs to be kept under review and if there were to any concerns demonstrated, it might be necessary to look at those. However, we wholesale support the concept of taking the lowest-risk and relatively highest-burden individuals out of much of the scope of health and safety.

Sara Higham: From the FSB's perspective, we agree with the principle of a proportionate, common-sense approach to health and safety. It is incredibly important to get health and safety right for our members. They recognise that it makes good business sense for them to have a healthy and happy work force, but in this instance we foresee taking out our members who are, perhaps, writers or web designers working from home, whose work does not affect anybody else and who do not have employees, so that they have clarity on what the health and safety duties are.

Furthermore, for businesses that are thinking of setting up, it is one less thing on their tick list of the many things that they have to do. That in itself is a positive thing, but overall it is about getting a good message out there about common sense and health and safety, and applying it in a place where most people think it is most important. As I said, our members take health and safety very seriously, so we would not support this if we thought it did not do that.

Q210 Andrew Bridgen: I want to press the panel on Mr Docherty's rather doomsday scenario that if the nuclear regulator is required to consider economic growth, we are going to have nuclear power stations exploding left, right and centre. Given the sensitivities of the nuclear industry, is it not more likely that the nuclear regulator will realise that the biggest threat to the growth of the nuclear industry is any breach of safety whatever, and that the duty could have the reverse effect? As we have seen around the world, when there has been a breach of safety in the nuclear industry, it curtails that growth completely.

Alexander Ehmann: There is no doubt that the effective regulation of certain key sectors is essential to growth. That is why I particularly underlined the point that I do not feel that any regulator having an eye to growth should face the fear that it will undermine any of their other priorities. We see it as a totally mutually compatible relationship. I have not seen or heard of an instance in which the consideration of growth would be inappropriate.

Q211 Chi Onwurah: As I said in the earlier session—I think you said that you worked for a regulator—I also worked for one. I worked for Ofcom, an economic regulator, for six years.

I do not want to put words into your mouth, but what I heard from you was a sensible and reasonable desire for regulators and their key stakeholders in the private sector to work together constructively to share information and understand each other's objectives, for different regulators to work together effectively and for proper assessments of the impact of regulation. That all sounds reasonable. That is regulatory best practice. Should not whoever is holding the different regulatory bodies to

account ensure that they are following regulatory best practice, rather than our introducing a duty that is vague and ill-defined and could have different levels of impact on different regulators?

Fundamentally, as the example of the nuclear industry has illustrated, it may bring conflicts. It requires an understanding of what is good economic growth: an understanding of economic levers, what leads to growth and what is short-term versus long-term growth. It is not a simple area, so should we not be focusing on getting regulators to do regulatory best practice, rather than introducing a broad duty that is regulatory, not deregulatory, and that is open to abuse?

Alexander Ehmann: I think that is an extremely interesting point. If you are asking whether I would prefer a system that ensured a comprehensive impact assessment across all regulators, of the standard that we see at departmental level in national Government, then the answer is yes, I would prefer that to the growth duty, because it would be a higher standard. However, is that proportionate or reasonable? I have to say no. Independent regulators, by definition, are independent, and being too draconian with them in setting standards would be challenging.

Secondly, regulators are differently resourced. You mentioned Ofcom; Ofcom is a relatively well-resourced regulator that, in my opinion, is quite good at impact assessment and analysis. One could name a number of other regulators that would struggle more with the capacity to deliver that in terms of manpower resource, time and finance. The growth duty enables regulators, within the constraint of their own resources, to devote a sizeable amount of their energies to considering the impact, without necessarily expecting a level of assessment, which would probably be too much for some of the smaller regulators to comply with.

Sara Higham: I would add to that by drawing attention to some of the evidence BIS brought forward. Some regulators have said that they do not feel that they would necessarily be able to consider growth as one of their duties, unless it were a statutory duty. That point has certainly been put forward. It is also about ensuring consistency. We know that some regulators are very good at that. We get reports from our members that there are various different projects and schemes. Estates Excellence, which is run by the HSE, is a good example, but others may not do that so much. It is about ensuring that they are all doing that and that it is a priority issue.

Q212 Chi Onwurah: If I understand you correctly, you are saying that regulators do not have the resources to do proper impact assessments but will magically when this duty comes into operation have the resources to understand growth and the impact of what they are doing on growth.

Alexander Ehmann: What I am saying is this: in an ideal world would I love a regulator to have 20 economists assessing this, a massive stakeholder relations team to collect and feed back information that enabled them to produce a thorough and detailed impact assessment? I would. However, I recognise that is not possible in all cases. It is possible—necessary—in all cases for a regulator to have some kind of assessment of the impacts of their policy. Whether they are fully economically nailed down is a moot point. I believe that all regulators have some capacity to assess impact.

Q213 Chi Onwurah: I agree, but I think we should focus on having an assessed impact. You can't change their resources by introducing a larger duty, which may have negative and unintended consequences, as well as improving their impact assessments.

Alexander Ehmann: There is no doubt that simply having the duty does not increase a regulator's resource. It does, however, mean that they have to consider in relation to this specific duty whether they have apportioned their resource appropriately. I would argue that some regulators will need to give thought to whether they wish to spend a little more resource in evaluation of impact on growth in order to fulfil this duty sufficiently.

The Chair: I shall bring the Minister in on that.

Q214 Tom Brake: On the growth duty, do you feel it is perhaps too light touch? Would you have liked something with more substance to it, rather than just a factor to be considered?

Sara Higham: One of the areas where we would like to see a bit more detail is accountability measures. For example, a better understanding of how businesses can understand how their regulator has considered growth in both their macro and micro actions might be something we need a bit more thought on.

Q215 Tom Brake: Who would you hope would produce that?

Sara Higham: Again, we would not want to be too prescriptive, but at the same time the guidance must be accessible to business groups and eventually their members, so that we understand what is happening. I am not sure who would be responsible for that, maybe the BRDO or the BRE—somebody within the BIS framework. It would be important to understand better how they would be accountable for this measure.

Alexander Ehmann: I would only add the things I have already referred to. I would have a preference for a greater gamut of regulators being included under the duty. If I were idealising this, it would have been an ideal outcome to set a minimum standard of assessment. We would have liked to see that, but as I said earlier, I recognise that not all regulators are evenly resourced.

The legislation and the draft guidance that accompanies it do a good job in ensuring that it is fit for purpose for the smallest as well as the largest regulator. It would be churlish of me not to support that, on the basis that that is what I argue for when Government deal with business—that they should have an appropriate mind to all sizes of business. I think it is appropriate to have a mind to all sizes of regulator, too.

Q216 Tom Brake: I can understand that if a regulator has a growth duty it will require it to work more closely with businesses in its area. Do you both think that this will also encourage regulators to work more effectively together? If so, why do you think that that will happen? What will trigger that process?

Sara Higham: We hope that that process would happen through the idea that if a business is regulated many times in a short period, obviously that takes up a lot of its resources and staff time, which will cost it more in the long run. We hope that regulators can consider the

[Tom Brake]

ways in which they can better work together—we know that that has happened in some local areas through various different projects, and some of the local enterprise partnerships have been looking at it—and perhaps share inspection regimes, and also look at the idea of earned recognition. That is an idea whereby if a regulator knows that x business is very compliant in lots of different areas, it is probably as compliant in other areas, so it is asked whether that information can be shared. I know that that is something that the Government are looking at.

Alexander Ehmann: By definition, not all growth-enhancing approaches taken in the regulatory space can be delivered by a single regulator on its own. Often some of the barriers to growth come from overlapping and different interpretations by different regulatory bodies. A good example of that would be the regulator I used to work for that is now PhonepayPlus, which regulates premium rate telecommunications. It overlapped in terms regulating advertisements with Ofcom, the Advertising Standards Authority and others. As a result, a business could not be certain of exactly what the advertising guidelines were, because they did not all align. Having the opportunity to try to deliver growth-enhancing policies that might well mean that a number of regulators try to coalesce a set of standards that work more effectively for business would be an extremely welcome outcome.

Q217 Tom Brake: May I switch briefly to the issue of apprenticeships? In one of the earlier evidence sessions, there was a view that while the proposal to involve employers is very positive, it could possibly lead to issues about transferability, for instance. If you have an apprenticeship that is very much targeted on car mechanics, it does not necessarily transfer very comfortably to an employer looking at someone with an apprenticeship in a particular but different area. How do you see that issue of quality, the potential proliferation of apprenticeships and the transferability of apprenticeships from one employer to another working? How do we control that? Who should control that?

Sara Higham: We think that it is very important that there is that transferability element in apprenticeships. That is one of the things that give apprenticeships their great quality, and it is one of the reasons why the state invests in them. Everybody gets something out of that if the skills are transferable.

The standards are being developed through the Trailblazer projects, as I am sure you are aware. The first one is happening at the moment. One of the things we would like to see is all draft standards being consulted on online, so that all small businesses can see and comment on them. That would ensure that as many small businesses as possible are aware of the content and have had an opportunity to shape it. In the long run, we hope that they will feel more ownership of it and therefore want to take part in it. We think that that is a very important part of the process. Having an open consultation online will ensure that you have some of those extra transferability bits.

The numeracy and literacy are happening separately from the bit in the standard, and so that will always be there. We know that there is the expectation that when somebody completes an apprenticeship, they will have level 2 in numeracy and literacy. That is a key part of the transferability. We would also like to see key skills there in terms of behaviours. That is really important. You are not just a competent mechanic; you are efficient, you know how to self-manage your time and work on your own. Those sorts of behaviours are incredibly important, and we hope that they will be in the standards because they are very transferable skills.

Coming back to our recommendation about online consultations, making sure that the draft standards are consulted on online and that you have got the views of all the small businesses allows you to make sure that that happens. The Trailblazer project is a pilot, as far as we understand it, and the first one is happening at the moment. There will be lessons to be learned, I am sure, and we will see how that goes.

Alexander Ehmann: If these prove to be too narrow and lacking in transferability, employers will look to other forms of qualification. The IOD is keen on emphasising that, although apprenticeships are a useful component of the overall skills mix, a mix is important. A range of different offerings is important to ensure that all employers and employees are catered for. I think that sometimes the great clamour always to be in favour of apprenticeships, almost because of the word itself, is a mistake. We need a broad gamut of qualifications that work for people.

Q218 Tom Brake: Can I ask one final question? I ask this is as a Member of Parliament, rather than as a Minister. Small businesses as a group are often less proactive than other groups in coming forward to lobby Members of Parliament on issues. To what extent do you think businesses will be engaged in the process of apprenticeships to identify the appropriate standards and the range of apprenticeships that should be provided?

Sara Higham: I will probably draw you back to my answer to the previous question. We think that it is hugely important that we get small businesses involved in the development of the standards. We recognise that it is much more difficult for them than for some of the witnesses that you had earlier today, such as BAE Systems, to send people to meetings, which are inevitably in London, to talk about the content and so on. That is why there should be innovative approaches to getting them engaged in the design, such as making sure that it is online. It should not necessarily be a PDF that they have to download, but an interactive system in which they can talk about the content in discussion rooms. We should also make sure that we use social media and as many outlets as possible. There is no silver bullet for ensuring that they all get involved, but we need to be innovative because we need to get small businesses involved in the design. The more we can get them involved in the design, the more they will engage in the long run.

The Chair: We have three minutes, and three people still want to contribute.

Q219 James Duddridge: The FSB was suggesting sustainable growth. On the Joint Committee we noticed that lots of people suggested it, but they had different, and in some cases contradictory, definitions of "sustainable." What is your view of sustainable growth and the reasons for adding it?

Sara Higham: We wanted to ensure that regulators considered both the micro and the macro aspects of helping to support businesses to ensure that it is not just about the way that they do the policy, which is the long-term bits and pieces, but about ensuring that it is on the ground. We recognise that the Committee found that that would be too complicated and probably too prescriptive and that it is much better to rely on the guidance to bring forward recommendations on how it should be done, and we are comfortable with that.

Q220 Toby Perkins: We are keen to make sure that there is a spread of different options—apprenticeships are not the only option—but that the quality of apprenticeships is considered so that your many employers know that there is quality assurance on the training that someone with an apprenticeship has had. We would have a worry that, in the rush for numbers, the quality aspects might fall away.

The Chair: Your having a worry is fine, but are you asking a question? We are running out of time.

Toby Perkins: To what extent would you share that fear? How important is quality?

Sara Higham: We believe that if you get the quality right the numbers will follow in the long run. It is a priority to make sure that we get good-quality apprenticeships. The FSB's perspective is that we would like the norm to move perhaps to a level 3, rather than a level 2, and we would like to see a much greater role for traineeships in that space. That is about getting young people ready for the workplace with numeracy and literacy skills, which many of our members say are sometimes lacking in young people. Traineeships could have a role in doing that bit, and apprenticeships should move into a higher quality—level 3 and beyond in most sectors—and become something more akin to what we see in other countries. In the long run we would really like to see a system in which someone could choose to do an apprenticeship, and if they want to do so, could go back and do a degree following on from that. There should be an integrated skills system that allows them to make that choice.

Q221 Andrew Bridgen: Do you agree that the growth duty on regulators is not incompatible? Indeed, regulators may well have a vested interest in economic growth, which they perhaps do not appreciate as much as they should. If you are a regulator and your sector is growing, then companies are profitable, they need to invest and compliance can be delivered relatively easily. It is far harder for regulators in declining sectors, in which companies are not making profits, to get that compliance. That is a far more difficult market to regulate.

The Chair: Do you agree or disagree?

Alexander Ehmann: I agree.

Q222 The Chair: What about you?

Sara Higham: I agree.

The Chair: Thank you very much indeed. I am sorry, but we had to finish by 5 o'clock under our self-imposed rules. Thank you very much for coming along.

Examination of Witnesses

Alexander Jackman and Professor Julia Black gave evidence.

5 pm

The Chair: Good afternoon. Will our guests please introduce themselves?

Alexander Jackman: I am Alexander Jackman. I am head of policy for the Forum of Private Business.

Professor Black: I am Julia Black, professor at the London School of Economics.

Q223 Chi Onwurah: Welcome to you both. This is a question for Professor Black. In your evidence submission, you are clear about the need for regulation to be counter-cyclical—that is to say, that it is strong when the economy is weak, as that is when firms would tend to cut back, potentially with regard to regulatory compliance. Do you think a growth duty will support or weaken the tendency of regulators to be counter-cyclical?

Professor Black: That is an interesting question. I have just been listening to the evidence given before my session. The duty for economic growth is really just the balance between "have regard to" and all the other objectives that regulators have. In terms of the pressure on businesses to cut corners—for example, in health or safety or other areas, particularly in the context of risk management—it is obviously going to be much greater where you have economic pressures. My worry—and it is only a worry, because we will have to see how these things play out—would be that a duty to have regard to economic growth would mean that they cut back on the insistence on standards and regulate down to cost, rather than up to standard, as it were. This would be particularly when companies are under economic pressures.

Q224 Chi Onwurah: In your submission, you also mentioned the experience in New Zealand, which looked to impose a duty of growth on regulators. Could you describe the New Zealand experience?

Professor Black: New Zealand had a deregulatory phase back in the late 1990s. There have been a couple of long-term consequences of that, which New Zealand is now counting the cost of. The first was in leaky buildings. It rains quite a lot in New Zealand, and as part of the deregulatory measures they cut back on building regs and on prescription under building regulation. There was more of an over-arching responsibility, but a lot of the prescriptive material in the regulations and guidance was taken away. There was a flurry within the building industry; then what New Zealand found out to its cost after a few years was that the way buildings were built meant that they were not weather-tight. They were using untreated wood that was exposed in various aspects of the building design, which meant they were not weather-tight, and you had a spate of buildings that started to leak in the early 2000s. Although estimates vary, the estimated cost of putting the buildings right and correcting them is around 1 billion New Zealand dollars.

As you can imagine, there was a lot of investigation into why that happened, and the evidence coming out is about cutting back on a lot of that prescriptive regulation. Okay, some of it might have been over-prescriptive; but at the same time a lot of knowledge was lost about what

[Chi Onwurah]

appropriate building standards should be. Builders and firms did not have the guidance that they needed—regulators were perhaps encouraged not to provide it—to ensure that buildings were built that were weather-tight over the long term. The reason I mentioned that is because it is to do with the period of time over which you assess economic growth. If you look at the results of that regulation in 2000, although I have not been able to see the figures, the building industry may well have been growing a couple of years after it was introduced. That would have been seen as a good thing and the regulation would have been seen as promoting economic growth. If you are looking at this some time later and looking at the costs of that, then how that plays into your economic growth definition becomes an interesting question.

Q225 Chi Onwurah: That is an interesting point about the nature of growth. In the Government's response to the Committee's call for evidence, they said that they were seeking compliant growth, not non-compliant or illegal economic activity that undermines markets to the detriment of consumers, the environment and legitimate businesses. As you have just said, it can be difficult to assess what type of growth you have, even after the fact. It is even more difficult to predict what kind of growth you should be taking into account. Do you think that all the regulators set out in the draft list will have the economic understanding to ensure that they go for the right type of growth in the long term?

Professor Black: No. In a way, you have to ask what the duty is adding and what it is trying to achieve. You could argue that what is needed—this is in some of the better regulation reports that have come out on how regulators are operating and the experience and some of the comments were made, for example, by the previous witnesses—is a lot to do with proportionality, joined-up inspections, regulators understanding the business and regulatory good practice.

If the purpose of the duty is to provide a lever for all those things to happen, you could argue about why we are doing it through this particular proxy, rather than saying, "You should be thinking about ensuring that you are proportionate." We already have that obligation through the compliance code and so on. If it is to be an additive to that—in a way, having a list of regulators to whom it applies and a list of regulators to whom it does not suggests that it is meant to be adding something over and above the proportionality requirement—one has to ask, "Well, what is that?" That "that" is to do something that will help the economy in some way, measured by some undefined indicator over some undefined period of time.

It is difficult to do that while maintaining your legislative mandate, which has achieved a whole bunch of other public objectives, whether they are the sustainable environment, investor protection, health and safety—*[Interruption.]* Sorry? Yes, particularly in Somerset. I know it is called blue-green—or is it green-blue? I cannot remember. Anyway, it was green and then you make it blue for the flooding. The overall point is that if the duty is to be additive and you want to think about economic growth while thinking about your legislative mandate in a way that is over and above a duty of proportionality, a regulator would be sitting there saying, "What do you now want me to do? As soon as a business says, 'That will be too costly', will I have to say, 'Okay, you're right and I need to back off in the interests of your short-term profitability'?"

In other words, is economic growth to be defined by the balance sheet of the individual companies that you have in your remit? Is that the indicator by which regulators will be judged? Will they be judged by the sector's profitability? I have a slight worry about that. In financial services, there was an example where a "to have regard to" was to take into account the international competitiveness of the industry. In the legislation that came after that, that "to have regard to" was deliberately removed, because it was seen as one of the ingredients that led to over-light-touch regulation in the context of the financial crisis. If I were a regulator now faced with this, I would be thinking, "Right, I'm on the list, so it must be something more, because otherwise I would be off the list. What is that something more and how am I meant to be assessing and measuring it? How am I really meant to be trading that off against my statutory duties?"

Q226 The Chair: Okay. Did you want to say anything, Mr Jackman?

Alexander Jackman: My view is that the growth duty, above else, will help to create conversations between regulators, and between regulators and those they regulate, for the benefit of the business sector in which they are acting. We are talking about everything that Professor Black has already mentioned about trying to align visits and ensure that a business is not over-regulated at any particular time and then goes years and years without—you try to find a more proportionate response.

We are also talking about having a conversation between the regulator and the business. The regulator says, "This is the fee or the duty that I am going to put on you," but the business says, "Well, look at my cash-flow situation at the moment as compared to next quarter"—it might be a seasonal business. It is about being able to have a sensible conversation with the regulator, saying, "Look, there's a better way that I can achieve compliance." We just need that conversation to take place. The way in which the draft guidance has been written allows that flexibility between different types of regulators, and I think it will be beneficial.

The regulators themselves are not going to be held responsible for any particular growth measure; they will be held responsible for reporting on how they as an individual regulator feel that they have tried to help the businesses they regulate.

Q227 Andrew Bridgen: The regulators that are not involved in the scope of the duty to take account of economic growth are the financial regulators—they have been excluded. Does that not somewhat undermine some of Professor Black's arguments? Non-financial regulators are going to be exposed to the duty. If we were to include financial regulators, we would overheat that particular pudding, would we not? We have seen it before.

Professor Black: You have to look at it in the round. The Financial Policy Committee has a fairly convoluted requirement in the end. It has an obligation not to do anything that may be to the detriment of economic

growth. The FPC sets recommendations on a macro-prudential basis for the Prudential Regulation Authority and the Financial Conduct Authority.

Q228 Andrew Bridgen: But financial regulators are not included in this duty.

Professor Black: No, but they have a separate one, which is not to have regard to economic growth in the sense that they are not to do anything that is going to be to the detriment of economic growth. It is not that they do not have anything to do with—

Q229 Andrew Bridgen: But that is not going to be varied by anything in the Bill, is it?

Professor Black: No. The point is: are they in the Bill? No, they are not. Are they on the list? No. Does that mean that they are not required to be having regard to economic growth in another way? No, it does not, because they already have that within their own remit or world of regulatory legislation.

Q230 Kelvin Hopkins: The thrust of the Bill and the concept of deregulation is about trying to reduce costs on business in a period when demand has been relatively low and there has effectively been an investment strike, so productivity has been seriously damaged. You can of course reduce costs by squeezing wages, reducing workers' rights, reducing health and safety and so on—that is what the Bill is about. Actually, we have had a little bit of growth recently, which has not come about as a result of all these supply-side measures. It has actually come about because of banks compensating for the mis-selling of payment protection insurance products, because of a mini housing bubble and because of persistently low interest rates, which mean that people are not going to save but rather spend, because they cannot get anything for their money, so they might as well buy things instead. That has generated demand, but there is no reference to demand.

Since 2008 we have also had a severe depreciation of the pound against the euro—or the devaluation or depreciation of the currency in broad terms. That has protected us from some of the things that have affected southern Europe—for example, Greece and Spain have suffered terribly. It is a myth to think that we can secure sustainable, long-term growth without investment or looking at demand, but only looking at somehow squeezing the costs of employers. Is that not the case?

Professor Black: It is very difficult to prove causality and the connections between anything that the regulator does and anything that happens anywhere in the world in that domain, to be honest. It goes back to an earlier point; or, to put it this way, I am not against regulators having good conversations with business. I am not against regulators understanding their businesses—how could you be?

Most of the time, when I go and talk to regulators, it is about how to build trust with business, how to engage with business, how to be commercially aware, how to be sensitive and how to know the business you are regulating in order, to be honest, to know when they are pulling a fast one, as well as to know when to help them by making regulation proportionate. Where you are going to come down to in terms of the assessment is to ask, "Is this going to be something to which lip service ends up being paid, largely because it is just too difficult to do anything other than pay lip service?", in the sense that, in trying to assess whether a regulator has or has not had regard to economic growth over the past reporting period, it will be very difficult to say, "Okay, here is regulator X, and here is economic growth"—or non-growth—"in sector Y." We might have a correlation between the existence of a regulator and something it has done, and economic growth or the lack thereof, but where is the causal connection between the two? It is not unique to this, but it is going to be an element that will have to come into play.

Q231 James Duddridge: May I ask Professor Black whether there is a good example of a regulator that is considering the growth duty before it is even there? Is there a regulator that we can describe as a shining example of a relationship that is working around an understanding of growth?

Professor Black: That is a good question. Some of the BRE reports that have been done so far—sorry, the Better Regulation Executive; it is a world full of jargon and acronyms—have pulled out the Health and Safety Executive in the area of chemicals. The HSE did the COMAH, which is major hazards in the chemical industries, and it was described as an area where good practices were occurring. One of the interesting things when thinking about regulators and how they build relationships with business is in terms of how a lot of the way those relationships are built is through inspection and audit cycles. It is by being in contact with a business that you really understand it—by having continuity of people coming around, so you know who you are dealing with as part of a firm—and the regulator knows the business itself.

In terms of a shining example for the growth duty, I have not seen anyone start to seize this straight away and say, "Right, we really need to go out and do this, and therefore we need change x, y and z," which is possibly because I have not been looking.

Q232 James Duddridge: It is interesting that you raise the Health and Safety Executive, because they were here earlier. Clearly the HSE had been doing an awful lot of work on this, but paradoxically wanted an exemption for other reasons. So our shining case wants an exemption, which is odd.

Professor Black: I have to say, they have form in that regard, because they did the same with RESA, the Regulatory Enforcement and Sanctions Act 2008, which they actively did not want to have, because they said they did not need it, although they had been very active in the process before that. They have form.

Alexander Jackman: I can give one example, although not of a specific regulator, but of the way in which some have come together to perform what I would view as a duty towards economic growth. Sara previously mentioned some of the LEPs, but in Leicester and Leicestershire in particular, all the local regulators have come together to produce one phone number, so if business has a question about any particular issue of regulation, it has one phone number and does not have to trawl through to find lots of different contacts. That is the kind of thing that I am talking about when I see the growth duty as of benefit to business.

Q233 Thomas Docherty: I want to go back to the description that Mr Jackman gave earlier about the relationship between regulators and those they are regulating. Forgive me for returning to this, but in the sectors of public safety, and specifically for the Office for Nuclear Regulation, which is about safeguarding nuclear power stations, nuclear submarines and so on, and the Drinking Water Inspectorate—but not the other things: not Ofwat or the Environment Agency—does the panel think that it is desirable from the public's point of view to have a closer relationship between the people responsible for nuclear safety and the people generating nuclear power, and the same for drinking water, or are you aware of any examples of any companies operating in either sector that have lobbied for their respective regulator to be given those additional responsibilities?

Alexander Jackman: I am not aware of any specific examples. I caution against getting to a situation where regulators see others exempt from this and perhaps direct more of their resource towards finding ways in which they might themselves reach the level of being exempted from it. I would support the inclusion of those two particular regulators. I suggest that the draft guidance—again, as it is written—should allow the flexibility for any regulator to decide to what extent it should be applying this kind of duty. With regard to public safety in particular, perhaps there is a need to do very little, for a regulator working in that sphere, other than to say, "Look, we understand we have a growth duty. Our primary statutory function is to look after public safety; therefore, we do not believe there is a necessity to have carried out additional work." However, they still fall within in the scope for the growth duty.

Professor Black: It goes back to my point about additionality. If nuclear is out, but the HSE—which does major hazards as well—might be in, what is the economic growth duty apparently adding in one sector of major hazards that it is inappropriate for it to be adding in another sector of major hazards? Do you see what I mean? If the overall idea behind the growth duty is to do very laudable things, which I would completely applaud, that make it easier for businesses to engage with their regulator—as you say, to have a single point of contact, extend the lead regulator across local authorities, and have joined-up inspections and an understanding relationship—that is fine and I am all for it. If the growth duty is really about making regulators have common sense about the way they are implementing their objectives and achieving all the things we have been talking about—about benefits of business, balanced regulation that is proportionate and targeted, and so on—why is that not appropriate in drinking water or in a major hazard industry, but it is appropriate in health and safety, point source discharges into rivers, and various other things?

Q234 Thomas Docherty: I do not disagree with that analysis, Professor Black, but is that not surely, if I was being reasonable, what the Government are trying to do, which, as Mr Jackman has suggested, is where appropriate, to have a more harmonious relationship and not to put up unnecessary burdens? Public confidence and common sense tells me that where you have significant risk from, to use your example, water becoming polluted, as you have just said, which would be covered by the Drinking Water Inspectorate, or a leak of radioactive water out of a power station, under the ONR's responsibilities, the cost of a failure is far greater, to be absolutely callous, than an individual falling off a ladder. It is the proportionality of risk. Rather than it being about the regulator, it is the regulators' public safety function that makes them exempt.

Professor Black: I take that argument, but again, it is a question of the consistency of its application. A lot of our regulators regulate a wide range of businesses that pose differential ranges of risk. Take the Environment Agency, for example. It ranges from coal-fired power stations down to how hairdressers dispose of their chemicals and farms dispose of fertilisers. They can divide up their regulated populations—as they do, have been encouraged to do under Hampton principles and have an obligation to do—into firms that pose different levels of risk. They have adopted a risk-based approach to their regulatory requirements. All of them, in different ways, categorise firms and activities in terms of the risk that they pose, the probability of a risk occurring and the impact of that risk, should it crystallise.

So, across all regulatory remits, high risks as well as low risks are regulated. The economic growth duty, as framed, is just to "have regard to". It does not require a sliding scale on which economic growth can be prioritised over other regulatory objectives in areas of low risk as opposed to high risk. It would be interesting to see whether the guidance came out with that; I would be slightly worried if it did, having worked on a number of different low risks and knowing that they can accumulate into one very big risk if you leave them alone for too long.

Do you see what I mean? You could argue, "Take the high risks out." Why then do we take some risks out and not others? Why is the overall concern about the need to be risk-based and have more concern for compliance and higher standards in high-risk areas than lower-risk areas not already captured by the obligations to be proportionate and targeted, and to have a risk-based approach? Again, what is this adding, really?

Q235 Andrew Bridgen: As we know, a large amount of the regulation that affects business in this country is not generated in this place but comes from the European Union. Do you think that the duty to take account of economic growth might have some effect in reducing gold-plating by regulators of European regulations? Would that be at all helpful?

Professor Black: It is a bit like saying, "Have you stopped beating your wife yet?" isn't it?

Q236 Andrew Bridgen: Be nice.

Professor Black: On the issue of the gold-plating, there are a number of different culprits, if there are culprits. There are the legislators themselves: MPs and Parliament. A number of regulators do not have rule-making powers. They can issue guidance, but they cannot—

Q237 Andrew Bridgen: It is interpretation, is it not?

Professor Black: It is interpretation. It comes back to whether it will mean that you have more proportionate regulation. Perhaps it is a guard against gold-plating where you do not think gold-plating is necessary. Yes, it could be. Will it necessarily have that effect? No.

Q238 Andrew Bridgen: Do you accept that because of the wide range of regulators and the broad-brush approach to the guidance, which gives them a lot of leeway, the growth duty will not be consistently applied? It probably should not be. It will be different across different regulators and, due to the vagaries of the regulators, probably different in different parts of the country, and potentially within the same regulator.

Professor Black: Ah, well, that brings us to another issue. Yes, I think that it will be varied—to an extent it should be varied; there is no "one size fits all"—between regulators and within the population of regulatees that they regulate. In terms of the consistency issues, one of the issues for business that is rightly coming out is around consistency of application. That is where we worry. Although we already know that we have issues of consistency between local authorities, we must think about who is implementing this. Sometimes it is the big regulators, and a lot of the time for businesses it is the local authorities—the trading standards or the local environmental health folk. If they are given something else to have regard to without clear systems in place to ensure consistent application, will they say, "Do you know what? I can do this in Pembrokeshire, but I cannot do it in Cornwall," or, "I can do this in Norfolk, but I cannot do it in Yorkshire"? There needs to be a consistent understanding of the application of the duty, as there must be for all the other aspects of the regulation that they have to implement. Consistency is a problem that goes beyond this element.

Q239 Tom Brake: Professor Black, can I bring you back to your apocalyptic description of what happened in New Zealand when there was deregulation and all the new buildings started leaking? I assume that you have seen the draft guidance.

Professor Black: I have not, actually.

Q240 Tom Brake: Okay. I will read what it says:

"The duty requires that economic growth is a factor to be taken into account alongside regulators' other statutory duties…The duty does not set out how economic growth ranks against existing duties as this is a judgment only a regulator can and should make…The duty does not oblige the regulator to place a particular weight on growth."

Given that description of the duty, do you have any reason to believe in 10 years' time we will find that as a result of the Bill all the buildings leak or the doors on the nuclear power stations are falling off?

Professor Black: Or are blown off. The answer is, how can you know when it is a discretionary rule? I go back to the additionality of it: what is it doing? How it will turn out in the next 10 years is down to how the discretion is used. The issue is not that regulators should not be given discretion—there are fair reasons why discretion is needed. It is about how the regulatory performance in exercising the discretion is evaluated and over what time period.

Q241 Tom Brake: I understand that. Are you of the view, for instance, that the Drinking Water Inspectorate or the ONR will not give sufficient priority to nuclear safety or the quality of drinking water? Do you have any reason to believe that that will not be their priority when they assess their regulatory functions?

Professor Black: I have absolutely no basis on which to make a decision either way. I do not know them well enough.

Q242 Tom Brake: May I move on to a slightly less contentious subject? Mr Jackman, I do not know whether you were in earlier with the previous business representatives, but the Bill proposes to involve employers more greatly in establishing apprenticeships. Does your organisation have a view on that, in terms of the standards, and so on?

Alexander Jackman: Our members have certainly called for it for a long time.

Q243 Tom Brake: What level of engagement do you expect the organisations and companies that you represent to have in the process of defining the standards and the range of apprenticeships that are available?

Alexander Jackman: As a business intermediary, we will be pushing any new power that our members have in developing new apprenticeship standards, and trying to encourage them where possible to add to the process, whether that is through the online system that Sara mentioned earlier or other methods. Where they are uncomfortable about doing that, we will do it ourselves by forming groups, talking to members, seeing what they want and making those propositions as an organisation. Many of our members are also members of direct trade associations. We are a business membership body that provides advice on employment law and so on, but they are likely to be members of specific trade bodies, through which they can seek to design those standards.

Q244 Tom Brake: Professor Black?

Professor Black: On apprenticeships? Not my ballpark.

Q245 David Rutley: Going back to the duty of growth, Professor Black, you have put forward your view and you seem to have some fundamental concerns given your experience elsewhere in the world. Drawing on that experience, are there any examples the other way around where regulators have gone too far in carrying out their duties without due regard to the impact on growth and the economy more widely?

Professor Black: That is a fair enough question. Are there any perfect regulators anywhere? No. In terms of better practice, really what one is talking about is understanding what it is that you are trying to achieve and understanding the businesses that you are regulating, so that you know that there may be alternative ways of achieving those different types of objectives. There has been quite a considerable rethinking of regulation and different regulatory strategies over the past 20 years as part of the better regulation movement, and there has been a recognition that a prescription of precise ways of doing things is not necessarily the best way.

I am doing some work on regulatory disasters at the moment, which is gallows humour-type research. I have been looking at Deepwater Horizon, and one of the criticisms that came out of the regulation of deep-sea oil drilling or offshore oil drilling in the US was that regulation was over-prescriptive and had not been changed in line with changes in the technology of deep-water drilling, so in effect deep-water drilling was unregulated

[David Rutley]

because all the regulations that existed assumed that a completely different model of technology was being used. There you have an example of over-prescriptive regulation not achieving the overall safety objectives that were needed. In that case, it was not because it was too light but because it was too prescriptive, and it did not change as the technology changed.

What you need, economic growth duty or otherwise, is regulation that has a clear set of objectives. Yes, there will be trade-offs between those different objectives, but you have a regulator that understands the business and you have a business on the other side that is willing to engage with the regulator in a constructive way and that has a common commitment to shared goals. That is a bit of a regulatory utopia, but that is where one wants to end up. What one is trying to do, in both the economic duty and other aspects of the better regulation movement, is to achieve that utopia. It needs buy-in from both sides, however, and it needs a recognition along the way that you may experiment with different things and they may go wrong but you can learn from that.

As I say, I think the growth duty as it stands is a proposal to be implemented. What I am really arguing about is: yes, it may be implemented in ways that will ensure that we are nearer to, rather than further away from, that regulatory utopia. In order to achieve that, there are various steps along the way that may be better—in terms of enhancing the idea of proportionality, the joining up with business, the understanding and so on—than other ways.

Q246 David Rutley: Given those points, is not all this trying simply to get to that utopian position? All that this requirement or duty to consider will do is to prompt a series of questions that could get us to a better place.

Professor Black: It could do. What I am doing, in what I have just put out and in the evidence that I wrote, is playing the devil's advocate and fulfilling the challenge function that is my job as an academic, which is to say, "Yes, it could go that way, but it could go the other way." That is why I could not answer the question about whether this was going to lead to utopia or apocalyptia—dystopia, as it were—because it is all in the implementation and it is all in the detail. You cannot tell at this point.

Q247 David Rutley: Mr Jackman, is it fair to ask you the same question? Do you have any examples where regulators have taken it too far and blocked out growth as a result?

Alexander Jackman: We do not have specific examples, but historically our members have expressed a desire to see any regulatory interaction with them supporting them towards compliance. In the past, we have had reports that rather than trying to support businesses to reach compliance or good practice, regulators have been trying to push a business towards best practice. I would suggest in some examples that while best practice is a desirable goal, it is something that can be achieved over a longer period of time. We would much rather that there were initial conversations about getting a business compliant, and thereafter trying to reach higher standards. Best practice, to me, is a unique selling point for a business, whereas compliance is in the interests of everyone.

The Chair: Are there any further questions?

Ordered, That further consideration be now adjourned. *—(Gavin Barwell.)*

5.40 pm

Adjourned till Thursday 27 February at half-past Eleven o'clock.