HOUSE OF LORDS
Library Note

Enterprise and Regulatory Reform Bill (HL Bill 45 of 2012–13)

This Library Note provides information on the Enterprise and Regulatory Reform Bill, which is due for second reading in the House of Lords on 14 November 2012. The Note is intended to be read in conjunction with two House of Commons Library Research Papers: *Enterprise and Regulatory Reform Bill* (7 June 2012, RP12/33) and *Enterprise and Regulatory Reform Bill: Committee Stage Report* (3 October 2012, RP12/56) which provide background information and summarise the second reading debate and committee stage in the House of Commons. This Note summarises the report stage and third reading debate in the House of Commons.

Edward Scott
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1. Introduction

The Enterprise and Regulatory Reform Bill was introduced in the House of Commons on 22 May 2012 as Bill 7 of 2012–13. Information on the Bill, including the text of the Bill, accompanying explanatory notes, and links to each debate, are published on the Parliament website. The Department for Business, Innovation and Skills website also provides information on the Bill and its progress through Parliament.

The Bill provides for reforms in a number of different areas. Its purpose, as described in the 2012 Queen's Speech, is to 'create the right conditions for economic recovery by strengthening the business environment, reducing regulatory burdens and improving business and consumer confidence'. It includes provisions for:

- The establishment of a Green Investment Bank, enshrining its 'green' purpose in law and providing powers for it to operate.
- Reform of competition law to promote enterprise and fair markets with the creation of a single Competition and Markets Authority through the merger of the Competition Commission and the competition functions of the Office of Fair Trading.
- Overhaul of the employment tribunal system and transformation of the dispute resolution landscape by encouraging 'early conciliation'.
- Strengthening the framework for setting directors' pay and repealing section 439(5) of the Companies Act 2006, making it possible for directors' remuneration to be contingent on the outcome of the shareholder vote on the directors' remuneration report.
- Reducing burdens on business by repealing unnecessary legislation.
- Limiting state inspection of businesses by extending the Primary Authority scheme.

(Cabinet Office, *The Queen's Speech 2012: Briefing Notes*, pp 3–4)

The Bill also includes provisions concerning the remit of the Equality and Human Rights Commission, planning regulations, and changes to copyright law. Provisions to enable a time limit to be put on new regulations via 'sunset clauses' are also included in the Bill.

The Bill received its second reading in the House of Commons on 11 June 2012 (HL *Hansard*, cols 64–142). The Bill was then considered in a Public Bill Committee over the course of nine days between 19 June and 17 July.

Background information and a summary of the Bill as presented to the House of Commons at second reading is provided in the House of Commons Library Research Paper, *Enterprise and Regulatory Reform Bill* (7 June 2012, RP12/33). A summary of proceedings at second reading and committee stage in the House of Commons is provided by the House of Commons Library Research Paper, *Enterprise and Regulatory Reform Bill: Committee Stage Report* (3 October 2012, RP12/56). This Note summarises the debates at report stage and third reading in the House of Commons and is intended to be read in conjunction with the two House of Commons Library Research Papers.

2. Report Stage

Report stage took place over two days, 16 and 17 October 2012. Prior to report stage, the Government published a number of amendments to the Bill, including for several new clauses. A summary of these new measures was published by the Government on the Department for Business, Innovation and Skills website. These Government amendments included:

- A proposal to remove the automatic liability on businesses in civil claims for breach of a duty imposed by health and safety legislation.
- Measures to simplify bankruptcy procedures by removing the court process when it is unnecessary.
- The addition of new clauses relating to the Equality Act 2010, including the removal of third party liability for harassment.

At the beginning of the first day of report stage, the Parliamentary Under-Secretary of State for Business, Innovation and Skills, Jo Swinson, told the House that two days had been provided for report stage and third reading in recognition of the importance of the Bill and the introduction of new measures at that stage. The Shadow Business Secretary, Chuka Umunna, told the House that his party would oppose the programme motion on the grounds that the House was being given inadequate time to debate the Bill given the variety of issues covered and the fundamental nature of the changes that the Bill would have to people's rights at work. The programme motion was passed following a division (HL *Hansard*, 16 October 2012, cols 184–9).

2.1 Civil Liability for Breaches of Health and Safety Duties

The Government tabled a new clause which sought to amend the Health and Safety at Work etc Act 1974 to remove the right to bring civil claims for breach of a duty contained in health and safety legislation. The Parliamentary Under-Secretary of State for Skills, Matthew Hancock, stated that this new clause was designed to address an unfairness identified in Professor Ragnar E Löfstedt's review of health and safety legislation, *Reclaiming Health and Safety for All* (November 2011). Some health and safety at work regulations currently imposed an automatic liability on employers. This strict liability made them liable to pay compensation to employees injured or made ill by their work despite all reasonable steps having been taken to protect them from harm. By removing this strict liability, proof of negligence on the part of the employer would be necessary to proceed with a claim, ensuring a reasonableness defence which would prevent businesses who had taken every reasonable precaution from being prosecuted for a technical breach.

Mr Hancock also argued that this would change the perception of employers towards health and safety regulations. The fear of litigation had driven businesses to exceed what was required by the criminal law, leading to unnecessary costs and burdens. The Minister argued that the inclusion of a reasonableness test in cases of negligence would enable employers to concentrate on sensible preventive health and safety management (ibid, col 191).

The Shadow Minister, Iain Wright, argued against the removal of the strict liability provisions on the grounds that it would not ensure fairness and justice for those injured at work, as it would place the burden of proof on vulnerable employees. Although he welcomed most of the recommendations of the Löfstedt review, he argued that the report offered no argument or evidence for changing the current legislative arrangements and only put forward an assumption that the strict liability was unfair on employers. Mr Wright stated that of the three cases that the Löfstedt review referred to in this context, two were not strict liability cases so would not be affected by the new clause. He described how

the removal of the strict liability provisions would fundamentally change the balance between different types of obligation and that if 'reasonable practicability' became the sole concept, this risked taking the country back to a '19th century mill owner's view' of health and safety (ibid, col 198).

Mr Wright argued that the burden of proof should not be placed on the employee because it was the employer, and not the employee, who selected and provided the work equipment and who, regardless of fault, created the risk. He asked the Minister whether the Government had considered, as an alternative measure, allowing employers to sue third parties such as the manufacturers or suppliers of potentially defective goods as a means of effectively recouping compensation made to employees (ibid, cols 195–201).

In response to Mr Wright, the Minister cited the support of 78 percent of the membership of the Federation of Small Businesses as evidence of the need for reforms to change the way health and safety management was conducted. Following a division the new clause was agreed and added to the Bill (ibid, cols 208).

2.2 Reforms to Bankruptcy Procedures

New Government amendments to the Bill were debated concerning reforms to the process by which an individual may apply for their own bankruptcy, removing the requirement for an indebted individual to present a bankruptcy petition to court and replacing it with a new administrative process. This would entail changes to the Insolvency Act 1986. These amendments were agreed with the support of the Opposition (ibid, cols 212–8).

2.3 Equality Measures

Measures in the Bill concerning equality legislation were also debated on the first day of report stage. These included proposals to remove from the Equality Act 2010 measures that the Government considered had imposed an unnecessary burden on businesses. The Minister, Jo Swinson, characterised the existing legal framework as full of aspiration but lacking clarity and as having a detrimental effect on businesses (ibid, col 226).

Members debated the Government's new clause which sought to amend the Equality Act 2010, repealing the provisions placing liability on employers for the harassment of their employees by third parties, such as customers and clients. This change was one recommended by the Beecroft report (October 2011). A new clause 13 aimed to repeal provisions concerning equality questionnaires. This would allow someone who believed they had been discriminated against to obtain information from those they thought had acted unlawfully against them.

MPs also debated an Opposition amendment to remove from the Bill measures to change the duties and powers of the Equality and Human Rights Commission (EHRC), as set out in clause 56 of the Bill. A division took place on the second day of report stage on this amendment which was won by the Government (HL *Hansard*, 17 October 2012, cols 423–7).

Other measures debated included the Government's new clause which would enable Ministers to require employment tribunals to order equal pay audits where an employer was found to have broken equal pay and sex discrimination laws. This measure was welcomed by the Opposition (HL *Hansard*, 16 October 2012, cols 231–2).

2.3.1 Third Party Harassment of Employees and Equality Questionnaires

The Minister described existing third party harassment provisions as unnecessary and confusing, stating that employers had genuine concerns about them. She argued that an employer's duty of care to prevent the repeated harassment of their employees existed both in the Equality Act 2010 and in the Sex Discrimination Act 1975. The Government sought to repeal the 'three strikes' test incorporated in the Equality Act 2010 which was applied when an employee had been harassed at work on at least two previous occasions and when the employer knew of the harassment but had not taken reasonable steps to prevent it from happening again. The Minster cited as evidence that the 'three strikes' test was no longer needed, with reference to the fact that only one tribunal case had been brought under the provisions in the previous four years (ibid, col 228).

The Shadow Secretary of State, Chuka Umunna, argued that the existing duty of care should not be changed because it provided clarity in cases of harassment of employees where the employers had not taken reasonable steps to ensure their protection. Mr Umunna was critical of the Beecroft report which had recommended the repeal of third-party harassment provisions, stating that its findings were not based on proper evidence but rather on anecdotal submissions. He accused the Government of looking to water down people's rights at work as a substitute for a proper economic growth plan and that this was symptomatic of the Government's 'desperation' to get the economy moving (ibid, col 241).

Further to the new clause, the Minister argued that there was clear merit in ensuring that an individual could establish the facts of a potential discrimination case, but disagreed with this being made possible through statutory provision. She cited responses to the Government's consultation which indicated that the procedure imposed considerable costs on businesses with questionnaires becoming over long and technical. The Minister cited the total cost to businesses of complying with questionnaires as nearly £1.5 million a year. She argued that businesses would be incentivised to comply with requests for information without the statutory requirement because a refusal to provide information would damage their position if the case went to court (ibid, col 230).

Mr Umunna argued that abolition of equality questionnaires was unnecessary as research carried out by the Equalities Office had found that only 2 percent of private sector employers had had to complete one in the past three years, and that most of those who had done so agreed that responding to them had been straightforward. He also asked the Minister why the Government were not instead limiting the number of questions that could be added to a questionnaire (ibid, col 230).

2.3.2 Equality and Human Rights Commission

Mr Umunna argued for the removal of clause 56 from the Bill on the grounds that it would lead to the downgrading of the EHRC and would fundamentally change its remit (ibid, col 236).

The Minister defended the inclusion of clause 56. She argued that amending the Equality Act 2006 would not fundamentally change the job of the EHRC but would instead enable it to focus on its core equality and human rights functions, making the organisation more efficient. Changes to the general duty of the EHRC as currently set out in section 3 of the 2006 Act were necessary, she argued, because it was currently too broad. She characterised the general duty as an aspirational statement with no specific legal purpose which did not help to clarify the precise functions of the EHRC. She cited evidence given by the EHRC's general counsel, John Wadham, in which he stated that parts of the legislation other than section 3 provided 'sufficient clarity' as to what the job of the EHRC was (Public Bill Committee, Enterprise and Regulatory Reform Bill, 19 June 2012, afternoon session, col 79) (HL *Hansard*, 16 October, cols 232–4).

The Minister also defended the repeal of the good relations duty set out in section 10 of the 2006 Act, arguing that the EHRC's work in this area could be carried out as part of its core equality and human rights functions, rendering a separate mandate unnecessary. A decision to repeal section 19 of the 2006 Act was justified by the Minister on the grounds that the duty it imposed on the EHRC led it to replicate the work of other organisations, such as police forces in England and Wales, who also collected information on suspected hate crime.

The Minister argued that the power to make arrangements for the provision of conciliation in non-workplace discrimination disputes, as set out in section 27 of the 2006 Act, ought to be removed because the EHRC had failed to provide a service which offered value for taxpayers' money. She said that the Equality Advisory and Support Service, launched in October 2012, would advise individuals on the alternative mediation services available to them. She also defended the decision to change the frequency with which the EHRC published progress reports from every three years to every five years (ibid, cols 235–6).

Mr Umunna cited opposition to these changes to the EHRC from the heads of Justice, the Fawcett Society, Mind, the Refugee Council, the Equality Trust and others who signed an open letter stating that the changes would leave the EHRC a weaker body. He said that over the last six years there had been cross party support for the general duty set out in section 3 of the 2006 Act, which made clear the vision and mission of the EHRC. He criticised the cutting of the budget of the EHRC and the resultant reduction in the number of staff and the contracting out of the Commission's helpline. He also cited the same evidence given by the EHRC's general counsel, arguing that the organisation would prefer to keep the remit it already had and that the organisation was not promoting the amendments in the Enterprise and Regulatory Reform Bill (Public Bill Committee, Enterprise and Regulatory Reform Bill, 19 June 2012, afternoon session, col 80). He described the Government's approach as the abolition of the EHRC by stealth (HL *Hansard*, 16 October 2012, col 239).

2.4 Estate Agency Work

A new clause, amending the Estate Agents Act 1979, was tabled by the Government. This clause would remove intermediaries, such as internet portals for private sales, from the scope of the 1979 Act by extending a current exemption to the definitions of estate agency work. This exemption would cover businesses which merely enabled private sellers to advertise their properties and provided a means for sellers and buyers to contact and communicate with one another. It would prevent these businesses from being obliged to comply with requirements that ought only to be relevant to full service estate agency businesses. Such intermediaries would be exempt from the disclosure of any self-interest in a property transaction and would not be required to be members of a redress scheme. These proposals followed the recommendations of the Government consultation *Encouraging New Business Models—Proposal to Amend the Estate Agents Act 1979* (June 2012). The new clause was agreed with the qualified support of the Opposition (HL *Hansard*, 16 October 2012, cols 271–5).

2.5 Changes to the Listed Building Consent Regime

Changes to the law concerning listed buildings were also debated. The Government presented a new clause to introduce provisions intended to improve the effectiveness of the listed buildings consent regime. This followed the Penfold Review (July 2010) concerning non-planning consents. The Government also presented a new clause which would introduce a new system for the certification of the lawfulness of proposed works to listed buildings. This was intended to provide certainty to owners and developers of listed buildings as to whether building consent would be required. The debate on these

provisions was interrupted following the close of business at 7pm as directed in the programme motions. These two clauses were added to the Bill, along with other measures concerning listed buildings, including those affecting the Osborne Estate, the former residence of Queen Victoria (HL *Hansard*, 16 October 2012, cols 275–291).

2.6 Changes to Employment Tribunal Rules

The second day of report stage began with a debate on part 2 of the Bill, concerning employment law. The Minister argued that the provisions in part 2 of the Bill would give businesses more confidence to take on new staff and grow. The proposals would encourage the early resolution of disputes, encouraging settlement agreements which would help businesses manage their staff more effectively and ensure that the tribunal system operated efficiently for all users (HL *Hansard*, 17 October 2012, col 329). She argued that these measures would not affect an individual's employment rights.

The Shadow Minister for Business, Innovation and Skills, Ian Murray, although supportive of the new proposals to reform the rules of procedure for employment tribunals, criticised the other measures put forward in part 2:

> ... the Government have absolutely no evidence for any of their proposed changes. Indeed, their own impact assessments, and business surveys, show that there is little appetite for them in the business community. Businesses tell me and other Members that their main concerns are not employee regulations but lack of finance and the general state of the economy.
>
> (ibid, col 349)

2.6.1 Amending the Rules of Procedure for Employment Tribunals

The Minister, Ms Swinson, proposed a new clause to be added to the Bill, the purpose of which was to change the rules of procedure for employment tribunals by amending existing provisions in the Employment Tribunals Act 1996. The Minister argued that clause would enable the Government to enact the recommendations made by Mr Justice Underhill in his 2012 review regarding the rules of procedure for employment tribunals. Mr Justice Underhill had recommended that changes to the procedural rules would lead to more effective and targeted case management. The changes enacted by the new clause included:

- Changing the rules for deposit orders, the requirement for a party to pay a deposit as a condition of proceeding with a weak claim. Tribunals can currently only attach a deposit order to the claim as a whole. The new procedures would enable judges to use deposit orders more flexibly to weed out particular weak elements of a claim.
- Enabling those who choose to represent themselves in a tribunal to recover witness expenses through a cost order and to seek a preparation time order.
- Enabling those who choose to be represented by a lay representative, rather than a lawyer, to recover costs through a cost order.

Mr Murray welcomed this new clause, although he voiced his concerns over the increased use of deposit orders. While he supported the premise of deposit orders in deterring certain claims, he said that their increased use, combined with the introduction of the fees regime, might restrict access to justice (ibid, col 349).

2.6.2 Introduction of Early Conciliation

The Opposition tabled two amendments which went to division. They sought to remove clause 12 from the Bill, which concerned the confidentiality of negotiations conducted prior to termination of employment. Clause 12 would make such negotiations inadmissible as evidence in any subsequent claim for unfair dismissal. Mr Murray described the clause as ill thought out and stated that it would be bad for businesses, and might lead to the UK's redundancy regime being undermined (ibid, col 350). He repeated his party's criticism of the Beecroft report on the grounds that its recommendation did not have a sufficient evidence base.

Ms Swinson argued that the Government had heard many times through formal and informal consultations with employers that finding ways to make it easier to end employment relationships that were not working would remove the 'fear factor' which prevented them hiring new staff. She argued that the proposals were different from those recommended in the Beecroft report because they offered better protection for employment rights and provided a 'voluntary and mutually beneficial process that will end the employment relationship only if the employee agrees to it' (ibid, cols 336–42). The motion to remove clause 12 was disagreed after a division.

The Opposition also argued for the removal of clause 13 which would allow the Secretary of State to use secondary legislation to increase or decrease the limit of the compensatory awards for unfair dismissal. Mr Murray argued that during committee stage, Government party members had indicated that this power would be used to reduce the amount awarded for unfair dismissal and he contended that a reduction would be another unwelcome measure which would hit middle earners. He argued that it should be up to the employment tribunal judge rather than the Secretary of State to decide what was an adequate compensatory award.

Ms Swinson argued that a cap on compensatory awards would provide certainty for both employers and employees as to the amount of compensation which might be awarded. She also stated that only a small minority of cases ended in a high award, with only 0.3 percent of unfair dismissal claimants being awarded more than an annual salary (ibid, col 362). The motion to remove the clause was also disagreed after a division.

Amendments to clause 14 were also discussed. Clause 14 concerned changes to the powers of Employment Tribunals to impose financial penalties on employers. The amendments included two put forward by the Conservative MP, Richard Fuller. He argued that the Government should not be involved in a dispute between an employer and an employee as this would add complexity to such cases, and that the Government's proposals might create an imbalance between the employer and an employee (ibid, cols 355–8). Ms Swinson argued that the introduction of these discretionary powers was not intended to penalise employers indiscriminately and that tribunals would only be used when an employer has breached an individual's employment rights. She also stated that representations from businesses suggested support for the Government's proposals (ibid, cols 343 and 363).

The Opposition also tabled amendments to clause 14 to enable employment tribunals to impose a penalty on an employer who did not settle the award within the time specified by the judge (ibid, col 354). Ms Swinson said that she was sympathetic with the amendments' aims but did not believe that they would have the intended effect. She stated that the Government was consulting on ways to ensure fines were paid more promptly (ibid, cols 344–5).

The Opposition also raised concerns about the impact of the introduction of fees in employment tribunals from summer 2013. They argued that the overall effect of the Bill,

coming at the same time as the introduction of fees, would be to restrict access to justice. More information on the introduction of fees to employment tribunals is provided in the House of Commons Library briefing *Employment Tribunal Reform–Introduction of Fees and New Rules of Procedure* (30 August 2012, SN6407, pp 11–23).

Members of the Opposition front bench tabled an amendment to clause 7 which would have required the Government to conduct an impact assessment on the effect of the introduction of fees on the employment tribunal system and on the conduct of early conciliation by ACAS, to be conducted prior to the provisions coming into force. Mr Murray argued that such an assessment would be necessary following a lack of clarity from the Government during scrutiny of the Bill during committee stage (HL *Hansard*, 17 October 2012, cols 349–50). Ms Swinson argued that a consultation was unnecessary as the Government had already consulted on the appropriate charging points and fee levels for tribunals in December 2011. The Government had also consulted on the possible impact of fees as part of their assessment that accompanied the announcement in November 2011 of the introduction of early conciliation (ibid, col 332). She also repeated reassurances made by her predecessor during committee stage that ACAS would be adequately resourced (ibid, col 333).

An amendment tabled by Labour MP John McDonnell sought to prevent an employer from seeking a costs order against a prospective claimant or from using any other provisions as an incentive to taking part in the conciliation process. The Minister argued that costs were only ordered in a minority of cases where a party had acted unreasonably in bringing or conducting proceedings. She argued that employers should not be prevented from seeking costs where the claimant has been unreasonable. She argued that preventing respondents from seeking a costs order would not be necessary as the real incentive to engage in conciliation would be the savings of time and costs of not going to a tribunal (ibid, col 333).

An amendment tabled by a group of members from the Labour Party, the SNP, Plaid Cymru and the Green Party, sought to extend from one month to six months the limitation period during which a claim could be brought to court. Ms Swinson argued that the amendment would affect only a small number of individuals and that it was difficult to see why individuals should require longer than a month to prepare and submit the necessary form to the tribunal, given that they would have already gone through the early conciliation process (ibid, col 335).

2.6.3 Whistleblowing Claims

The debate on employment law also saw discussion of the Government's proposals set out in clause 15 of the Bill to limit the definition of a protected disclosure in whistleblowing claims. The Bill would see the introduction of a public interest test. Labour MP, Katy Clark, tabled two amendments to the clause, arguing that the provisions would make it more difficult for people to rely on the Public Interest Disclosure Act 1998, as it created another legal test in what was already a complex legal area. One of her amendments would have removed the good faith test from the Bill and the other dealt with vicarious liability (ibid, cols 358–60). Ms Swinson argued in favour of the provisions in the clause on the grounds that the protection it proposed struck the right balance, protecting whistleblowers without imposing unreasonable and unworkable demands on employers (ibid, cols 330–2). Mr Murray stated that the Opposition disagreed with the Government that inserting a public interest test into the legislation would assist in the matter (ibid, col 354).

2.7 Green Investment Bank

Amendments to part one of the Bill concerning the establishment and remit of the Green Investment Bank were also debated on the second day of report stage. The Opposition tabled a number of amendments including the addition of a new clause to the Bill. Mr Wright described how the new clause was intended to ensure that investments by the Bank would be in keeping with its green purposes while enabling the Bank to have sufficient flexibility with its investment portfolio. The clause would require the Bank to assess whether its investment strategy helped achieve the carbon budgets and greenhouse gas reduction targets as set out in the Climate Change Act 2008. The Opposition also tabled an amendment that would have required the Bank to identify opportunities in which small and medium sized enterprises could be awarded contracts when undertaking investments.

Mr Wright stated that one of the purposes behind the Opposition's amendments was to probe the Government on how it envisaged the Bank would operate, arguing that there was:

> ... a huge, pressing need for policy certainty for investors in the green economy, but so far the Government have not been able to provide it, to the detriment of the country's chances... and the chances for jobs and growth.
>
> (ibid, col 377)

Another Opposition amendment would have required the Bank to begin borrowing from April 2015 or if that was not achievable, Parliament would be provided with a clear alternative date. Mr Wright criticised the Government for its policy of making the commencement of borrowing from April 2015 subject to public sector net debt falling as a percentage of GDP (ibid, col 378). Green Party MP, Caroline Lucas, argued that neither the Government's nor the Opposition's proposals were sufficient to ensure the timely commencement of borrowing, advocating her own amendment to ensure that the Bank would be able to borrow from 2015 (ibid, col 379). The former Secretary of State for Energy and Climate Change, Chris Huhne, voiced his regret that the Bill contained no commitment on borrowing (ibid, col 382).

The Parliamentary Under-Secretary of State for Skills, Matthew Hancock, repeated the Government's commitment that the Bank would be able to borrow from April 2015, subject to public sector net debt falling as a percentage of GDP (ibid, col 382). He also argued that the Government's own proposed amendment to part one of the Bill would allow the Bank to invest in activities it considered likely to contribute to one or more of the green purposes.

MPs questioned whether the Bank would be able to invest in projects which crossed borders and formed part of global supply chains. In response, the Minister stated that the Government's own amendments to the Bill would allow the bank flexibility to invest in both the UK and elsewhere. He stated that amendments made to the Bank's statement of objects in its articles of association that would ensure the bank's activities were limited to those the board considered would, or were reasonably likely to, contribute to green purposes in the UK (ibid, col 382).

Mr Hancock said that he could not support the Opposition amendment, which would put on a statutory basis a commitment for the Bank to help small and medium sized enterprises as this would increase the complexity of decision-making in the Bank, lead to uncertainly and also increase the likelihood of judicial review (ibid, col 384).

Two divisions were held following the debate. Opposition amendments concerning when the Bank should begin borrowing were rejected.

2.8 Directors' Remuneration

MPs also debated measures in the Bill on executive remuneration, including provisions to allow binding ballots by shareholders on executive pay.

Ms Swinson stated that the Government had opened up the debate on directors' pay over the previous year and had drawn attention to the fact that top pay in large companies had grown rapidly without any clear connection to performance (ibid, col 399).

The Government's proposals were broadly supported by Mr Wright, for the Opposition, who stated the reason why reform was necessary:

> ... over the past 30 years we have seen market failure and a huge disconnect in the level of remuneration paid to top executives, but that has not ensured commensurate performance among the companies they lead, which is what we need.
>
> (ibid, col 396)

The Opposition tabled an amendment that would have enabled an organisation's employees to also be consulted on executive pay. The amendment was put to the House in a division and rejected (ibid, cols 401–2).

2.9 Copyright and Orphan Works

The Government tabled an amendment to clause 66 of the Bill which was intended to address the concerns expressed by members of the committee on the Bill and industry stakeholders relating to the scope the clause might give the Government to change copyright exemptions.

The Government also tabled an amendment to the Bill to require the Secretary of State to take into account any feasibility study of which organisation was best placed to issue licences authorising the use of orphan works. Orphan works are works protected by copyright, such as a photograph or piece of folk music, where the rights holder is not known or can't be found ('UK copyright: Accessing Orphan Works', Department for Business, Innovation and Skills website, 30 July 2012). The Opposition argued that the Government had not been clear enough on its timetable for authorising the use of orphan works. Mr Hancock responded by stating that he expected the study to conclude during 2013 (ibid, col 415).

Both these amendments were agreed by the House (ibid, cols 405–15).

2.10 Cartel Offences

New Government amendments to the provisions in the Bill concerning cartel offences were made at report stage. These amendments were not debated following the close of report stage in accordance with the timetable agreed in the programme motion (ibid, col 427).

3. Third Reading

Following the completion of report stage, Ms Swinson moved that the Enterprise and Regulatory Reform Bill be read a third time. She argued that, although legislation could not alone guarantee and generate economic activity, the Bill was an important part of a wider Government strategy to promote growth, support businesses and create jobs (ibid, col 429).

She outlined how the different provisions of the Bill formed part of this strategy. Measures to combat unnecessary and complicated regulation would remove the barriers to economic growth. The reforms to encourage parties to work together to resolve their disputes outside the tribunal system were intended to give employers the confidence to take on and manage new staff. Reforms to directors' pay would lead to greater transparency and give more power to shareholders to hold companies to account, incentivising genuine success and preventing reward for failure. The new Competition and Markets Authority was intended to better support competitive markets, helping businesses to boost productivity and bringing benefits to consumers.

Other measures she commended included those enabling the Government to combat cartels to protect the interests of both business and consumers. Changes to copyright laws were also described as 'critical to the growth of the UK's creative industries' (ibid, cols 429–31).

On the Green Investment Bank, Ms Swinson said that its creation would leave the UK in a stronger position as the energy market continued to change and the country continued in its transition to a green economy:

> The move to a low-carbon economy is a big challenge and, indeed, a big opportunity for this country. Some analysis suggests a demand for more than £200 billion of investment in the next decade to develop the necessary innovative technologies.
>
> (ibid, col 430)

Mr Umunna restated the Opposition's view expressed in a reasoned amendment tabled at second reading that the Bill was 'a missed opportunity to provide a strategy for economic growth and that it contained inadequate measures to improve business confidence, investment and competiveness' (ibid, col 432). He stated that the Opposition supported in principle a number of the measures in the Bill such as those relating to the Green Investment Bank, improving the competition regime and extending the primary authority scheme to make regulation regimes more efficient. Mr Umunna also stated that his party did not object in principle to what the Government had so far proposed to do in relation to executive pay, although his party believed that the Government should go further.

Mr Umunna described how the Bill also contained measures his party could not support:

> We want to see our economy grow, and I hope and expect the next quarter's GDP figure, which will be released next week, to be a positive number after three quarters of contraction, but growth cannot be at the expense of the basic protections that people enjoy in this country. In the name of growth part two of the Bill will drastically reduce people's rights at work and part five, along with other Government measures, takes us along the slippery slope to the abolition of the Equality and Human Rights Commission. This is wrong.
>
> (ibid, col 432)

House of Lords Library
House of Lords
London SW1A 0PW
www.parliament.uk