HOUSE OF LORDS
Library Note

Growth and Infrastructure Bill (HL Bill 72 of 2012–13)

The purpose of the Growth and Infrastructure Bill is to promote investment in infrastructure projects, reduce delays in the planning system and introduce a new employment status of employee shareholder. This Library Note provides background information for the second reading of the Bill in the House of Lords on 8 January 2013. In particular, the Note summarises the report stage and third reading in the House of Commons. The Note is intended to be read in conjunction with two House of Commons Library Research Papers, *Growth and Infrastructure Bill* (25 October 2012, RP 12/61) and *Growth and Infrastructure Bill: Committee Stage Report* (13 December 2012, RP 12/78), which provide background information and summarise the second reading and committee stage in the House of Commons.

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1. Introduction

The purpose of the Growth and Infrastructure Bill is to promote investment in infrastructure projects, reduce delays in the planning system and introduce a new employment status of employee shareholder. This House of Lords Library Note provides a précis of the report stage and third reading of the Bill in the House of Commons. The Note should be read in conjunction with two House of Commons Library Research Papers: *Growth and Infrastructure Bill* (25 October 2012, RP 12/61), which contains more detailed information on the background to the Bill; and *Growth and Infrastructure Bill: Committee Stage Report* (13 December 2012, RP 12/78), which summarises the second reading and committee stage in the House of Commons. Before turning to the report stage and third reading, the next section of this Note provides some background to the Bill.

2. Background

The Growth and Infrastructure Bill was not included in the Queen's Speech in May 2012, but is the result of the Government's concern over unnecessary bureaucracy in the planning system, "that can hinder sustainable growth" (HC *Hansard*, 6 September 2012, col 31WS). The Bill would also implement a number of the recommendations made by the Penfold Review of Non-Planning Consents, which published its final report in July 2010, and to which the Government responded in November 2010, with a further report on the implementation of the review published by the Government in November 2011.

The Bill is split into three parts, with the main provisions including:

Promoting growth and facilitating provision of infrastructure—

- option to make planning applications directly to the Secretary of State, where a local planning authority has a record of very poor performance
- broaden the powers of the Secretary of State to award costs between the parties at planning appeals
- limit the information local planning authorities can require with planning applications
- allow economically unviable affordable housing requirements contained in section 106 agreements to be reconsidered
- exclude the right to apply for land proposed for development to be registered as a town or village green, to safeguard against the system being used to stall or stop development, while protecting existing registered greens
- enable the requirements relating to the installation of electronic communications apparatus contained in regulations made under section 109 (as amended) of the Communications Act 2003 to be relaxed

Other infrastructure provisions—

- modify the special parliamentary procedure to authorise the compulsory acquisition of land falling into a special category
- enable the Secretary of State to direct that business and commercial projects of national significance can be considered under the nationally significant infrastructure regime contained in the Planning Act 2008
- speed-up processes for holders of consents under section 36 (as amended) of the Electricity Act 1989, by placing them in the same position as holders of development consent orders made under the Planning Act 2008, and therefore allowing them to be varied by the relevant Secretaries

of State to take account of, for example, changes in technology and design
- clarify the position of variations and replacements of pre-Planning Act 2008 consents

Economic measures—
- postpone the date on which new non-domestic rating lists in England should be compiled from 1 April 2015 to 1 April 2017
- create a power to allow Welsh Ministers to make an order postponing the date on which the new non-domestic rating lists in Wales should be compiled from 1 April 2015 to 1 April 2016, 2017, 2018, 2019 or 2020
- create a new employment status of employee shareholder with different employment rights compared to employees, in return for shares of a value of at least £2,000 in the employer's company or parent company

(see further: *Growth and Infrastructure Bill (HL 72 of session 2012–13): Explanatory Notes*, paras 3–8)

The Growth and Infrastructure Bill (HC Bill 75 of session 2012–13) was introduced in the House of Commons on 18 October 2012, and received its second reading on 5 November 2012 (HC *Hansard*, 5 November 2012, cols 596–697). The Bill was then considered in fourteen sittings of Public Bill Committee between 13 November and 6 December 2012. At committee stage, the key areas discussed included proposals to allow applications for planning permission to go directly to the planning inspectorate, the renegotiation of affordable housing obligations, the postponement of the revaluation of business rates and the proposed new employment status of employee shareholder (see further: House of Commons Library, *Growth and Infrastructure Bill: Committee Stage Report*, 13 December 2012, RP 12/78). Furthermore, a number of amendments to the Bill were made by the Government during committee stage, including: amendments to clause 5 (now clause 6 of HL Bill 72 of session 2012–13) on the modification or discharge of affordable housing requirements; new clause 3 (now clause 21 of HL Bill 72) on the removal of consent and certification requirements under the Planning Act 2008; and new clause 14 (now clause 4 of HL Bill 72) on permitted development rights for changes of use. The Commons report stage and third reading of the Bill (HC Bill 104 of session 2012–13) took place on 17 December 2012 (HC *Hansard*, 17 December 2012, cols 590–677). The issues debated during report included the designation of councils, affordable housing, employee shareholders, permitted development, planning consent for telecommunications equipment, energy infrastructure in Wales, and the registration of town and village greens. The Government made a number of amendments and added new clauses to the Bill during report, including: new clause 3 (now clause 20 of HL Bill 72) on the variation and replacement of pre-Planning Act 2008 consents; and new clause 4 (now clause 26 of HL Bill 72) on the power to postpone the compilation of Welsh rating lists. The Bill (HL Bill 72) was read for the first time in the House of Lords on 18 December 2012, and the second reading is due to take place on 8 January 2013.

During the course of the passage of the Bill through Parliament, the Government issued or responded to a number of consultation documents:

- Department for Communities and Local Government, *Planning Performance and the Planning Guarantee Consultation* (22 November 2012), which relates to clause 1 and Schedule 1 (of HL Bill 72 of session 2012–13), and closes on 17 January 2013
- Department for Environment, Food and Rural Affairs *Consultation on the Registration of New Town or Village Greens* (July 2011), and *Town and*

Village Green Consultation Summary of Responses (November 2012), which relate to clauses 13–15

- Department for Communities and Local Government, *Nationally Significant Infrastructure Planning: Expanding and Improving the 'One Stop Shop' Approach for Consents Consultation* (26 November 2012), which relates to clause 21, and closes on 7 January 2013
- Department for Communities and Local Government, *Nationally Significant Infrastructure Planning: Extending the Regime to Business and Commercial Projects Consultation* (26 November 2012), which relates to clause 24, and closes on 7 January 2013
- Department for Business, Innovation and Skills, *Consultation on Implementing Employee Owner Status* (18 October 2012), and *Implementing Employee Owner Status: Government Response to Consultation* (3 December 2012), which relate to clause 27

In addition, the Valuation Office published an analysis in November 2012 of the proposed postponement under clause 25 of the Bill of the next business rates revaluation from 2015 to 2017.

3. Commons Report Stage

The Commons report stage of the Growth and Infrastructure Bill took place on 17 December 2012 (HC *Hansard*, cols 590–661). During the report stage, the issues debated included the designation of councils, affordable housing, employee shareholders, permitted development, planning consent for telecommunications equipment, energy infrastructure in Wales, and the registration of town and village greens. The Government made a number of amendments and added new clauses to the Bill, including: new clause 3 (now clause 20 of HL Bill 72 of session 2012–13) on the variation and replacement of pre-Planning Act 2008 consents; and new clause 4 (now clause 26 of HL Bill 72) on the power to postpone the compilation of Welsh rating lists. This section of the Note focuses on the debates in the House of Commons at report on the designation of councils, affordable housing and employee shareholders.

3.1 Designation of Councils

The amendments discussed under this heading relate to clause 1 of the Growth and Infrastructure Bill. Clause 1 would provide applicants with the option to apply directly to the Secretary of State for planning permissions, if a council has been designated as having a very poor record of performance.

The Opposition proposed a number of amendments to clause 1. The Shadow Minister for Communities and Local Government, Dr Roberta Blackman-Woods, began by recalling that some time had been spent in the Public Bill Committee debating the "true purpose" of clause 1 and "its inherent anti-localist, centralising agenda" (HC *Hansard*, 17 December 2012, col 592). The Opposition had sought to test whether the Government had "intended to produce a clause that would enable major planning discussions and decisions in designated authorities to be taken by the Secretary of State—usually by the Planning Inspectorate on his behalf—thus significantly reducing the influence that local people have on planning decisions affecting their area". The second major issue discussed in committee had been the nature of designation itself: whether the criteria to be used were fair; and whether the Government should be "going down the route of designation at all". Discussions in committee had, according to Dr Roberta Blackman-Woods, been "somewhat hampered" by the fact that the relevant consultation document, *Planning Performance and the Planning Guarantee Consultation*

(22 November 2012), on the designation of failing planning authorities, had been published less than an hour before clause 1 was discussed in committee (HC *Hansard*, 17 December 2012, col 592). She explained that "an authority's track record of speed is to be measured over a two-year period, based on the percentage of major applications determined within statutory limits, and quality is to be measured by the percentage of decisions on major applications that are overturned on appeal". Both criteria were problematic, as the first would "draw in only a handful of authorities" and the second "none at all". The Minister knew that there was "no evidence base for the measures" in clause 1, and additional pressures could be placed on local authorities to "agree to applications that, on balance, they might have refused". In committee, when the Minister was given "alternative criteria for designation that were much more in line with the localist agenda, such as being designated for failure to make decisions in line with the local plan", he "refused to accept" them (col 593). Furthermore, although the Government were consulting on the designation criteria, clause 1 allowed the Secretary of State to alter criteria, "seemingly on a whim".

It was for these reasons that the Opposition had tabled amendments 42 and 43, which would remove clause 1 and Schedule 1 (col 594). The Opposition were "against local authorities being designated as failing" in the way suggested, and they did not believe that it would "improve the performance of local planning authorities". As the consultation paper looked to be "seeking to rubber-stamp the criteria put forward for designation and as the Government have made no effort to improve the clause to make designation and its operation more democratic", the Opposition had no alternative but to table their amendments to remove the provisions. By contrast, new clause 5 proposed by the Opposition would "provide an alternative approach to planning". Dr Roberta Blackman-Woods explained that the new clause would include a definition of the purpose of planning in the Planning and Compulsory Purchase Act 2004: "the new clause would set out the need for planning policy to 'positively identify suitable land for development in line with the economic, social and environmental objectives so as to improve the quality of life, wellbeing and health of people and communities'". The system should "look at 'the quality of life, wellbeing and health of people and communities... contribute to sustainable economic development… protect and enhance the natural and historic environment and quality of existing communities and the countryside… ensure long term sustainable patterns of resource use'", and should "'positively promote civic beauty through high quality and inclusive design; and… ensure the planning system is open, transparent, participative and accountable'" (cols 594–5).

The Parliamentary Under-Secretary of State for Communities and Local Government, Nick Boles, responded to the debate on clause 1 by stating that the Government hoped that "vanishingly few local authorities will be caught by the measure, but just as we accept that some schools fail and require intervention, and that Ofsted is the right judge of whether they are failing, and some hospitals fail and the Care Quality Commission is the right judge of whether they are failing, we believe it is our responsibility as Government to identify where some—very few—local planning authorities are failing to discharge their responsibilities to local people" (col 605). It was for these reasons that they were introducing clause 1.

Annette Brooke, Liberal Democrat MP for Mid Dorset and North Poole, asked whether the Minister had considered giving notice and support to failing authorities, before moving to designation (col 606). Nick Boles said that "because of the proposal... that it should be two years of data about the timeliness of decisions on major applications, it will become clear... which authorities are heading into the danger zone, even after probably only six months' data". He had had discussions with the Local Government Association, and officials at the Department for Communities and Local Government would be "putting an arm round those authorities that are beginning to get into the

danger zone and helping ensure that they get out before the axe falls—before the designation becomes real". Furthermore, it was his "genuine hope that no local authority gets caught by the provision, because no local authority consistently fails to discharge its responsibilities".

Following a question from Clive Betts, Labour MP for Sheffield South East, about the capture of performance data, Nick Boles explained that the "statistics currently capture planning performance agreements that are agreed before an application is submitted, but not those that are agreed after". The Government would be altering the collection of statistics to ensure the data was more accurate. Where that was not possible, they would "take submissions from local authorities on why the data might not present a fair picture of their performance, and we will of course take fully into account the fact that the data might not be absolutely conclusive for those submissions in year one".

The House divided on amendment 42 to leave out clause 1, with 216 votes in favour, and 294 against the amendment (cols 607–10).

3.2 Affordable Housing

A number of amendments were proposed to clause 6 of the Growth and Infrastructure Bill. Clause 6 would allow the modification or discharge of the affordable housing elements of section 106 agreements to make developments viable. Section 106 agreements are made under section 106 (as amended) of the Town and Country Planning Act 1990:

> New development can place additional burdens on the existing infrastructure and resources in the area (such as volume of traffic). It can also deal with existing problems in an area (such as a lack of affordable housing) and allow opportunities to be realised (such as archaeological study). Councils may require developers to make some reasonable financial or practical contribution to the community to address these types of issues. For example, a developer seeking planning permission to build a new private sector housing estate may be willing to contribute to the cost of additional facilities at a local school and provide affordable housing.
>
> This is usually achieved by making planning permission conditional on the developer first entering into an agreement or obligation, commonly referred to as a "section 106 agreement". Once the agreement is signed, it is a legally binding contract, the terms of which can be enforced under contract law by either party against the other.
>
> (Local Government Ombudsman, 'Complaints about Section 106 Agreements/Planning Obligations', September 2011, factsheet 11)

The Shadow Minister for Communities and Local Government, Dr Roberta Blackman-Woods, proposed a number of amendments to clause 6, which had "greatly exercised us in committee because of the threat that it presents to the future supply of affordable housing delivered through the application of section 106 agreements" (HC *Hansard*, 17 December 2012, col 616). She stated that no evidence had been provided to the Public Bill Committee or elsewhere "of the necessity of the clause or of why section 106 agreements, as they relate to affordable housing, should be singled out for such treatment" (cols 616–17). Nor had the Minister explained why the clause was necessary, "given that local authorities are already renegotiating section 106 agreements", a point the Local Government Association had emphasised (col 617). Evidence provided by the Local Government Association showed that "on average, councils are willing to accept a

level of affordable housing about a third lower than the amount set in their local plan", and that "all but two percent of councils have said that they would be willing to renegotiate section 106 agreements".

She went on to discuss the Opposition's amendments, which would enable the House to "understand the full nature" of what was wrong with clause 6 (col 618). Amendment 45 would "require a local authority to establish first of all that it is the application of a section 106 housing agreement that is making a development unviable", and would allow "other types of obligation, such as highways contributions, to be put forward to the local authority for renegotiation as part of current section 106 arrangements". As developers could already ask a local authority to renegotiate a section 106 agreement, the Opposition could not "understand why the Government would not want to accept such a basic, common-sense amendment". Amendment 44 was supported by the Local Government Association, and would require regulations to be made on the "criteria by which viability is to be assessed, and to consult relevant organisations before doing so". The Local Government Association thought that clause 6 encouraged a "have-a-go behaviour for developers, because it offers no reason for them not to try to seek a reduction in their affordable housing obligations from the planning inspectorate". The determination of "economic viability and the ability of developers to use non-viability as a means of renegotiating section 106 agreements for affordable housing" was central to clause 6, but the Government had not "thought it necessary or reasonable to set out clearly... how viability is to be determined" (cols 618–19). Amendment 46 would require the Government to use "the £300 million they say they have allocated for affordable housing... to be used to pay developers to make sites viable" (col 619). Labour Members were "desperately concerned that the removal of affordable housing from development sites will lead to a lack of balance and a lack of mix in our communities", and that was why the Opposition thought that it was "better for the Government's money to be used for mixed schemes, which are already planned and deliverable, rather than to stop them and put the money somewhere else". The Opposition felt strongly about this matter, and would press the House to a division. Amendment 47, also the subject of discussion in committee, would address the situation "where development has been stalled for more than one year and land value has risen", and would allow the local authority to "determine a new requirement, modify a requirement or agree to review it after a given period" (col 620). In particular, the amendment would "allow for the renegotiation of section 106 agreements for housing to be made where land values have increased and development on a renegotiated agreement downwards has not been delivered within one year". She concluded with amendment 48, which she thought was extremely important: "if a developer sought to persuade the Secretary of State that a development was not viable because of the application of a 106 agreement for affordable housing and that it should therefore be removed, the amendment would ensure that the land remains protected for use by social landlords, or by the local authority if possible". This would "protect the development of mixed communities and ensure that social landlords are not denied building opportunities through the absence of land".

Nick Raynsford, Labour MP for Greenwich and Woolwich, proposed two amendments to clause 6 on "rural exception sites". Under the National Planning Policy Framework (March 2012), housing development in rural areas can only occur if affordable housing is also provided. Nick Raynsford explained that the exceptions policy allowed "affordable housing—which may be social housing for rent, but could equally be low-cost home ownership—on the clear understanding that that housing will, in perpetuity, be kept available for the needs for which it was produced and that it will never be converted into market housing" (HC *Hansard*, 17 December 2012, col 612). He said that the rural exceptions policy had "evolved to meet special needs without opening the floodgates to more indiscriminate development, which would have otherwise happened because the areas concerned are often highly attractive and desirable areas where there would be

considerable financial return from building commercial housing" (col 613). The section 106 agreement was crucial, as without it, "landowners are inevitably reluctant to provide land, because they can see the risk that sites that they sell substantially below open market value... might produce a windfall gain to some future occupier who is fortunate enough to find that the property is saleable on the open market" (col 614). Furthermore, communities who had agreed to an element of affordable housing "on the basis that it is for people in need would be horrified if the policy could be subverted and the properties could become available as open market homes". As a result, "landowners and communities would have a crisis of confidence in the policy if clause 6 was passed unamended".

The Parliamentary Under-Secretary of State for Communities and Local Government, Nick Boles, said he wanted to "build more houses now, and I want the absolute certainty that they will go up, rather than a vague, tenuous hope of even more houses at a possible future date" (col 623). The discussions in committee and at report had persuaded him "even more of the merit of this clause, and I am redoubled in my enthusiasm". However, he had "heard good arguments from Members across the House about ways in which the legislation might be applied that would not produce more houses soon, or could threaten that possibility". In relation to rural exception sites, he understood that "the likelihood of more land being brought forward in the future to supply affordable housing in key rural exception sites might diminish if the clause were to be applied to those genuinely exceptional schemes" (cols 623–4). He was persuaded by the principle of the argument, but the precise way the amendment took account of the issue was not "necessarily right", and he was "currently looking at proposals that will be brought forward in the other place to achieve a carve-out for rural exception sites from this provision" (col 624). He was also persuaded by some of the arguments about "developers achieving a more favourable affordable housing agreement and then sitting on it". For this reason, the Government had "clarified that any affordable housing agreement renegotiated by the planning inspectorate will survive for three years but return to its previous level at the end of that period. If the developer has not built out on the basis of the new, lower, affordable housing agreement, the agreement will return to the previous higher level, and they will have to continue to build it out at that level". In relation to financial support, Nick Boles said that the £300 million subsidy (and a further £10 billion of guarantees) was "awarded to particular providers of affordable housing, not particular schemes". It was not possible to "allocate money to solve the problem of a particular site, because that would not meet the value-for-money test, as some sites will represent worse value for money than others". It was therefore right to retain "the discretion to give the subsidy where value for money is greatest, but there is nothing to prevent providers who have sites that are affected by such renegotiation from coming forward with proposals for that subsidy and guarantee".

Nick Boles thought that there was a common thread running through the Bill, and that was that the Government never wanted many of the measures to be "needed because local authorities have acted first" (col 625). The Government wanted local authorities to "take responsibility, and instead of fetishising an agreement that sets out a vague target for affordable homes that might be built, we want them to do whatever it takes, pragmatically and practically, to ensure that homes are built". They also wanted "mixed communities to remain a key theme; we do not want gated communities", and that was why the new section 106 affordable housing agreements would "return to their previous level after three years if they have not been built out fully". The Government preferred "local authorities, rather than the planning inspectorate, to renegotiate affordable housing agreements", and their amendment was a "last resort to prevent a very few pig-headed local authorities from doing what is in the interests of their own people and ensuring that more houses get built quickly, rather than waiting for some never-never land where that

unrealistic agreement is finally translated into bricks, mortar and roofs over people's heads".

At the end of the debate, Nick Raynsford withdrew his amendment, and the Opposition pressed the House to a division, with 220 votes in favour and 271 votes against amendment 46 (cols 626–9).

3.3 Employee Shareholder

The Growth and Infrastructure Bill would create a new employment status of employee shareholder. Clause 27 (of HL Bill 72 of session 2012–13) would amend the Employment Rights Act 1996 to create the new employment status, under which an employee shareholder would agree to have fewer employment rights than an employee in return for shares in the employer's company at a minimum value of £2,000.

The Shadow Minister for Business, Innovation and Skills, Ian Murray, spoke to the Opposition's amendment 59, which would have left out clause 27. The clause had "received a lukewarm response, at best, from the business community, and it has been roundly trounced by employee organisations, trade unions, business leaders and charities" (HC *Hansard*, 17 December 2012, col 631). The Opposition therefore believed their amendment was the "only acceptable option, as we can see no way in which the clause could be amended to make it more palatable". Clause 27 was "about cash for repeal", and "for as little as £2,000-worth of shares, an employee would be able to give up legal rights such as their right to training, their right to unfair dismissal protections, their right to a redundancy payment—even though their shares might be valued at less than the statutory redundancy payment—and their right to flexible working".

In particular, it was "not at all clear whether the new type of employment contract would be genuinely voluntary", and Paul Callaghan from the legal firm Taylor Wessing had commented that "these contracts will be optional to the extent that eating and drinking is optional". Ian Murray said that there would also be "nothing to prevent employers from threatening existing employees that they will retain their jobs only if they agree to sign a new employee owner contract", and no mention had been made in the Bill of safeguards for individuals who decided not to become an employee owner (cols 631–2). In relation to claimants of jobseeker's allowance, he questioned whether refusing an employee owner-only contract would constitute refusing to take a suitable job (col 632). In the Public Bill Committee, the response of the Government had been that it would "be up to the discretion of the Department for Work and Pensions", and that the Minister would "reflect on that discretion". Ian Murray was "keen to hear what measures" the Minister would propose "to ensure that the scheme is genuinely voluntary, as the Government insist, and that jobseeker's allowance claimants will not be at a disadvantage, should they rightly refuse to accept a job in which they did not have full rights at work". A further question related to the valuation of shares and the cost to businesses themselves. In his evidence to the committee, Paul Callaghan had highlighted the "significant potential costs to business of putting these proposals in place: the costs of valuing, issuing and allotting new shares in small numbers to a great number of employees". Paul Callaghan had gone on to say that "small firms might not wish to dilute their share ownership in this way in any case, and might have internal restrictions preventing them from doing so". The loss of unfair dismissal rights, according to Ian Murray, could lead to grievances being construed as other claims, which could lead to an "escalation in discrimination and whistleblowing claims, which are more time consuming, more costly to the employer and take up more tribunal time".

Ian Murray quoted the Secretary of State for Business, Innovation and Skills, Vince Cable, as saying that the policy was "categorically not a case of us allowing no-fault

dismissal—a scheme championed by Tory donor Adrian Beecroft—by the back door and condemned by Liberal Democrats as introducing a 'hire and fire' system" (col 633). In Ian Murray's opinion, this was a "final attempt by the Chancellor not just to deliver his Beecroft-compensated, no-fault dismissal by the back door; instead, given the issues around the paper value of shares, particularly in non-quoted companies that might sack employees when business falters, it is a step even further than Beecroft. This is simply no-fault dismissal—without any compensation". Turning to the income tax and national insurance implications of the proposal, he commented that the Government had stated they were "also considering options to reduce income tax and National Insurance contributions… liabilities that arise when employee shareholders receive their shares, including an option to deem that employee shareholders have paid £2,000 for shares they receive. This option would mean that the first £2,000 of shares received under the new status would be free from income tax and NICs". However, an employee "who received as little as £4,000-worth of shares would be hit with PAYE and national insurance charges of hundreds of pounds in their first pay packet, despite having never realised the value of these shares—if, indeed, they ever have any value at all". He concluded that the Opposition "fully support employee ownership, but this policy has the potential to undermine all the good employee schemes that exist".

The Minister of State, Department for Business, Innovation and Skills, Michael Fallon, said that he fully accepted that there were concerns about clause 27, but that some of the concerns were based on a "misunderstanding of the intent behind the new employment status", while others took "no account of the Government amendments that have already been tabled" (col 644). The clause would create a new employment status, that of employee shareholder, in addition to the existing employment statuses of worker and employee. The United Kingdom already had different types of employment status with different levels of rights and different obligations, "to allow businesses and individuals to choose the right type of contract that suits their particular circumstances". It was therefore important, "before we come to consider the new status, that the House understands the differences between existing employment statuses, because each has different employment rights". Employees, for example, had "all employment rights, whereas workers do not have unfair dismissal rights, do not enjoy the right to statutory redundancy pay and do not have other statutory rights". However, workers did have the right to the national minimum wage and did have "protection against unlawful deductions from their pay, paid annual leave, rest breaks and protection against discrimination, including on the ground that they work part-time". The statuses of worker and employee "are distinguished by the level of control and obligation that the employer has over the individual". The employer "has a higher level of control over an employee—he can dictate how, when and what an employee does, whereas an employer cannot dictate in the same terms how a worker carries out his work". The new status of employee shareholder carried "the same level of control as an employee, but links employment with shareholding in the company", and individuals would have "similar rights to employees, but they will not have the right to statutory redundancy pay, the statutory right to request flexible working unless they have returned from parental leave, time off to train or unfair dismissal rights except for automatically unfair reasons". The new status was designed "to give companies more choice in the type of employment contracts they can use to structure their work force" (col 644).

Turning to the Government's amendments, Michael Fallon said that they formed a package of comprehensive measures that would "strengthen the Bill's provisions for companies and people", and that they responded to "important points raised during the consultation, on second reading and in committee" (col 647). Amendments 22 to 28 would change the name of the new status to "employee shareholder". During the consultation, the Government had received "comments on the name 'employee owner'", and they recognised that "'employee owner' might be seen as confusing in relation to the

wider employee ownership agenda". The name "employee shareholder" was "far better at describing the new status, as it links the concept of employment and shareholding". Amendment 29 would ensure that "employee shareholders who are parents can request flexible working once they return from parental leave". The EU parental leave directive required that "parents should be able to request flexible working after their return from a period of parental leave", and the amendment ensured the UK would be "compliant with the directive". Turning to the issue of shares and what would happen to them at the end of the employment relationship, the Government believed that "employers and employee shareholders are likely to agree sensible terms for the disposal and buy-back of shares in order to ensure that the shares have the necessary value to meet the conditions for employee shareholder status". The Bill had been drafted on that basis. It was not the Government's intention that "employee shareholders should be left with shares that they can sell back to the company only at prices that are unfair or where the buy-back arrangements would leave the employee at a financial disadvantage if there is no other way of disposing of the shares for value" (col 648). Therefore, they believed it was "prudent to seek a power in the Bill to allow the Government to set a minimum value for the buy-back of shares if the company and employee shareholder enter into a buy-back agreement". Amendment 30 created that power. Amendment 31 would provide "clarity and certainty to employers and individuals who are considering accepting a position as an employee shareholder, as it spells out how shares will be valued". The amendment would aid "employers who want to be certain that the contract will not be void because too few shares in value have been given", and it would reassure individuals that "they are getting at least £2,000-worth of shares in consideration for becoming an employee shareholder".

On the issue of individuals in receipt of jobseeker's allowance, Michael Fallon wanted to reassure the House about what the Government had done "to ensure that employee shareholder status does not lead to jobseekers being deprived of benefits if they decide not to take a job they have been offered on the basis of the new status". The Government recognised that "the status should not be regarded as suitable for all businesses or individuals and should therefore be entered into voluntarily and with a clear understanding of what it will mean for them". The Government had considered what safeguards would be "needed to ensure that the individuals receiving benefits are not deprived of them if they reject a job offer as an employee shareholder" (col 649). However, they believed that "jobseeker's allowance claimants must actively seek and be available for work", and that must "include consideration of all suitable vacancies, and it is right that employee shareholder jobs should be as much a part of that consideration as any other". If a claimant applied for an employee shareholder job and was offered a position, "they should normally accept the offer". If they did not, their benefit payments "might be sanctioned if they do not have good reason for refusing the offer"; but in considering whether the claimant did or did not have a good reason, "the decision maker will take into account the claimant's individual circumstances and the specific terms and conditions on offer under the company's employee shareholder scheme". To ensure that advisers were able to help claimants to make the right decision about employee shareholder positions, the Government would "provide guidance and information to them on what the status means and the factors that a claimant will need to take into account before making the decision". Michael Fallon confirmed that the Government would provide guidance for decision makers "to help them to reach consistent decisions in this area, and we will now seek views from key stakeholders to make sure that that guidance is fit for purpose". The current guidance for decision makers would be amended to "ensure that it is available to decision makers in jobcentres", and safeguards would be "put in place without the need for legislation, and the necessary changes will be made when employee shareholder status is legally implemented".

He went on to say that "no one on the Government Benches wants employees to be pressurised, harassed or bullied into accepting" the new status (HC *Hansard*, 17 December 2012, col 650). The new status was entirely voluntary, and needed to be seen as such. The Government had therefore tabled amendments 64 and 65. Amendment 64 would create "a new right not to suffer detriment if an employee refuses to sign an employee shareholder contract", and amendment 65 would create a new unfair dismissal right (cols 650–1). Both of these rights would apply "from day one of an employee's contract", and employees could not be taken on and then, "on day two, be forced to become employee shareholders" (col 651).

He concluded by discussing the Opposition's amendment to leave out clause 27. He said he had "already outlined how the creation of the new employment status adds to the existing statuses of worker and employee". The new status gave "companies a new way of taking on individuals, giving both companies and individuals greater choice and flexibility". He thought that removing the provision in its entirety would "remove the opportunity for new flexibility and choice for companies". By increasing the range of employment statuses, "companies limited by shares will have a greater choice about how to grow and adapt their work force", and the new status would also "create opportunities for an individual to take up an employment status that may allow them to share in the rewards of a company". It was for the company to "decide what type of contract will be most suitable for it to offer, depending on its requirements and circumstances". The provision did not "prevent employers from offering more rights to their staff, such as a contractual right to request flexible work or contractual redundancy pay, just as they can now do with all other existing employment contracts". The provision was not about "taking away employment rights; it is about creating a new employment status with a different set of rights, just as there are different rights associated with being an employee or a worker". The Government wanted "companies and people to share in the risks and rewards that share-ownership offers, and this is a new way to do so".

The House divided on the Opposition's amendment, with 225 votes in favour and 260 votes against leaving out clause 27 (cols 652–5).

4. Commons Third Reading

The third reading of the Growth and Infrastructure Bill took place at the conclusion of report stage on 17 December 2012 (HC *Hansard*, cols 661–77). The Minister of State, Department for Business, Innovation and Skills, Michael Fallon, began by saying that the Bill was about "the coalition's priority: promoting economic growth. It contains a range of practical measures to boost infrastructure, increase housing supply and simplify planning rules, and all those things will make a difference now" (col 661). He went on to say:

> The Bill will unblock delays in the planning system, encourage faster roll-out of superfast broadband, bring forward investment in energy projects, and give employers and employees more choice and flexibility. The Opposition repeatedly attack the Government for failing to do enough on growth, as if some magic wand could repair at a single stroke the terrible damage they inflicted on our economy. In the Leader of the Opposition's speech to the CBI last month, he said:
>
> > "Enterprise and job creation are fundamental to the good economy and good society, and I will lead a party that understands that at its core",
>
> but businesses that back the Bill will see that, when his party has the chance to live up to those words and support reforms to promote growth, it votes against them. Government Members instinctively understand enterprise and will back the

> risk-takers and those willing to invest in creating jobs and growth. We want to help to modernise our economy, our infrastructure and our planning system. Only one part of this country resists modernisation—the Labour party. Better planning, more affordable housing, faster broadband, bigger investment in infrastructure and a boost for share ownership are the core of the Bill, and I commend it to the House.
>
> (col 663)

The Shadow Minister for Communities and Local Government, Dr Roberta Blackman-Woods, said that the Bill was "put out in haste in September as one of a number of panic measures to suggest that the Government were doing something to address the flatlining economy". She went on to say:

> We will certainly be voting against the Third Reading of this horrible, nasty little Bill that does little to promote growth, but risks employees' rights and the protection of our environment, while also reducing the amount of affordable housing. The Wildlife Trusts' comments are pertinent:
>
> > "Our primary concern is that the Bill perpetuates the myth that planning is responsible for holding back growth rather than focusing on the significant issues of financial restraint and borrowing difficulties. We believe that this approach to growth risks putting our natural capital at risk and undermining future prosperity."
>
> I hope the Minister listens to the Wildlife Trusts, even if he will not listen to us. This Bill changes the basis on which planning applications are determined by breaking the trust with local communities, and thus we must vote against it.
>
> (col 667)

The Bill was read for a third time, with 273 votes in favour and 231 votes against.

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