PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

DEREGULATION BILL

Fourth Sitting

Thursday 27 February 2014

(Afternoon)

CONTENTS

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Monday 3 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

Public Bill Committee

Thursday 27 February 2014

(Afternoon)

[Mr Jim Hood *in the Chair*]

Deregulation Bill

Clause 1

Health and safety at work: general duty of self-employed persons

Amendment proposed (this day): 3, in clause 1, page 1, line 4, leave out subsections (1) and (2) and insert—

'(1) After section 52 of the Health and Safety at Work etc. Act 1974 (meaning of work and at work) insert—

"52A Self-employed persons: list of low risk activities

The Executive shall, for the purpose of clarifying the duty set out in section 3(2) of this Act—

(a) prepare and maintain a list of undertakings commonly carried out by self-employed persons that, so far as can be reasonably expected, will not expose any persons to risks to their health or safety; and

(b) publicise this list in such ways as the Executive thinks appropriate, including on their website.".'.—*(Chi Onwurah.)*

Creates a duty on the Health and Safety Executive to maintain a list of 'low risk' activities that are not likely to fall within the duty under section 3(2) of the Health and Safety at Work Act etc. 1974.

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing amendment 4, in clause 1, page 1, line 10, at end insert—

'(2A) Regulations resulting from the amendments made by subsection (1)(2) of this Act shall be made by statutory instrument.

(2B) A statutory instrument under subsection (2A) shall be made until—

(a) the Secretary of State has—

(i) consulted with relevant parties; and

(ii) conducted and published a full impact assessment; and

(b) the instrument has been laid in draft and approved by resolution of both Houses of Parliament.

(2C) The Secretary of State shall—

(a) review the definitions of prescribed undertakings specified in regulations resulting from this section annually; and

(b) publicise widely the prescribed undertakings and any subsequent changes made to those regulations.

This would amend the procedure for the Secretary of State to make regulations on which undertakings are covered by the Health and Safety at Work Act etc. 1974.

When we adjourned earlier, Mr Chris Williamson was addressing the Committee. Before I call Mr Williamson, I inform the Committee that the Clerk has received some written evidence relevant to the clause during the lunch break. We have made it available to Members on the table.

Chris Williamson (Derby North) (Lab): I think I was coming to a conclusion in my remarks. [Hon. Members: "Aah!"] I know that Members want me to go on for longer, but there might be other opportunities for them to benefit from my oratory skills.

I want to refer to the point made by colleagues on the tax take. Increasing the number of self-employed workers has an impact on the tax take, and that is important for those concerned about ensuring that we have a decent society. Our public services define a decent society. Public services ensure we are cared for when we are old, looked after when we are sick and keep our streets clean, as well as the rest of the gamut of public service activities. If the tax available to sustain those services is impinged on by increasing the number of self-employed workers, that has an impact.

The original purpose behind the health and safety provisions stands today. Muddying the waters in the way that the Government propose takes us backwards, which would be regrettable. Our job in this place is to ensure that we make progress and do not take our country and citizens back to a time when less protection was available to them. For that reason, I will support the amendments tabled by my hon. Friend the Member for Newcastle upon Tyne Central, and I urge colleagues on both sides of the Committee to do the same.

The Solicitor-General (Oliver Heald): May I start, Mr Hood, by joining the welcome to you as Chairman and saying how delightful it is to be under your tutelage once again? I also welcome the hon. Member for Newcastle upon Tyne Central and her colleagues on the Opposition Front Bench.

Part of the Government's main policy objective is to reduce the burdens on business to achieve growth. As a number of Members have said, the Health and Safety at Work, etc. Act 1974 is an important milestone in health and safety. Health and safety is important and I do not think anyone on the Committee would disagree with that. There have been considerable achievements, as has been mentioned, not least last year when we saw the Olympic site developed. It was the best health and safety project in Europe at the time.

Kelvin Hopkins (Luton North) (Lab): Will the Minister give way?

The Solicitor-General: In a moment. I will just get started, if I may.

Recent reviews have highlighted that there is a perhaps unjustified fear of health and safety, a fear of being sued and a perception of heath and safety that is unhelpful. Poor health and safety advice is given by badly qualified consultants. That mix is a restraint and burden on business. The Government have acted to try to make improvements to reduce burdens, but we have not done that on the basis of headlines in newspapers or anything like that; we have done it on the basis of rigorous research.

Professor Löfstedt, who has been mentioned already—we have his letter supporting the Government's approach—is the king of risk management. He is a professor at

King's college London and is highly regarded. When the witnesses gave evidence, they all accepted that he was a top academic in the field. The point that he made in his report was that there is a case for following a similar approach to other countries and for

"exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others."

He said that this

"will help reduce the perception that health and safety law is inappropriately applied".

It is the Government's case that it is important that this perception should change,

Chris Williamson: Will the hon. and learned Gentleman give way?

The Solicitor-General: I will give way first to the hon. Member for Luton North, but will make one more point. The Government put forward their proposal to the Joint Committee, which looked at it and felt that it was necessary to define the group that was to be non-exempt or exempt more accurately than had been done in the first attempt. That is why clause 1 is as it is.

Kelvin Hopkins: The point has passed. It was a small point, but the Minister mentioned the Olympics and the construction work in east London. It contrasts in an extreme way with what has been happening in Qatar, where hundreds of Indian and Nepalese workers have died because they do not have the protections that workers do in Britain.

The Solicitor-General: I think we all agree with that.

Chris Williamson: On the point that the Minister makes about the perception of health and safety being an impediment and a burden, does he not agree that it is unhelpful for Ministers and Members on the Government Benches to be constantly reinforcing the view that health and safety is in some way excessive and a barrier? It would be incumbent on Ministers to stand up for health and safety. If we give the true picture, maybe the perception could be dealt with through that route, rather than taking the legislative measures that the Minister proposes.

The Solicitor-General: If it is true, as I argue, that there are badly qualified consultants going round giving poor advice in this field and there are a lot of people who are concerned that they might be sued or prosecuted, then surely the hon. Gentleman must accept that if we are to do something about it, taking the advice of a leading figure in the field and exempting people where we can is a sensible thing to do.

Thomas Docherty (Dunfermline and West Fife) (Lab): The Minister is being most generous with his time. Will he clarify a point that we were discussing during our short recess? If a clerical worker who is self-employed works in an office-based job, but the office itself is within, say, the Olympic construction site, a power station or something else, in the Minister's learned opinion would that self-employed clerical worker be exempt from these regulations or not?

The Solicitor-General: We are trying to exempt people unless they are on the list of activities. If they are on the list of activities then they are not exempt, otherwise they would be if they are self-employed.

Toby Perkins (Chesterfield) (Lab): To clarify what the Minister is saying, if someone performs a task that is not considered dangerous, such as working at a computer on a desk, but they are in an environment that we might consider dangerous, such as a power station or a building site, would they not be covered because the task they are doing is safe?

The Solicitor-General: Clearly, there will be very good consultation in respect of this. *[Interruption.]* No, the point I am making is that the HSE has said it will consult on this. If the hon. Gentleman or anyone else has a particular concern that there is a dangerous situation that needs to be covered, they will have the opportunity to put that forward. That is clear. The other point to make, which is important, is that the HSE has a role in advising business and will issue guidance so that businesses are aware. We had the example of the hairdresser earlier. If a hairdresser looks after and uses chemicals, then that activity is on this list. Certainly as regards the activities of that person, they would have the general duty on them. That is my point.

Several hon. Members *rose—*

The Solicitor-General: I will give way to my hon. Friend the Member for Macclesfield.

Thomas Docherty: Help him out.

David Rutley (Macclesfield) (Con): Far from it. I just want to amplify the concerns that the Minister has been addressing. I will never forget the time that I was in Macclesfield, talking to a constituent, who was concerned about excessive regulation giving health and safety a bad name. I asked the person who they worked for and they said, "The Health and Safety Executive." They were so concerned that excessive regulation was giving their industry a bad name. Does my hon. and learned Friend agree that we have to deal with that perception, and that the steps he is talking about will help tackle that?

The Solicitor-General: That is exactly the point I am trying to make. Reports on health and safety concerns have stated that there is that perception, and that poorly qualified consultants are giving poor advice. The Government are dealing with that. It is a barrier to growth and restraining business. We want business to grow, because we as a country need it.

The Government's efforts are based on research of an academic kind; they are measured and not based on headlines or anything of that sort.

Toby Perkins: Will the Minister give way?

The Solicitor-General: I just want to make one further point.

[The Solicitor-General]

In so far as a hairdresser is handling chemicals and storing and using them, they would be covered by this duty, so a hairdresser who does not do that would not be. If people were to work on a construction site, as in the example given by the hon. Member for Dunfermline and West Fife, and not doing construction, and it was no part of their role to do construction in any way—in other words, they are not doing the hazardous activity—they would not be covered, because they are a self-employed person not doing something hazardous.

Thomas Docherty: I worked at a nuclear power station for three years. We had lots of self-employed or agency staff working in important clerical roles, but it is common sense that there is a duty regarding behaviours for people next to a nuclear reactor, particularly as it is a busy industrial site. Does not the Minister understand that he is solving a problem without recognising that the location is as important as someone's specific activity?

The Solicitor-General: Just to be clear, people in the hazardous part of the business environment will obviously be covered because they are in a hazardous situation.

Thomas Docherty *rose—*

The Solicitor-General: I think the hon. Gentleman is trying to make a point that is really not there.

Thomas Docherty But will the Minister say which bit of a nuclear power station is not hazardous?

The Solicitor-General: I am not suggesting for a minute that there are not parts of a nuclear power station that are. Of course it is a hazardous place. It is on the list. Anyone who works there would be covered, whether they are self-employed or not. My point is that people working on a construction site in an office who are not involved in any hazardous activity and are not in any way involved in it would not be.

Several hon. Members *rose—*

The Solicitor-General: I shall make a bit of progress. I think that the point is pretty clear.

Clause 1 is currently worded to exempt self-employed people, except those on the prescribed list, and it should exempt approaching 2 million people, but it does not change the law on self-employment in any way. The definitions remain the same. There is no reason to think that it will change employment law at all: it will not.

Of course, the issue raised by the hon. Member for Newham about examples of payroll companies and the like—

John Cryer (Leyton and Wanstead) (Lab): Leyton and Wanstead.

The Solicitor-General: I apologise; I have it written down.

The hon. Gentleman's example sounded bad, but the Bill would not deal with that in any way. He will know that there is long-standing employment law on this point, and long-standing national insurance law as well, which is dealt with by the Treasury. The leading case in deciding whether somebody is employed or not goes back to 1968. There have been cases that the trade unions and major companies and employees have been involved in for many years.

The current draft prescribed list of undertakings has been compiled to include work activities that have the potential to cause serious harm to others. It includes international health and safety obligations and cases where high numbers of self-employed people are working in areas where there are high injury rates, such as agriculture—that would include a beekeeper, provided he was doing that in the course of a business—and it has all the existing definitions to support it. On this list, where a subject is entitled agriculture, it is defined in accordance with the existing law.

2.15 pm

Kelvin Hopkins: The Minister is drawing distinctions between activities, some being hazardous and others not. It is not necessarily about the activities; it might be the equipment. Office workers have contracted repetitive strain injuries and damage to eyesight from poor screens. In my office we have an electric guillotine that, without a guard, would be extremely dangerous. There all sorts of potential dangers even in an office. It is not the activity; it is the equipment. Electrical equipment always has the potential to inflict shocks. There is especially a problem if children are around. There all sorts of items that could raise dangers even in a self-employed office environment.

The Solicitor-General: Of course, all the duties regarding an employer and employee remain. There is no question of changing those. A self-employed person might possibly have an action in tort if they were injured by other people's equipment. The point about the Health and Safety at Work, etc. Act 1974 is using the criminal law to enforce a general duty. It has always been seen as a measure to use against serious risk. That approach does not change under the proposals we are making. We are not saying that 2 million people have to look at the risks and consider them in detail when they are in safe occupations.

The Opposition seem basically to agree with that approach, but their amendment suggests that we should prepare and maintain a list of self-employed people undertaking low-risk activities. It would be a time-consuming, enormous task to produce a list of every possible activity that is safe. It would also be pointless, because the evidence base is the other way. The Health and Safety Executive and others have collected information about the hazardous risks we are talking about for years. To compile a list of occupations that have risks is a much more straightforward, simple and sensible thing to do than to try and produce a list of what is safe, which would be massive.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): The Minister must have a vivid imagination if he believes we share a common approach. We share a common desire to improve regulation and reduce burdens, but our amendment is to clarify and address the issue of perception, rather than to remove legislation for health and safety.

The Solicitor-General: The hon. Lady's amendment proposes that the Health and Safety Executive should prepare and maintain a list of self-employed people undertaking low-risk activities. That would be an enormous task and create confusion. It would be a less satisfactory way of doing what the Government are trying to do, which is to create a simple, clear way of allowing people to see whether they are covered or not.

Toby Perkins: The hon. and learned Gentleman says that the amendment would cause confusion. He is proposing legislation specifically naming what is dangerous. Hairdressers who use dyes are on the list; those who just clip hair are not. Someone who has to walk across a building site every day but is working on a computer is not on the list. The idea that what he is talking about here is simplifying the situation is ludicrous.

The Solicitor-General: To put it the other way, on the hon. Gentleman's list would be hairdresser, non-use of chemicals, and clerical worker, not working in construction. There is no difference; it is just that his list—*[Interruption.]* I do not know: 10 times as long. It would be an enormous list trying to include every safe occupation. It would be a genuine lawyers' feast. The most important point is that we had the benefit of pre-legislative scrutiny on this Bill, and those who scrutinised it said that they wanted it to be easier to understand who was and who was not exempt. They were in favour of exemption but they wanted it to be clearer. It is much simpler to do that by providing a short-ish list of the hazardous occupations than by providing an enormous list of safe occupations. Also, the evidence base is of what the hazards are; it is not of what is safe.

John Cryer: I think I am right in thinking that the Minister said earlier that the list would be subject to a Health and Safety Executive consultation, but we are now at Committee stage and presumably Royal Assent is not that far away. How will that fit in with the consultation, because the Health and Safety Executive—which has been cut, so it has fewer resources—must hold a consultation, wait for the responses, then contribute to the Bill. Will the Bill be issued with the list, or will that come later?

The Solicitor-General: The idea is that the regulations should be in place at the time when this is implemented; otherwise, it could not be implemented. So the idea is to implement the clause when the regulations are in place.

John Cryer: The list?

The Solicitor-General: The list would be in regulations.

The Chair: Order. I am trying to be helpful. Hon. Members were asking earlier whether we would have a stand part debate. If they will not allow the Minister to get through his response without a huge number of interventions, which will cover part of what would be expected to be in the stand part debate, hon. Members may be talking themselves out of having a stand part debate. So I would hope that interventions are to the point, as has been previously raised, and that they would be short interventions and not contributions to a debate.

The Solicitor-General: It may help the hon. Member for Leyton and Wanstead if I finish my remarks anyway, because I deal with a lot of these points.

The current drafting of clause 1 and the existing statutory framework within the Health and Safety at Work, etc. Act 1974 does achieve a number of aspects that amendment 4 purports to introduce. Clause 1 limits the duty in section 3(2) of the 1974 Act to undertakings "of a prescribed description". "Prescribed" is already defined in the 1974 Act to mean prescribed by regulations made by the Secretary of State. It is not necessary, therefore—I do not know whether this will help—to specify in the clause that regulations need to be made by statutory instrument. That is already there in the 1974 Act.

The amendment seeks to impose a statutory obligation on the Secretary of State to consult with relevant parties and to conduct and publish a full impact assessment. The new regulation-making power created in subsection (2) is a relevant statutory provision, and as such it already falls subject to the statutory duty to consult in section 50 of the 1974 Act, so consultation is there already as well. There is no need to repeat that in a separate amendment, and the Government will comply with the requirements to produce and publish an impact assessment alongside any new regulations, which they always do. The existing statutory framework in the 1974 Act does not provide for the new regulation-making power to be subject to affirmative resolution procedure, because the increase of parliamentary time that that would require is not considered appropriate, and normally the affirmative procedure is kept for cases where primary legislation is being changed by secondary legislation. But the option would be available to pray against the regulations if there was concern, and of course the business managers would then wish to ensure that there was a debate.

Chi Onwurah: Just to clarify, is the Minister saying that a full impact assessment regarding that list will be published, which will identify, for example, the impact on hairdressers and nuclear workers of that list?

The Solicitor-General: It will set out, in the normal way, all the impacts that the Government are required to set out under their policy and guidance on this. Certainly if, in the course of the consultation, the hon. Lady or other people raise concerns, they will be considered, as they should be.

Most of what the hon. Lady is proposing in amendment 4 is already covered by existing law. It is worth noting that the Delegated Powers and Regulatory Reform Committee looked at the clause and did not consider the affirmative resolution procedure to be appropriate, although it would normally say so if it thought that that would be right.

Finally, the need to ensure that new regulations are regularly reviewed is accepted under the Government's better regulation agenda. Amendment 4 would impose a statutory obligation to review the regulations annually, which is over-burdensome. Our intention, however, is that any new regulations made under the power will contain a duty for the Secretary of State to review them every five years. That complies with the Government's better regulation guidance. The Health and Safety Executive will produce guidance on its website to ensure that the

[The Solicitor-General]

legislative change is properly understood by those affected. It will also ensure that clear guidance, with examples, is available to the self-employed engaged in high and low-risk activities.

On that basis, I hope that the amendment will be withdrawn.

Chi Onwurah: The debate has realised my expectations with regard to the expertise of Members, as well as their interest in—and at times excitement about—the subjects we are considering.

The hon. Member for Birmingham, Yardley made a considered contribution based on his experience. My hon. Friend the Member for Luton North made a number of excellent points about the importance of health and safety. My hon. Friend the Member for Leyton and Wanstead described the clause without our amendment as a lawyers' charter and emphasised the point about increasing bogus self-employment, which I did not feel able to mention enough in my remarks. My hon. Friend the Member for Derby North talked about his own experience of industrial accidents, again emphasising the importance of what we are discussing and in particular why we must retain our strong health and safety requirements while addressing perceptions as necessary.

A number of my hon. Friends wished to vote against the clause in its entirety, although they expressed their support for amendments 3 and 4. I understand their wish and considered long and hard before tabling the amendments. My hon. Friends may say that I am being idealistic or naive, but I wanted to be in Committee with a shared desire to address true underlying concerns about the perception that health and safety represents a burden, while maintaining the strength of our existing health and safety legislation.

I thank the Minister for his response. He gave some clarity about the impact assessment at least, if not the timing, so I still find myself confused.

Toby Perkins: The Minister's speech was similar to an organic process: we could see the Bill evolving and changing in intent before our very eyes. The idea that what has been presented will in some way offer certainty to people about whether they are included is so obviously wrong.

Chi Onwurah: My hon. Friend accurately, if perhaps a little harshly, describes my sense of remaining confusion, which many will unfortunately share.

2.30 pm

The Solicitor-General: The hon. Lady expressed concern about the timing. The impact assessment would be published when the regulations were before the House. The aim is for the whole legislative package, including the regulations, to be in place by the time of Royal Assent.

Chi Onwurah: Although that is a clarification, I truly do not understand how we are expected to give the Bill full scrutiny when we have no assessment of its impact in so many different areas. I look forward to an explanation that would clarify, for example, what would happen if my hon. Friend the Member for Dunfermline and West Fife was working in a clerical role in a nuclear station and was visited by a hairdresser who had chemicals. Would the hairdresser be subject to health and safety legislation while my hon. Friend, who might have access to the nuclear power station's entire IT system, would not be?

Andrew Bridgen (North West Leicestershire) (Con): Were the Opposition not comforted and reassured when they received Professor Löfstedt's worthy letter, which deals with some of those concerns, at lunchtime today?

Chi Onwurah: I am conscious of your guidance about the stand part debate, Mr Hood, but I will briefly respond to that point. I have read Professor Löfstedt's letter, but it is an academic clarification in the truest sense of the word. Although Professor Löfstedt says that he asked for action to be taken, he says:

"I believe this position was consistent with the spirit of my recommendation."

I would not call that a ringing endorsement of the provisions.

The Solicitor-General: It is better than "I disagree."

Chi Onwurah: It is, but it is still not a ringing endorsement. Amendment 4 is simply a probing amendment. Amendment 3 is designed to address the Minister's concern about perception, which we share, without undermining the critical health and safety legislation that self-employed people deserve as much as others do. I want to press amendment 3 to a vote, and I hope the Minister and others will join us in voting for it.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 9.

Division No. 1]

AYES

Cryer, John	Perkins, Toby
Docherty, Thomas	Turner, Karl
Hopkins, Kelvin	
Onwurah, Chi	Williamson, Chris

NOES

Barwell, Gavin	Heald, Oliver
Bingham, Andrew	Johnson, Gareth
Brake, rh Tom	Nokes, Caroline
Bridgen, Andrew	Rutley, David
Duddridge, James	

Question accordingly negatived.

The Solicitor-General: I beg to move amendment 2, in clause 1, page 1, line 11, leave out from 'Executive)' to end of line 12 and insert 'after subsection (4A) insert—

'(4AA) Subsection (4)(b)(i) does not apply in relation to the making of regulations under section 3(2) for the railway safety purposes (and, accordingly, the Executive shall submit under subsection (3) such proposals as the Executive considers appropriate for the making of regulations under section 3(2) for those purposes).".'

This amendment will enable the Health and Safety Executive to make proposals for the making of regulations under section 3(2) of the Health and Safety at Work, etc. Act 1974 for railway safety purposes. Section 3(2) is amended by clause 1(2) to restrict the general duty imposed by it to self-employed persons who conduct an undertaking prescribed in regulations.

This is a minor and technical amendment to clause 1(3) in consequence of changes in the Energy Act 2013 to section 11(4) of the Health and Safety at Work Act, etc.1974. Its effect is simply to ensure that the Health and Safety Executive can make recommendations for prescribed activities involving railways.

Amendment 4 agreed to.

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

Chi Onwurah: It is a great shame that the Committee chose to reject our amendment 3. As it stands, the clause is an ideological change to a law that has existed for 40 years and saved many lives. I must confess that I am experiencing déjà vu because, as I have said, the last Bill Committee on which I served considered the Enterprise and Regulatory Reform Bill. It, too, was full of attacks and policies based on anecdote, and here we are again. The Government have given up even pretending to tackle issues that matter to small businesses and ordinary people, such as access to finance and energy prices. Instead, they are taking up the case of the oppressed novelist tied up in red tape—the dead hand of the state stopping him finishing that book while he produces an impact assessment of health and safety on his work.

This week, I read a Cabinet Office report of 2013, entitled "When Laws Become Too Complex". It was mentioned in evidence to the Committee this week and I recommend it. It quotes Edward VI:

"I wish that the superfluous and tedious statutes were brought into one sum together, and made more plain and short."

The truth is that the Health and Safety at Work Act, etc. 1974 brought together myriad statutes into one simple and easy to understand one. The Cabinet Office has a good law initiative whereby laws should be

"necessary, effective, clear, accessible and coherent".

The 1974 Act is all of those things, but we have seen in the debate on a small number of activities and occupations that this clause is ineffective and confusing.

I challenge Government Members to produce one piece of evidence or a witness who can demonstrate with proof, rather than anecdote, that the clause will be effective. I also challenge them to convince us that they have thought through all the possible unintended consequences. It is clear from the debate that they have not thought through even a small number of the possible consequences.

I will not again raise the vision of the hairdresser visiting the nuclear power station, but let me present one scenario in a little detail. Let us suppose there is a worker in a call centre in Newcastle—which is an excellent location for call centres and, indeed, all support services. Their employer tells them that, rather than having an employment contract with a salary, they will now be a self-employed service agent. That happens all too often; remaining levels of unemployment in my constituency and elsewhere across the country mean that many workers find themselves persuaded, shall we say, into unwanted self-employment.

The worker is still doing exactly the same job. They turn up at their employer's premises, but they are no longer covered by health and safety legislation. The employer is no longer officially an employer, because there is merely a service contract. What happens if the worker overbalances on their badly designed chair or knocks a potted plant on their neighbour's head? As my hon. Friend the Member for Leyton and Wanstead said, this clause is a lawyers' charter. Who is to take responsibility? Is that not simply introducing more and more confusion, and for what? It is 37p per self-employed person; 4p per year is probably close to the mark.

Far from improving perceptions of the law, this clause causes confusion. If Ministers want to improve the perception of health and safety, they should support health and safety and champion how it can improve lives. They should tell stories like the one my hon. Friend the Member for Luton North told about health and safety saving lives in this country over decades, and about disregard for health and safety still causing fatalities in many places around the world.

I challenge Ministers again to show real evidence—not what a friend told them, or what somebody mentioned in a pub—that the law is currently being applied inappropriately or that it is stifling enterprise or holding back our economy in any way. If they cannot produce that evidence—Professor Löfstedt's most recent evidence is clarificatory, not new—this is bad law. I would argue that, contrary to being bad for business, the Health and Safety at Work, etc. Act 1974 has made our economy more competitive over the past four decades. Safe, secure employees are more productive employees. Safe and healthy workplaces are more productive workplaces. That is the case regardless of the size of the business. Health and safety is a crucial part of good management and long-term planning.

On long-term planning, there is another area of unforeseen consequences on which the Government have failed to deliver any evidence: occupations that may arise in the future. We live in a rapidly changing environment, in a time when technology is changing our lifestyles, our working environments and our jobs. How will this legislation react to new activities and new jobs in which self-employed persons may pose risks to others?

I want to quote a woman who works for the European Union and health and safety organisations—Conservative Members may not wish to listen. Ms Christa Sedlatschek, director of the European Agency for Safety and Health at Work, said last month that a Europe-wide survey of more than 36,000 businesses found that

"it is not the perceived cost or complexity of health and safety legislation that prevents some workplaces from taking preventive action, but rather a lack of awareness about relevant workplace risks."

I suggest to the Minister and Government Members that the clause will only reduce awareness of risk among self-employed people and small businesses.

2.45 pm

Our work force is ageing, in particular the proportion of those going into self-employment since 2008—I think 60% were over the age of 50. In general, the workplace is ageing, as older people increasingly stay on in work, as well as starting their own businesses, and they will be more susceptible to risks at work—not only falling off a ladder, but a bad back, stress and other conditions that

are becoming more commonplace. In future, we need to be more aware of risk, not less. The argument is economic, as well as about health and safety. Members should also consider the human argument: no cost can be placed on human life, injury or suffering.

If it is not apparent by now, our intention is to vote against the clause standing part of the Bill, in summary for the following reasons. We have seen no rigorous evidence to support any of the benefits that the clause is supposed to bring at any stage. It will have negligible benefit to small business and self-employed people, at the cost of creating confusion for millions of self-employed people in a variety of sectors and dangerous occupations. Furthermore, the clause contributes to a narrative that health and safety is inherently a bad thing, rather than something that can make our economy more competitive and a safer place to work. I sincerely hope that Government Members will look seriously at the clause and not choose ideology and partisanship over something that could cost some people very dear.

Kelvin Hopkins: It was remiss of me earlier not to welcome you to the Chair, Mr Hood, and to say what a pleasure it is to serve under your chairmanship, but I was caught slightly unawares this morning. It is a genuine pleasure. I want to support strongly everything that my hon. Friend has said from the Front Bench and to make one more point, which she hinted at in her speech.

Health and safety legislation is not only about restricting people or making them do things, but about a culture in which we all become conscious of dangers in what we do in our daily lives, at work and outside work. Unfortunately, I was not so sensible myself and slipped on an oil patch—it was nothing to do with work—but I am now much more conscious of the fact that there are dangers. We all become conscious of dangers.

In other areas of life, too, we have become more conscious of dangers, such as wearing seat belts in cars. That was introduced as voluntary, but people did not wear them; once we had to wear seat belts, we became conscious of the dangers in driving and of what can happen with forces of deceleration on the human body when it hits something hard.

Legislation can often change cultures. It can change attitudes, making us more aware. That is what health and safety legislation does, and cutting back on it will have little economic impact. It could be argued that it will have a damaging economic and social impact. Appearing to window-dress for the sake of prejudice outside this place—that health and safety is somehow a bad thing—is a retrograde step and not one that we should welcome. We should be standing up for health and safety and saying that the existing law is the least we should have. The fact that our health and safety law is stronger than that on the continent of Europe is a matter of pride, as well as of common sense. We ought to vote down the clause.

Toby Perkins: I want to add to my hon. Friend's point and one made earlier about the comparison of what happens in Britain with what happens in some countries overseas. One point that has not been made is that in Germany it is much more difficult to set up a company than it is in the UK. One strength of the UK economy is that it is easy to set up a company and to become self-employed. In Germany, it is much more complicated to set up a company and the way that a company is constituted is very different. For that reason, using Germany as an example is different, because companies that employ people in Germany are different.

Kelvin Hopkins: I thank my hon. Friend for making a strong point. The extent of self-employment in Britain is vast, so restricting the application of health and safety legislation to the self-employed is much more serious here than it might be overseas.

I have made the points I want to make; we should vote the clause down. We ought to persuade the Government that they should be standing up for health and safety. They should be saying that the kind of prejudices that float in some sections of the media are utterly misguided, and that Members from across the whole House should stand up for health and safety and express pride in the impact that it has had on our society over the past 40 years and that it will continue to have in future. I therefore support my hon. Friend the Member for Newcastle upon Tyne Central.

The Solicitor-General: We have had a short but none the less interesting debate. The Government's point is not that there is anything wrong with having good quality laws to enforce health and safety and using the criminal law as we do, but that we should not use the law as a restraint on growth when it is not necessary. Professor Löfstedt made that point in his excellent report. It is nonsense to say that there is no evidence, when he had a commission, which included my hon. Friend the Member for North West Leicestershire and other experts from across industry. The report makes the point, which I was making earlier, that there is a problem in Britain and concern that health and safety is being applied unnecessarily in some cases, and that there is influence from third parties, who are promoting the generation of unnecessary paperwork, focusing on health and safety activities that go beyond what is required.

Chi Onwurah: I just want to clarify that when Opposition members of the Committee ask for evidence, we are asking not for evidence about an issue with perception—which the Minister is right to say that Löfstedt speaks to—but for evidence and documented examples of issues with health and safety.

The Solicitor-General: The hon. Lady is perhaps missing the point. There are business people throughout the country and those who want to set up in business, and we do not want to restrain their activities unnecessarily. We want them to go out, set up business and grow. We do not want barriers to growth.

Thomas Docherty *rose—*

The Solicitor-General: Let me just finish the point. Perception is a barrier to growth. We can exempt 2 million people from legislation because they are in safe occupations. They will all be saved from having to do risk assessments, at 15 minutes a person according to one estimate. However, it is not so much the money, as the barrier that the perception creates that is the problem.

The hon. Lady says there was no support for the measure. When the British Chambers of Commerce gave evidence, it supported it. The business organisations support it, because they understand that we have to see whether we can remove barriers to growth and to enterprise. Yes, we are a safe country, and that is a good thing. No one is trying to change that. The difference between the hon. Lady and me is that she wanted a safe list of occupations, whereas I am arguing that there should be a list of high-risk occupations, because that is a simpler way of effecting what Löfstedt says.

Parliamentary Secretary, Office of the Leader of the House of Commons (Tom Brake): It is much more focused.

The Solicitor-General: It is indeed a more focused approach, as my right hon. Friend says from a sedentary position, because it is based on evidence accumulated over the years about what is and is not hazardous.

Chi Onwurah: I thank the Minister for giving way and enabling me to correct, again, his assertion that the only difference between us is the nature of the list. I want the legislation to remain and to support more publicity about what occupations are not risky. He wants to take away the legislative protection of many self-employed people and put a list in its place.

The Solicitor-General: The hon. Lady cannot get away with that. Her amendment 3 said there should be a list of safe occupations and that the people on it would no longer be subject to the law. She cannot now be saying, "Oh, we put that down and if it had been passed, we would still have voted against the clause."

Chi Onwurah: That is not what I was saying. I am not sure that the Minister has fully read my amendment, because it would have removed the subsections that remove self-employed people from health and safety legislation. With my amendment 3, the legislation would have remained as it is under the Health and Safety at Work, etc. Act 1974. In addition, there would have been a list that helped those who are self-employed to understand what limited risks they faced.

The Solicitor-General: Well, either way I am glad we opposed amendment 3. I would just say to the hon. Lady that if that is what she intended, so be it.

Toby Perkins: Will the Minister give way?

The Solicitor-General: No.

Toby Perkins: It is a small point.

The Solicitor-General: I will continue for a moment.

The point is that Professor Löfstedt, who is the leading expert in the field, supported by those in the business world who know about these things, says that people in low-risk activities should not face inspection or have to do risk assessments when they are unnecessary. To have that in the law is bad for the perception, which is a restraint on business and growth. The point Professor Löfstedt makes in his letter, which amplifies what is in his report, is this. Why should somebody in a clerical job—a software developer or writer; people like that—have to go through this process? Why should they have to worry about this? We are talking about 2 million people being required to waste their time and put in fear. *[Interruption.]*

The Chair: Order. I said at the beginning of the Committee this morning that I did not want chatter between the Front Benches. A lot of restraint would be helpful at this stage.

The Solicitor-General: I think we have had a good debate; I am not sure whether the hon. Member for Chesterfield has a further point to make.

Toby Perkins: The Minister says that this is not so much about that issue, but all about the perception. If he were in charge of the Home Office, rather than in his Department, and a rumour swept the town that a moose with the mouth of a tiger was marching up and down the side of the river, then rather than a make a public information announcement that there was no moose with the mouth of a tiger, he would be bringing in a force to kill the moose with the mouth of a tiger. He is dealing with perception. What he should be doing is telling businesses out there about the sensible policies on health and safety, rather than changing the law in a dangerous way in order to deal with a perception that does not legally exist.

The Solicitor-General: The hon. Gentleman makes a point that I do not think stands scrutiny. He admits that imposing a burden on 2 million people is unnecessary, because he admits that there is very little that they should have to do to tackle health and safety concerns because they are in low-risk occupations. What is the point of that? It gives an opportunity to the consultants to go in and give them poor quality advice of the sort that Professor Löfstedt talks about. Perhaps it creates a bit of business for them, but it does not do anything for the reputation of health and safety, which is something that needs protecting, as other hon. Members have said. I do not think there is much more that I can add, but I commend the clause to the Committee.

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

The Committee divided: Ayes 9, Noes 7.

Division No. 2]

AYES

Barwell, Gavin	Heald, Oliver
Bingham, Andrew	Johnson, Gareth
Brake, rh Tom	Nokes, Caroline
Bridgen, Andrew	Rutley, David
Duddridge, James	

NOES

Cryer, John	Perkins, Toby
Docherty, Thomas	Turner, Karl
Hopkins, Kelvin	Williamson, Chris
Onwurah, Chi	

Question accordingly agreed to.

Clause 1, as amended, ordered to stand part of the Bill.

Clause 2

REMOVAL OF EMPLOYMENT TRIBUNALS' POWER TO MAKE WIDER RECOMMENDATIONS

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

3 pm

The Solicitor-General: Clause 2 would remove the power given to employment tribunals in the Equality Act 2010 to make wider recommendations to employers who have lost a discrimination case. When introduced, those wider recommendations were intended to benefit the wider work force in cases where the claimant had already left the employer's employment. However, the Government have found the power to be unnecessary, to generate cost and confusion and to have no known effect in ensuring that employers do not breach equality law again.

Most of the recommendations made by tribunals since 2010 are generic and related to process. We believe that since then, 30 tribunals have chosen to make wider recommendations. About 85% of those concern training for management or updating company diversity policies. Common sense and business sense mean that employers who lose a discrimination case will often take additional actions voluntarily. They do so in the interest of avoiding similar cases being brought against them in the future.

The Government have been working proactively with business through their Equalities Office to improve compliance with the Equality Act. In 2012-13, the Government Equalities Office partnered the British Chambers of Commerce in events across the country, explaining the Act to small business. About 300 businesses attended the events and a follow-up booklet, "Business is Good for Equality", was more widely distributed by regional chambers to their members, which together, employ more than 5 million people.

The director general of the British Chambers of Commerce wrote in the booklet's foreword that the popularity of the events is

"proof of just how much business people appreciate the opportunity to meet government face-to-face to discuss their challenges and successes. I hope that other departments can learn from this partnership between the Government Equalities Office and the Chambers of Commerce Network".

I should point out that even the figure of 300 businesses that attended the events to learn at first hand about their obligations under equality law is 10 times the number of employers who have received a wider recommendation in the past three years. Moreover, the power is, in practice, discretionary. It has no legal sanctions to ensure that a recommendation is carried out. The tribunal has no power to force a non-compliant employer to carry out the recommendations. In practice, tribunals are left trying to set deadlines or seek confirmation of compliance, but it is completely understandable that some employers are just confused about the nature and extent of the requirement itself.

Some hon. Members have expressed concern that repeal will reduce protections against discrimination in the workplace, but I assure them that that is not the Government's intention, it will not be the result, and the repeal does not reduce the rights of complainers. Tribunals continue to have the power to make recommendations. The repeal does not reduce the rights of other employees in the business, as the wider recommendation is unenforceable. If an employer fails to act after losing a tribunal case and a further successful complaint is made against them, a tribunal is entitled to take the previous judgment into account anyway. That can even lead to greater sanctions being imposed by a tribunal if the previous behaviour is relevant.

We consider that that is an appropriate approach to encourage the small number of non-compliant employers to change their practices. Some commentators, including some hon. Members, have suggested that employers want tribunals to have the power to guide them in improving their workplace practices, but we have listened to business and heard evidence that they do not agree. Business representatives, the Institute of Directors, the British Chambers of Commerce and the Federation of Small Businesses support the repeal. They tell us that the wider recommendations power causes burdens to business through uncertainty, risk and cost.

The point was made that an employer, when deciding whether to contest a case, may feel that they have a strong case but worry about the burden and that may affect their decision. Such burdens fall disproportionately on small businesses and affect their ability to operate competitively.

This modest change will take away some of the uncertainty, risk and cost and ensure that when an employer responds to the wider implications of a judgment against them, they are free to act as they—and not just the employment tribunal—judge to be in the best interests of their business. That, in turn, will help small businesses to grow, take on more staff and aid the recovery.

Kelvin Hopkins: I strongly oppose the clause. In one of our sittings on Tuesday, I said that I had chaired a group of Members that was established to campaign against what the Government are doing in weakening tribunals. Tribunals should be a fundamental human right and any weakening of them is very serious. This is a relatively minor part of a tribunal's powers.

The Solicitor-General: The hon. Gentleman knows that thousands of cases every year deal with discrimination, yet in the more than three years since 2010, the power has been used in only 30. That shows that this is not a power that the tribunals are even using.

Kelvin Hopkins: The Minister mentions that only a few have been brought forward. Why, then, bother removing the power in any case?

Thomas Docherty *rose—*

Kelvin Hopkins: I will just answer the point. The power is there if the tribunals wish to use it and, where they have, I am sure that it has had a beneficial effect.

Thomas Docherty: The Minister made our point for us: this power is used sparingly as it is. Does my hon. Friend agree that it is not a cumbersome burden on business?

Kelvin Hopkins: My hon. Friend is absolutely right. I know of tribunal cases, people who have sat on tribunals and those who have gone to tribunal—indeed, some hon. Members, shamefully, have had tribunals against them. For a tribunal to have the power available to make a general recommendation that is not enforced or an obligation to wise up the employer so that they will not make similar mistakes in future must be elementary common sense, even if it is not widely used.

Once a tribunal case has found against them, most employers will mend their ways, but some may need a little more pressure or encouragement to do the right thing in future and not cause distress to those who have suffered from wrongful dismissal or whatever. That would also benefit their company in future; it would mean that they did not make the same mistake again and incur all the costs involved in defending themselves in another tribunal case.

It is perfectly sensible to keep the power in the law as it stands. It may not be used widely, but it costs little and when it is used I am sure that it is beneficial.

Toby Perkins: I agree with my hon. Friend in many ways. As a former self-employed business owner, I know that no one goes into business because they want to spend more time with their bureaucracy and everyone wants less regulation. Many businesses across the land will have been quite excited or even rejoicing when they heard that, after 13 years of talking in opposition and almost four years in government, the Government were finally bringing forward a Deregulation Bill. Sadly, the Bill's name is one of its best parts. We will support many clauses in the Bill, but, frankly, they are hardly game-changing.

Much of the Bill includes measures that will make little or no difference and some of it is not deregulatory at all—some of it will cost business money. Overall, the Government's estimate of the savings for business in the Bill will be less significant than if they had simply sent every British business a single second-class stamp every year. That is the full extent of the money being saved by business under the Bill.

Clause 2 would remove employment tribunals' power to make wider recommendations in discrimination cases that affect employers' dealings with persons other than the claimant. Before looking at why the power is being abolished, there is value in looking at why the power existed. I went back to the Bill Committee for the 2010 legislation to learn about what Members were saying at that time. It was a very different Conservative party in those days. They were still in their "hug a hoodie, try to pretend to be reasonable" stage—very different from today.

The hon. Member for Weston-super-Mare (John Penrose) tabled a couple of amendments and made it very clear that he supported the intentions of the proposal. However, there was something he was worried about:

"I am sure that all members of the Committee would agree that it may be necessary, when a finding has been made that an organisation has been behaving in an illegal fashion, for that organisation to clean up its act and to change what it is doing."

He questioned whether the power would be used far too widely and whether the steps would be binding or mandatory. He questioned whether the impact on business would be significant. He received a reply from the Solicitor-General of the time, who told him:

"The key is that any recommendations made to benefit the broader work force and indeed the business would have to be proportionate to the case that is brought, otherwise it would be unlawful."

He was also told some of the typical recommendations that the then Solicitor-General anticipated the tribunal making.

"Some typical recommendations that might help include taking steps to implement a harassment policy more effectively; providing equal opportunities training for staff involved in promotion procedures; and introducing more transparent selection criteria in recruitment transfer or promotion processes."

In fact, that is precisely the kind of recommendation that has ended up being made. The then Solicitor-General went on to say:

"It is a pretty simple, logical follow-on to a finding in a tribunal that there is a problem and a recommendation on how best to put it right." —[*Official Report, Equality Public Bill Committee,* 25 June 2009; c. 511-513.]

It was there to support businesses. Having listened to those assurances, the hon. Member for Weston-super-Mare withdrew the amendment and supported the proposal.

The Conservative party of the time—very different from today's—having scrutinised the intentions of the Bill, recognised that it was positive and supported it. It now turns out that precisely what the then Solicitor-General said would happen has happened. It has been used sparingly and been relatively modest in terms of what was expected. In fact, we have something that was supported by the Conservatives and that has delivered exactly what they supported back then.

Now, with this very different Conservative party, it is no longer acceptable. That is very revealing about the state of politics in this country. It also shows that we have a Government who have run out of ideas for useful things to do and are simply trying to deal with perceptions in the business community rather than take action about existing problems.

I have spoken about what the Conservative party said, but what the Liberal Democrats said at the time was even stronger. I particularly enjoyed what the hon. Member for Hornsey and Wood Green (Lynne Featherstone) had to say; I think colleagues might enjoy this.

"The passion that drives and motivates Liberal Democrats—that beats in our hearts—is our quest for, and commitment to, a fairer and more open and equal world."

That sounds wonderful. That was what the Liberal Democrats believed then. She went on to say that her only objection to the proposed legislation was that the Government could have taken a more radical perspective. She wanted to see them go further. That is where the Liberal Democrats were in those days. I heard some of them myself. She wanted guarantees that were

"radical and would give us a constitutional right to fairness".—[*Official Report*, 11 May 2009; Vol. 492, c. 577-8.]

That is what the Liberal Democrats were saying when we brought this legislation in. We now have a Liberal Democrat Member who, far from calling for it to be more radical, says that this very proportionate and sensible legislation should be got rid of.

Kelvin Hopkins: The word "flexibility" is used frequently in politics these days as a good thing. It seems that the Liberal Democrats are almost infinitely flexible. Are the Conservatives fond of their flexible friends?

3.15 pm

Toby Perkins: According to *The Daily Telegraph,* not so much any more, but we will see how that pans out.

Let us suppose for a minute that the situation was different. Let us suppose that instead of tribunals making just 30 recommendations and taking a very measured and proportionate approach, they had gone wild and made wider recommendations all over the place, causing huge problems to businesses. Then we would be debating something that businesses across the country were very concerned about and, if we follow what the Minister has said to its logical conclusion, he would have been much happier, because there would have been loads of recommendations. He would have been able to say, "This is a really important power that is being used on a huge scale." In fact, because tribunals have done exactly what the previous Solicitor-General said and used the power proportionately and moderately, he now says, "Let's get rid of it." That does not seem to make much sense.

The Government held a consultation on removing the power to make wider recommendations. They received 157 responses: 12% were in favour and 79% were against. When the Government do a consultation and 79% of responses say, "You've got it wrong," but they say, "We're going to do it anyway," people are bound to say, "What was the point of the consultation in the first place?"

We need to recognise this power in its context. Many of us have, in different ways, been aware of and perhaps had some experience of employment tribunals. The hon. Member for North West Leicestershire said tantalisingly in one of the sittings on Tuesday that he had been to a few in the past. He did not expand—perhaps he would like to—on whether that was in his role as an employer, whether he was a wronged employee or whether he is just one of those people who likes to go and watch employment tribunals.

Andrew Bridgen: I think I have probably attended five tribunals in 25 years as an employer employing up to 250 staff and, from memory, I think that I won four of the five cases.

Toby Perkins: So it was as an employer. I am glad that the hon. Gentleman was able to update us on that. I have not, I am happy to say, been to an employment tribunal myself, but my background is relevant. Hon. Members may be aware that I had my own business for five years before coming to this place, but before that, I worked as a manager at a recruitment firm and I had a number of staff—although nothing like as many as the hon. Gentleman—working for me across five branches. In the course of five or six years, in what was a very high-turnover environment, a number of people who came to work for us subsequently were not able to do the job and ended up moving on, but the way in which the process was handled meant that we did not end up at a tribunal.

We all recognise that sometimes we have employees who cannot do the job that we have taken them on to do and they have to be dismissed, but the fact that that happens does not logically mean—I want to clarify that I am not in any way casting aspersions about the kind of employer that the hon. Gentleman is—that it is inevitable that we end up in front of a tribunal. I was in a business that had a lot of staff turnover. None the less, such situations were managed in a way that did not involve us having to keep going to tribunals.

None of this is to say that there are no employers who have had bad experiences with a tribunal. I know, from a huge series of business consultation visits that I and other members of the Labour party business team have been doing up and down the country, that the issue of tribunals exercises some employers. It is unsatisfactory that employers sometimes feel—the Minister referred to this—that they have a case, but they are nervous about defending themselves, either because of the costs, even though they think that they are right, or because of the reputational risk.

Andrew Bridgen: I will give an example. A constituent came to me. They had a very small business, employing seven or eight people, and they were involved in an employment tribunal. The aggrieved employee demanded that all the employees of the business be there for a three-day tribunal. The business owners had no choice but to settle, because they would not have had a business if they had had to send everyone to a tribunal for three days.

Toby Perkins: I absolutely recognise that, but the clause would not have helped that business in any way whatsoever. That is the important point. There are some difficult issues to solve with tribunals. I recognise that those issues exist and that the process leaves some businesses feeling bitter. They mention the cost and so on, but no businesses have said to me that the issue is the wider recommendations. That never came up.

The Solicitor-General: But it is the case that the British Chambers of Commerce, which meets more businesses than the hon. Gentleman or me, said that the wider recommendations power was a concern for employers in deciding whether to contest a case. If it is concerned, we should take account of that.

Toby Perkins: I certainly think we should take what the British Chambers of Commerce says seriously. Those who read the evidence that it gave on Tuesday will remember that it considers the power a small matter. It was not wildly excited in any way and said that it considered that the power made a small difference, if I remember rightly. That is not to dismiss the concerns, but some of the arguments that we will hear during this debate will put those concerns into context.

I have had many discussions with business groups. Sometimes, there is a danger that, in representing the views of members, the British Chambers of Commerce ends up painting the business community into a position on employee relationships that is not at all reflective of what the business community thinks. It creates a perception that is not reflective. The vast majority of businesses out there are anxious to ensure that they have good relationships with their employers.

There is a balance to be struck. The Bill addresses an insignificant issue to attempt to alleviate a concern, without dealing with the problem that businesses have. It would be good if we saw some policy making from the Government that identified a problem and proposed

a solution to it, rather than proposing a solution to deal with the perception of a problem. By their own definition, it is not even the problem.

Andrew Bridgen: What if those wider recommendations are erroneous or not accurate or not going to address the issues facing the business? The hon. Gentleman is arguing that a tribunal, in only a couple of days, will have more knowledge than the paid directors or owners of the business, and that might not be the case.

Toby Perkins: The sense that we had from the trade unions in evidence on Tuesday was that the power was modestly used, but was designed to be helpful.

Chi Onwurah: My hon. Friend is making a strong and passionate point that has not so far been made in this debate on the reputation of small businesses and their interest and desire to have a harmonious working environment. While owners might not always know everything that goes on within a business, or how certain employees feel in certain situations, most businesses would welcome a better understanding of how the working environment could be improved, which these recommendations might provide.

Toby Perkins: Absolutely. That is an important point, which I will expand on in a moment.

The Solicitor-General: Will the hon. Gentleman give way?

Toby Perkins: I will finish responding to my hon. Friend the Member for Newcastle upon Tyne Central, and then happily give way. I will expand in a moment on how businesses might feel after they lose a tribunal case and the effect that the wider recommendations might have on their perception.

I went from working for an employer with 500 or 600 members of staff to running my own business, so I know how difficult it is for small businesses to recruit staff of the right calibre. Lots of people, I think wrongly, want to work for a big company and do not recognise the opportunities in small businesses. It is incredibly important that we do not send out the message that if people want workers' rights and a fair deal, they should work for a big businesses, and if they work for a small business they can forget all that.

The Solicitor-General: The point that the British Chambers of Commerce made is that although the number of cases was small, the decision to fight them in the first place has a broader impact; its worry is that that affects employers. All the business representatives who responded to the consultation were in favour of repeal.

Toby Perkins: I thank the hon. and learned Gentleman for that point, but why do the 12 representations from businesses he received trump the 125 representations he received from everyone else? The fact is that 79% of those who responded on the wider recommendations think he is wrong, but he is saying, "Hang on, we've got a few who say we are right."

Anyone who witnessed the evidence session on Tuesday will recognise that the British Chambers of Commerce must represent its members. When the Government introduce a Deregulation Bill that removes the expectation on its members, we know that it must support it. However, it was not hugely passionate, and it gave no sense in its representations that the Bill will make a big difference. We will not march out of here and be carried through the streets of Whitehall because of the change. On balance, it will not be good for employers. The British Chambers of Commerce felt that it needed to show some support for the Government's attempts to deregulate, albeit that it did so modestly and unambitiously.

Andrew Bridgen: But does it not say something that the employers' organisations are happy to have the recommendations taken away in the full knowledge that it does not absolve the employers of their responsibilities or future liability, but only takes away the recommendations?

Toby Perkins: I guess the point the hon. Gentleman is making is that the fact that the recommendations are not enforceable is a bad thing. I think it is a positive thing. The employer can receive advice, take advantage of the recommendations and make the necessary changes to prevent it from going back to the tribunal. However, if it goes back to the tribunal 12 months later, the tribunal will say, "Hang on, some wider recommendations were made last time you were here. It looks like you didn't take any notice of them." That is an important piece of information for the tribunal when it considers how seriously the employer is trying to improve things from when it saw them 12 months ago.

Andrew Bridgen: It would be sensible to assume that all employers who find themselves at the wrong end of an employment tribunal decision will look at their business practices, not necessarily because of wider recommendations. What if those wider recommendations are not compatible and would not help to solve its problems?

3.30 pm

Toby Perkins: The hon. Gentleman is tempting me to get ahead of myself in my speech. He is asking whether all people who lose in a tribunal make changes. The evidence is that 59% of businesses that lose in a tribunal make changes and 41% do not. Clearly, that is a partial change. Sometimes there will be isolated incidents, but what happens in one tribunal case does not mean that a change of policy all the way down the line is needed. In many cases, people who lost a in tribunal once might want to make changes and are not doing so.

I have spoken to a huge number of employers over the past three years, and although they have brought up concerns about tribunals, not once have they brought up the issue of the wider regulations. No business likes being taken to a tribunal, and a business would like losing a case even less. Businesses often contest cases because they think that they are in the right in the first place. People across many sectors object to the idea that there is someone who can tell them what they have done wrong, but not how to put it right. We see that in school inspections and many other fields. People say, "They come in and criticise us but they do not actually tell us

[Toby Perkins]

what we have to do to make things right." We currently have a tribunal system that not only gives the stick but provides help on how to put things right.

The vast majority of employers want to be good employers, within whatever limitations they might have. They certainly do not want to be told that their office environment is sexist, racist, homophobic or whatever. Nevertheless, if they fall foul of the law—sometimes, particularly as businesses are growing, the culture changes without the owner's intention—and a culture develops that they want to sort out, it is much easier for bigger companies with more resources and established policies to handle things. For small employers, who are often spinning thousands of plates at the same time and trying to keep their heads above water, it can be difficult to keep a grip on an unhealthy culture that develops as the company grows.

The panel empowered employers to say, "Right, the courts have told us that we got it wrong. We're not going to get it wrong again. They have told us how we can ensure that we are not seen as an environment where racism, sexism or homophobia are casually accepted. We are going to take the necessary action." If someone then says that there is a problem, the employer is actually protected. They can say, "Hang on a second; we had a complaint before. You gave us some recommendations and we went away and took advantage of them." They would be in a stronger place to defend themselves in future tribunals.

By the same token, if employers have not taken the required steps, they cannot claim ignorance. If they are one of the small number of casual employers who do not care about these things, it will be there in black and white. A member of staff will be able to go a tribunal knowing that the company was told to take action a year ago because racism existed in the workplace, but nothing was done. That is the right balance.

To give some context, 56% of employers make changes after they lose a tribunal case. Many of the others are not subject to wider recommendations anyway. The change is therefore not about making things better but about the Government being able to go to the business community and say, "Look, we are trying to make things better for you." That is being done with electoral purposes in mind, and rather than dealing with business's issues, it deals with their perception.

The Minister cites the fact that not that many recommendations are issued as a reason to get rid of them; I think that the fact they are issued responsibly is a reason to keep them. Of all tribunal cases, 15% are lost on the grounds of discrimination. About 3% of that 15% actually go as far as the courts. Of that 3%, less than 1% get wider recommendations. That shows that we are talking about a power that is being used responsibly. It is still in its early days, and was supported by the Conservative party in its more enlightened days—as well as by the Liberal Democrats in their even more enlightened days.

It will be a big mistake to get rid of wider recommendations, and the Government are wrong to do so. It is far better to work with employers and say, "Look, tribunals are a rare thing, and we want to support employers so that they do not end up before one," than to add to the impression that taking on members of staff is a terrifying thing to do. We are discussing a modest power that is being used modestly. The Government's own impact assessment says that the net impact of the change will be to increase the cost to businesses because they will not have that crutch to lean on. It is not the part of the tribunal system that employers fear; it is a helpful addition to a process that may have been resented or found troubling. Removing the power will weaken tribunals, with no benefit whatever to employers.

The Solicitor-General: We have had a short and lively debate. I was not too surprised when the hon. Member for Luton North said that he disagreed with clause 2, because he has made that point in the past. In so far as the hon. Member for Chesterfield is concerned, it is not right to see the Bill as the only thing that the Government are doing on deregulation because it is not. It is part of a process that includes the red tape challenge and measures taken to remove regulations. This Government will be the first to have less regulation at the end of their term than at the beginning, which is a remarkable achievement.

The consultation process is not a poll. It is about what the arguments are and whether they hold water. The Government are right to pursue a growth agenda to pull the country out of the mess that it was in. To do so, reducing burdens on business is important. If all the employers' organisations say that something should be repealed when we ask them, if in evidence to the Committee they say that it has broader impacts on whether employers fight cases that they feel they should fight but perhaps do not in case the tribunal imposes heavy burdens and if a power is passed by this House but not used, as here, surely it should be scrapped.

The hon. Gentleman acknowledged that if employers lose a tribunal case, they look at what went wrong and at what was said to them. He made the point that most of them make changes so that something does not happen again. He said that changes were made in a little more than half of cases, but in some cases the problem is not systemic; it might simply be that a supervisor or someone else in the business did not behave as they should, rather than that proper protections and policies were not in place. My argument to the Committee is that this power is not being used to any extent, it makes no real difference and it is unenforceable, but it is affecting employers and hampering growth.

Karl Turner (Kingston upon Hull East) (Lab): The Solicitor-General is an eminent barrister and, no less, the adviser on legal matters to the Government. He suggests that because something is not being used, we should simply scrap it. The offence of infanticide is rarely used in my experience, but it is on the statute book for good reason. The offence of a mother within 12 months of giving birth bringing about the death of her own child is, I suspect, not one that is often charged but should we scrap it because it is not being used?

The Solicitor-General: We are talking about deregulation. Of course there is a role for the offence of infanticide and I do not wish to see it repealed, but in Committee we are talking about business being restrained by barriers to growth, stopping this country achieving everything that it can economically. The power to be repealed is only a small part of the picture, yes, but the British Chambers of Commerce said that it can have broader

impact and has affected the way in which employers see the tribunal process. It was interfering in that way, to use my words. In such circumstances, there is a case for repeal, which is why I am making it.

Kelvin Hopkins: We will come to the wider debate on growth a little later, but I made the point in a previous sitting that growth arises because of increasing consumer demand. Minuscule changes to the supply side by taking an almost negligible cost away from employers will make no difference at all to the wider economy. It is political window-dressing. I apologise, but I should make one other point. With tribunals, most employers learn from their one mistake—if a case goes against them—and do not do the same thing again. Tribunals, however, might judge that a particular employer—a minority—does need a bit more advice, if I may put it in those terms, and does need to be told.

The Chair: Order. A bit too long.

The Solicitor-General: I will make the point that what the hon. Gentleman has said reminded me of everything that is wrong about Labour. If we look after the pennies, the pounds look after themselves. The Bill will save £300 million over a 10-year period. That is not insubstantial. He may have noticed that some of the measures are small, but there are a lot of them, and the overall effect is to deregulate. We are also trying to reduce taxes and to do things that free up business to go out and achieve. Those things make a difference and I commend the clause to the Committee.

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

The Committee divided: Ayes 9, Noes 6.

Division No. 3]

AYES

Barwell, Gavin	Heald, Oliver
Bingham, Andrew	Johnson, Gareth
Brake, rh Tom	Nokes, Caroline
Bridgen, Andrew	Rutley, David
Duddridge, James	

NOES

Cryer, John	Onwurah, Chi
Docherty, Thomas	Perkins, Toby
Hopkins, Kelvin	Turner, Karl

Question accordingly agreed to.

Clause 2 ordered to stand part of the Bill.

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

3.42 pm

Adjourned till Tuesday 4 March at five minutes to Nine o'clock.