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Deregulation Bill: Committee Stage Report

Bill No 162 of 2013-14

RESEARCH PAPER 14/28 9 May 2014

This is a report on the House of Commons Committee Stage of the *Deregulation Bill.* A separate Library Research Paper (RP14/16) was prepared for the Bill's Second Reading debate in the Commons. The Bill's Report Stage will take place on 14 May 2014. A carry over motion was agreed on 24 February 2014 to allow the Bill to be re-introduced if its stages were not complete by the end of the session.

A number of new clauses were introduced during the Bill's Committee Stage. These concerned exemptions for turban-wearing Sikhs on the wearing of safety helmets in workplaces; the regulation of taxis and private hire vehicles; disputes regarding agricultural holdings; housing standards; and sanctions related to TV licence fee non-payment.

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Research Paper 14/28

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Summary

The Government described the Deregulation Bill as "one part of the on-going Deregulation agenda" which includes the Red Tape Challenge and the One in Two Out rule.[1] The Bill proposes a range of measures in line with the Government's aim to reduce regulatory burdens on businesses and public authorities. Its scope includes health and safety, employment law, company and insolvency law, the use of land, housing, transport, communications, the environment, Child Trust Funds, entertainment, criminal justice and economic growth. It involves input from ten ministerial departments, coordinated by the Cabinet Office.

At Second Reading (3 February 2014) the Minister for the Cabinet Office, Oliver Letwin, said that the Bill follows a "review of the entire regulatory scene" and is part of the Government's aim to have a period of Parliament for the first time in the country's history in which a government has "reduced rather than increased the burden of domestic regulation".[2] For the Opposition, the Shadow Minister, Chi Onwurah said that although Labour supported some of the measures in the Bill there were several it did not support, including changes to health and safety duties for self-employed persons and a proposed reduction of employment tribunals' powers in discrimination claims. Another key area of debate concerned the Bill's proposed duty on non-economic regulators to have regard to the desirability of promoting economic growth. The "growth duty" was described by the Minister as "probably the single most important clause in the Bill".[3] Ms Onwurah said that the Opposition supported the aims behind the proposed new duty, although were concerned to ensure that it would not inhibit or contradict the primary function of regulators.

In Committee (25 February 2014 - 25 March 2014) a number of new clauses were introduced. The Government, with Opposition support, introduced a new clause to extend current exemptions for turban-wearing Sikhs on the wearing of safety helmets in workplaces (**clause 5**).

The Government introduced three new clauses relating to taxis and private hire vehicles in England and Wales. **Clause 8** would allow people who do not hold a private hire vehicle driver's licence to drive a licensed private hire vehicle when the vehicle is not being used as a private hire vehicle. **Clause 9** would set a standard duration of three years for a taxi and private hire vehicle driver's licence and a standard duration of five years for a private hire vehicle operator's licence. **Clause 10** inserts a new clause that would allow a private hire vehicle operator to sub-contract a booking to another operator who is licensed in a different licensing district outside London, or based in London or in Scotland.[4]

Clause 11 concerns disputes regarding agricultural holdings that can currently be referred to arbitration. The proposal would allow some of these disputes to be capable of determination by a third party appointed by the parties.

The Government introduced two new clauses related to housing standards. These are now **clauses 28** and **29.** Clause 28 would amend the *Building Act 1984* to create new powers for the Secretary of State to include optional requirements in building regulations. Clause 29 would amend the *Planning and Energy Act 2008* to ensure that local authorities do not stray beyond the building regulations in setting local energy efficiency standards.

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1 *Government Response to the Report of the Joint Committee on the Draft Deregulation Bill*, Cm 8808, January 2014, p1

2 HC Deb 3 February 2014 c44

3 HC Deb 3 February 2014 c37

4 Explanatory Statements, Order Paper 25 March 2014

Two new clauses (**clauses 51** and **52**) were introduced on the subject of TV licensing, and won all-party support. **Clause 51** would require the Culture Secretary to carry out a review of the sanctions for licence fee non-payment, looking at the option of switching to a civil penalty system of fines, within three months of the Bill being passed. **Clause 52** would introduce a new power for the Secretary of State, through secondary legislation, to change the sanctions that apply to the failure to have a TV licence. The power provides for the sanctions to be changed either by replacing the criminal regime with a civil regime.

1 Introduction

The *Deregulation Bill* (Bill 162 of 2013-14) was introduced in the House of Commons on 23 January 2014 and received its Second Reading on 3 February 2014. The Bill's Committee Stage took place between 25 February 2014 and 25 March 2014. The Bill's Report Stage will take place on 14 May 2014. A carry over motion was agreed on 24 February 2014 to allow the Bill to be re-introduced if its stages were not complete by the end of the session.[5] The Bill, together with its Explanatory Notes, are available from the Parliament website, on which the progress of the Bill can be followed. A separate Library Research Paper was prepared prior to the Bill's Second Reading debate.[6]

The Bill was announced during the Queen's Speech on 8 May 2013, described as a Bill "to reduce the burden of excessive regulation on businesses". It is the second substantial piece of regulatory reform legislation proposed by the current government, the first of which became the *Enterprise and Regulatory Reform Act 2013*. The Bill was published in draft on 26 July 2013 and scrutinised by a Joint Committee of both Houses. The Joint Committee published its report on 29 December 2014.[7] The Government published its response to the Joint Committee's report on 30 January 2014.[8]

1.1 Second Reading

The Bill received its Second Reading on 3 February 2014. In introducing the Bill, the Minister for Government Policy, Oliver Letwin, stated that the Bill follows a "review of the entire regulatory scene" but is "just one small part of the process" of reducing regulation, the other parts of which include the Red Tape Challenge review of regulation.[9] Mr Letwin said that the Bill represents part of the Government's efforts to have a period of Parliament for the first time in the country's history in which a government has "reduced rather than increased the burden of domestic regulation".[10]

The Shadow Minister for the Cabinet Office, Chi Onwurah, said that while there were many parts of the Bill which Labour did not oppose, the Bill contained some disturbing proposals which it did oppose, including the removal of some of the employment tribunals' powers in discrimination cases (**clause 2**) and the exemptions for self-employed persons from health and safety duties (**clause 1**). Ms Onwurah argued that the "crude proposals in the Bill" failed to "recognise that good regulation is necessary to protect jobs and growth".[11]

Clause 1 would remove the duty on most self-employed persons to carry out their undertakings in a manner that avoids risk to their own and others' health and safety. Ms Onwurah said this would create confusion about who is and who is not covered by the health and safety duty.[12]

Clause 2 would remove employment tribunals' power to make wider recommendations in discrimination claims (see below). Ms Onwurah noted that the tribunals' recommendations

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5 *Carry Over of Public Bills,* Commons Library Standard Note, SN3236, 21 January 2014 provides some background on this.

6 *Deregulation Bill*, House of Commons Library Research Paper, RP14/16, 30 January 2014

7 Joint Committee on the Draft Deregulation Bill, *Draft Deregulation Bill – Report – Session 2013-14*, HL Paper 101, HC 925, 19 December 2013

8 *Government Response to the Report of the Joint Committee on the Draft Deregulation Bill*, Cm 8808, January 2014

9 HC Deb 3 February 2014 cc35-38

10 Ibid., c44

11 Ibid., c49

12 Ibid., c46

are only advisory and argued that removing the power constituted an attack on employment rights that the Opposition would not support.[13]

Another aspect of the Bill that received considerable comment during the debate was the Bill's proposed growth duty. The duty would require non-economic regulators to, in the exercise of their functions, have regard to the desirability of promoting economic growth. Oliver Letwin described the growth duty as "probably the single most important clause in the Bill".[14] For Labour, Chi Onwurah said:

> the Bill seeks to introduce a growth duty on regulators…. This duty will compel them to have regard to the promotion of economic growth when carrying out their functions and to carry them out in a necessary and proportionate way. We support the aims behind the duty and, clearly, the principle that regulators should go about their business in a proportionate way, but we must ensure that the duty does not inhibit or contradict the primary function of any regulator.[15]

Caroline Lucas tabled an amendment opposing the Bill's Second Reading due in part to her criticism of the growth duty. Ms Lucas said she feared the new duty would impinge on the ability of regulators independently to carry out their roles.[16] In reply, the Minister stated that the duty would act "not as an override but as a balancing consideration".[17] The amendment was withdrawn and the Bill given a Second Reading without division.

Other significant comment during the Bill's Second Reading debate is highlighted below alongside discussion of the Bill's individual clauses.

1.2 Committee Stage

The Bill's Committee Stage took place between 25 February 2014 and 25 March 2014, with a total of eighteen sittings. The record of the Committee's proceedings is available on the Parliament website.

The Committee consisted of the following Members: Gavin Barwell (Con); Andrew Bingham (Con); Tom Brake (Con); Andrew Bridgen (Con); John Cryer (Lab); Thomas Docherty (Lab); James Duddridge (Con); Oliver Heald (Con); John Hemming (LD); Kelvin Hopkins (Lab); Gareth Johnson (Con); Paul Maynard (Con); Caroline Nokes (Con); Chi Onwurah (Lab); Toby Perkins (Lab); David Rutley (Con); Jim Shannon (DUP); Karl Turner (Lab); Chris Williamson (Lab).

This Research Paper discusses in turn each of the Bill's main clauses. The clause numbers refer to the Bill as amended in Committee (Bill 191 of 2013-14).

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13 Ibid., c46
14 HC Deb 3 February 2014 c37
15 Ibid, c49
16 Ibid, c57
17 Ibid, c80

2 Health and safety

2.1 Health and Safety (clause 1)

Clause 1 of the Bill would amend section 3 of the *Health and Safety at Work etc. Act* 1974. Section 3 currently places a general duty on self-employed people to carry out their undertakings, so far as is reasonably practicable, in a way that avoids risks to their own or others' health and safety. Clause 1 would remove this duty from self-employed individuals unless they are undertaking potentially high-risk activities of a prescribed description.

Second Reading

Introducing the clause at Second Reading, Oliver Letwin, Cabinet Office Minister, said that it would mean about two-thirds of self-employed people would no longer be subject to the general duty. He described this as a "major gain in itself."[18] People involved in high-risk industries, such as nuclear, construction and the chemical industries, he said, would continue to be subject to the duty.

The Shadow Minister for the Cabinet Office, Chi Onwurah, countered that the measures affecting business were the "most worrying ... part of the Bill".[19] Clause 1, she said, would cause confusion about which self-employed people were, and were not, subject to the duty. Ian Lavery similarly claimed the clause served "no purpose other than to confuse" and said it was not clear who would and would not be subject to the 1974 Act's duties given the absence (at that point) of a prescribed list of undertakings.[20] In response, the Minister confirmed that details of the list would be available by the time the Bill was considered in Committee. He also clarified that the list would focus on activities rather than professions or jobs, but would also specify certain particularly dangerous sectors.[21]

Caroline Lucas argued that some of the most dangerous industries – including construction and agriculture – had very high proportions of self-employed people and described the changes as "completely unnecessary".[22] David Rutley, however, argued that the measures were supported by business organisations.[23] Andrew Bridgen similarly commended the clause, saying that the move could save small businesses money and would bring the UK into line with some other EU member states.[24]

Committee Stage

There were no substantial Government or other amendments made to clause 1 in Committee.[25] The clause, however, generated significant debate. The Government published, during Committee Stage, a 'prescribed list' of undertakings (e.g., undertakings which would still be subject to the duties under section 3 (2) of the 1974 Act.) The drafting of the list attracted some criticism. Jim Cryer described the list as "very vague" and said it was not clear whether a number of occupations – such as plumbing or carpentry – were included or not.[26] There was also discussion of how the clause was likely to affect those with more complicated employment status – e.g., self-employed people working as contractors.[27]

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18 PBC Deb 3 February 2014 c41
19 Ibid., c46
20 Ibid., c81
21 Ibid., c81
22 Ibid., c57
23 Ibid., c53
24 Ibid., c75
25 A minor technical Government amendment was passed without debate or a division, the effect of which is to allow the HSE to make recommendations for prescribed activities involving railways.
26 Ibid., c118
27 See e.g., Ibid., c115 onward.

A new health and safety clause was introduced by Government amendment to extend to other workplaces the current exemptions for turban-wearing Sikhs regarding the wearing of safety helmets on construction sites (see below).

Other significant amendments discussed, and divisions.

Amendments 3 and 4 were moved by Chi Onwurah during the Committee's third sitting. Contrary to provisions in clause 1 as introduced, which provide for a list of high-risk activities to which the general duty would still apply, amendment 3 would have placed a duty on the Health and Safety Executive (HSE) to maintain a list of ***low***- risk activities unlikely to fall within the duty of section 3(2) of the 1974 Act. The general duty on self-employed persons, however, would remain.

Speaking to amendment 3, Ms Onwurah said that it would "help make the law clearer, without repealing a law that has helped to keep us safe for 40 years".[28] The Solicitor-General countered that maintaining a list of low-risk activities would be "an enormous task and [would] 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."[29]

The Committee divided on Amendment 3, but it was defeated by 9 votes to 7.[30]

Amendment 4 was a probing amendment which would have required any regulations made under Section 1(2) of the Bill to be made by statutory instrument subject to the affirmative resolution procedure, following consultation with relevant parties and the publication of an impact assessment. There would be a duty to review the list of prescribed undertakings annually, and publicise the list, and any changes made to it, widely.

Ms Onwurah said the amendment sought to understand the checks and safeguards the Government was putting in place because clause 1, as drafted, "pose[d] the risk of exempting large sections [of the workforce] from health and safety while increasing confusion."[31] The Solicitor-General said the amendment was unnecessary; it was already the case, he said, that the clause required the prescribed list to be set out in regulation. This would not be subject to the affirmative procedure because the "increase of parliamentary time that would require is not considered appropriate".[32] He also confirmed that the HSE would undertake consultation on the regulations, and that an impact assessment would be published as was the usual practice.[33]

Clause 1, with a minor amendment (see footnote 8), was ordered to stand part of the Bill by 9 votes to 7.

2.2 Requirements to wear safety helmets: exemption for Sikhs (clause 5)

The Government introduced an amendment, new clause 18, (clause 5 of the current Bill) to extend current exemptions for turban-wearing Sikhs on the wearing of safety helmets in workplaces. Currently, section 11 of the *Employment Act 1989* (as amended) exempts turban-wearing Sikhs working on building sites from the requirement to wear safety helmets. The effect of the amendment is to extend this current exemption to other workplaces, with some exceptions. It would also extend the existing limited liability provisions of the exemption

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28 PBC Deb 27 February 2014 c107
29 Ibid., c129
30 Ibid., c132
31 Ibid., c107
32 Ibid., c130
33 Ibid., c130

to those persons, such as employers, who hold a legal requirement in respect of the wearing, provision or maintenance of safety helmets by exempted individuals.

The Health and Safety Executive (HSE) consulted on the changes for a two-week period between 27 January and 7 February 2014 – details can be found in the relevant *Consultation letter.*[34] This asked for views on any industries or workplaces that should be excluded from the exemption.

The Solicitor-General said that the clause was the result of representations from the Sikh Council UK.[35] Toby Perkins said that the Labour Party strongly supported the new clause. There was, he said, a "clear incentive to act" and the amendment would rectify the current anomaly whereby construction workers were exempt but those in other industries – sometimes lower risk - were not.[36] He asked for clarification on a number of issues including territorial extent. The Solicitor-General confirmed that the clause applied to the UK save for Northern Ireland but that amendments to the Bill bringing NI within the scope of the clause were expected in due course, subject to Ministerial agreement.[37]

The amendment was agreed without a vote.

3 Employment tribunals

3.1 Employment tribunals' power to make wider recommendations (clause 2)

Clause 2 would remove employment tribunals' power to make recommendations in discrimination cases which affect the employers' dealings with persons other than the claimant. Section 124 of the *Equality Act 2010* provides that if an employment tribunal finds that there has been a contravention of a relevant provision of the Act, the tribunal may make "an appropriate recommendation". An appropriate recommendation is one which requires the defending party to take specified steps within a specified period "for the purpose of obviating or reducing the adverse effect of any matter to which the proceedings relate":

- on the claimant;
- on any other person (the power to make wider recommendations).

In Committee, the Solicitor-General stated that the Government found the power to be costly and confusing, and stated that since its introduction in 2010 only 30 tribunals had made wider recommendations. Mr Heald argued that it would be common business sense to take voluntary remedial action upon losing a tribunal case; therefore the power was unnecessary.[38]

Labour's Thomas Docherty stated that the fact the power is used sparingly supported its retention, not its removal.[39] The Shadow Minister, Toby Perkins, argued that recommendations could be useful in future discrimination cases against the same employer: if not complied with, the tribunal could hold that against the employer; if complied with, the employer could use that in its defence.[40]

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34 HSE, Consultation letter. proposal to amend the provisions of section 11 of the Employment Act 1989 to extend the exemption afforded to turban wearing Sikhs (undated).
35 PBC Deb 25 Mar 2014, c 580
36 Ibid.
37 Ibid., c583-4
38 HC Deb 27 February 2014 c139
39 Ibid, c140
40 Ibid, cc146-147

The Solicitor-General highlighted evidence to the Committee from business organisations indicating employers were not defending cases they felt they ought to fight for fear that the tribunal would impose heavy burdens.

The Committee divided on clause 2: Ayes 9, Noes 6. Accordingly, clause 2 was ordered to stand part of the Bill.

4 Apprenticeships

4.1 Apprenticeships: simplification (clause 3)

Clause 3 would introduce changes recommended by the Richard Review to simplify English apprenticeships. The statutory requirement for the Specification of Apprenticeship Standards for England (SASE) set out in the *Apprenticeships, Skills, Children and Leaning Act 2009* would be removed and instead the Secretary of State would be able to "prepare and publish standards for such sectors of work as the Secretary of State thinks appropriate". It is also proposed that "Employers, or representatives of employers, may make proposals to the Secretary of State as to the content of a standard" and to give the Secretary of State powers to issue apprenticeship certificates or delegate the function as he/she wishes. Additionally Clause 3 proposed separating the statutory requirements of English and Welsh apprenticeships.

Amendment 6 was moved by Toby Perkins during the Committee's fifth sitting. Amendment 6 would have required the Secretary of State to report annually on the implementation of changes, the effect of changes on the number of apprenticeships and the scope for further proposals to increase the number of apprenticeships created by public procurement contracts. Mr Perkins said amendment 6 would "ensure that that commitment to apprenticeships was for life and not just for national apprenticeship week".[41] Tom Brake argued that the amendment was unnecessary because the Government was already reporting annually on apprenticeships.[42] The Committee divided on amendment 6, but it was defeated by 10 votes to 7.[43] Clause 3 was ordered to stand as part of the Bill.

Toby Perkins moved amendment 7 to **Schedule 1** in the Committee's fifth sitting. The amendment required that by 2020 the minimum standard for apprenticeships would be a qualification no lower than the National Vocational Qualification Level 3. Mr Perkins said that "It is important that we say that apprenticeships are a gold standard," and also suggested of Level 2 apprenticeships "Perhaps is would be appropriate for some of them to be called traineeships".[44] John Hemming raised the concern that the amendment "have not only an effect in future but a retrospective effect because it will throw doubt on intermediate apprenticeships even now?"[45] The Committee divided on amendment 7, but it was defeated by 10 votes to 8.[46] Schedule 1 was ordered to stand as part of the Bill.

4.2 English apprenticeships: funding arrangements (clause 4)

Clause 4 would allow payments, funded by the Secretary of State to be paid to employers of apprentices, reimbursing employers for money spent on training. Introducing the clause at Second Reading, Oliver Letwin said it would provide "for a much simpler apprenticeship scheme."[47]

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41 PBC Deb 4 Feb 2014, c 153
42 Ibid., c154
43 Ibid., c157
44 Ibid., c178
45 Ibid., c197
46 Ibid., c200
47 HC Deb 3 February 2014 c41

Toby Perkins used the debate to raise the issue of smaller firms having inadequate cash flows to benefit from the scheme.[48] Tom Brake stated that "an alternative funding route would be needed." And that "The technical consultation is going to explore that issue."[49] The clause was agreed without division.

4.3 Abolition of the Office of the Chief Executive of Skills Funding (clause 42 and Schedule 13)

Clause 42 would abolish the Office of the Chief Executive of Skills Funding and transfer certain powers and duties in respect of apprenticeship training, and further education and training for adults, to the Secretary of State. The changes would enable the Skills Funding Agency – the executive agency set up in April 2010 to support the Chief Executive exercise its functions – to operate through the powers and duties of the Secretary of State, rather than the Chief Executive. **Schedule 13** would make consequential amendments to *Apprenticeship, Skills, Children and Learning Act 2009* (ASCLA).

At Second Reading Neil Carmichael said:

> It is quite right that that office should be removed because it is effectively an unnecessary quango that removes the transparency and accountability that there should be around the decisions of and issues to do with the Skills Funding Agency. It is right that we give more power to the Secretary of State and not have such a structure standing in the way of effective progress.[50]

There were no significant debates or amendments made to clause 42 or Schedule in Committee.[51]

5 Agricultural Holdings Act 1986 - resolution of disputes

Clause 11 is a new clause resulting from a Government amendment. It would implement a recommendation from the Farming Regulation Task Force which was further developed by the Tenancy Reform Industry Group (TRIG).[52] TRIG is the advisory group which represents landlords and tenants of agricultural holdings in England and Wales.

The new clause would insert a new Schedule into the *Agricultural Holdings Act 1986*. This Act consolidated previous legislation on agricultural tenancies and contained a number of minor alterations. It applies to agricultural holdings entered into before 1 September 1995 and provides for the security of tenure, regulation of the terms and conditions of an agricultural tenancy and for the payments of compensation to tenants for improvements and disturbance.[53]

The new Schedule would allow for disputes that can currently be referred to arbitration (other than those regarding notices to quit a tenancy) to be capable of determination by a third party (e.g. a land agent) appointed by the parties. It would also provide for the interaction between arbitration and third party determination.[54] Hence, the clause would allow for an alternative method of dispute resolution, modernising the current dispute resolution options under the Act and bringing them in line with the provisions available to new agricultural tenancies under the *Agricultural Tenancies Act 1995.*

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48 PBC Deb 4 February 2014 c204
49 Ibid., c208
50 HC Deb 3 February 2014 c70
51 A minor technical Government amendment was passed without debate or a division.
52 Defra, *Government response to the Farming Regulation Task Force*, February 2012, p.51
53 HMRC, *IHTM 24211, Agricultural Tenancies: Overview of the legislation 1948-1995* as viewed on 22 April 2014
54 HC Deb 26 March 2014 c.648

Outlining this amendment in Committee, the Solicitor-General emphasised that the reform had been requested by tenant farmers and is strongly supported by the Tenancy Reform Industry Group. This is because third-party determination is viewed as measure which offers landlords and tenants a helpful alternative to the quasi-judicial process of arbitration with lower costs and a less formal process that can perhaps cause less friction in landlord/tenant relations.[55]

Thomas Docherty asked for details of the expected savings through access to this alternative. The Solicitor-General indicated that the current arbitration procedure costs on average, £25,000 per case and it was estimated that there will be a saving of £10,000 per case using the more informal, flexible third party process.[56]

6 Energy Measures

6.1 Shippers etc of gas (clause 12)

This clause would provide that third parties, who wish to make use of an offshore gas unloading facility, operated by another person that has a licence, would no longer be required themselves to have a licence to unload at the facility.

The clause was passed without amendment. The Minister was pressed for assurances that environment and health and safety requirements would remain the same; he confirmed that they would.[57]

6.2 Access to registers kept by Gas and Electricity Markets Authority (clause 62)

This clause would amend section 36 of the *Gas Act 1986* and section 49 of the *Electricity Act 1989.* It would remove the requirement for Ofgem to maintain physical registers that are open to the public, and would instead require the contents of each register to be shown on the their website. The clause was passed without amendment.

7 Suppliers of fuel and fireplaces

Clause 13 (previously clause 8) would amend Part 3 the *Clean Air Act 1993,* relating to smoke control areas. The Act provides for the Secretary of State to publish lists of authorised fuels and exempted fireplaces that can be used in smoke control areas. Currently this is done through regulations, which are updated every six month. The clause would remove the need to issue regulations, replacing them with an online list to be published by the Secretary of State that will be revised "as soon as is reasonably practicable after any change is made".

During the Bill's Committee Stage the Shadow Minister for Business, Innovation and Skills, Toby Perkins, asked for assurances that the clause was aimed only at speeding up the process of listing fuels and would not lead to a change in the criteria by which fuels are assessed.[58] The Solicitor-General gave that assurance, and the clause was ordered to stand part of the Bill.[59]

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55 PBC Deb 25 March 2014 c551
56 Ibid., c552
57 PBC Deb 4 March 2014 c213
58 PBC 4 March 2014 c214
59 Ibid., c215

8 Sellers of knitting yarn

Clause 14 would revoke the *Weights and Measures (Knitting Yarns) Order 1988*. The clause was agreed to without amendment.[60]

9 Insolvency

9.1 Second Reading debate summary

The Bill's insolvency provisions were raised only once during Second Reading, by Mark Lazarowicz. He referred to a letter by the Law Society of Scotland in which concerns were raised about the partial authorisation of insolvency practitioners (IPs). The main concern being that these clauses would be ineffective in Scotland because "significant parts of the corporate insolvency regime" are linked to bankruptcy legislation.[61]

9.2 Committee - Divisions

Authorisation of insolvency practitioners (clause 15)

The first of the two divisions on the Bill's insolvency provisions took place during the Committee's sixth sitting on 4 March 2014. The division was on **clause 15**, concerned with the partial authorisation of IPs.

In considering clause 15, it should be noted that different laws operate in Scotland in respect of personal insolvency but not corporate insolvency. The term 'bankruptcy' is used in respect of England and Wales, and bankruptcy procedures are governed by the *Insolvency Act 1986*. In contrast, 'sequestration' is the Scottish legal term for bankruptcy, and sequestration procedures are governed by the *Bankruptcy (Scotland) Act 1985* (as amended).

Background

Under the current system of authorisation, Insolvency Practitioners (IPs) are granted an insolvency licence, which allows them to act as an IP in relation to both corporate and personal insolvency cases. This licence is granted on passing the Joint Insolvency Exam (JIE) and having gained practical insolvency experience (approximately 600 hours for most licensing bodies).[62] The JIE incorporates both personal and corporate insolvency law. Individuals who are authorised to act as an IP are authorised in relation to all categories of appointment – there is no partial authorisation

Clause 15 would introduce a system whereby IPs could choose to qualify in either or both personal or corporate insolvency. Those partially qualified would only be able to practise in their chosen specialist area. Specifically, clauses 15(2) and 15(3) would amend Part 13 of the *Insolvency Act 1986*. A new section 390A would be inserted to provide that an IP who is partially authorised will be authorised to act only in relation to companies, or only in relation to individuals. It would also provide for a person to be fully authorised to act as an IP and practise in all categories of appointment. Individuals who are already authorised to act as an IP will be fully authorised.

In respect of Scotland, the definition of an individual would be extended by section 388(3) of the *Insolvency Act 1986*. The effect is that an IP who acts as a permanent or interim trustee in the sequestration of the estate of a Scottish partnership or another entity by virtue of section 6 of the *Bankruptcy (Scotland) Act 1985* is acting as an IP in relation to an individual. This means that an IP who is partially authorised in relation to individuals will be able to take appointments in relation to the sequestration of a Scottish partnership, whereas an individual

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60 PBC Deb 4 March 2014 c217

61 HC Deb 3 February 2014 cc78-9

62 *R3, the Insolvency Trade Body – Written Evidence to the Joint Committee on the Draft Deregulation Bill*, 16 September 2013, [online] (accessed 29 January 2014)

who is partially authorised in relation to companies will not. No partially authorised IP would be able to accept an appointment in relation to a partnership which is not a Scottish partnership. This type of insolvency would require an individual to be fully authorised as they may need to have knowledge of both company and individual insolvency law.

Detailed information on the technical aspects of clause 15 (previously clause 10) is provided in the Bill's Explanatory Notes and in the House of Commons Library Research Paper 14/06, prepared for Second Reading of the Bill, dated 30 January 2014.

The Joint Committee's report on the draft *Deregulation Bill* noted that some stakeholders had raised concerns about the level of consultation that had been undertaken in respect of the proposal allowing for the partial authorisation of insolvency practitioners (then clause 9 of the draft Bill).[63] Although the Insolvency Service believed there had been a proper consultation in 2010,[64] the Joint Committee recommended that the clause should be the subject of further consultation.

In parallel with the introduction of the Bill in the Commons on 23 January 2014, the Insolvency Service opened a public consultation on the amended proposal relating to partial authorisation, now contained in clause 15 of the Bill. This took the form of a letter addressed to a wide range of stakeholders inviting views on the matter.[65] The consultation closed on 21 February 2014. The Solicitor-General announced the Government response to the consultation during the Public Bill Committee's debate on the clause, on 4 March 2014.[66]

Committee debate and division

The Solicitor-General began the debate on why the clause should stand part of the Bill, by setting out the Government's response to the recent consultation.[67] Challenged on its results, the Solicitor-General acknowledged that most of the IPs who responded were against the clause, as were the main insolvency trade body and three of the regulatory bodies. However, there was support from the second largest authorising body—the Insolvency Practitioners Association—and from the only creditor organisation to respond.[68]

The Minister said that having considered the views expressed by stakeholders, the Government had decided to proceed with the proposal as set out in the Bill.[69] It was the Government's view that partial authorisation would increase competition by lowering entry qualification barriers to the insolvency profession. It would provide choice to those who wish to specialise in a particular area of insolvency practice.[70] The Minister argued that IPs would benefit because the measure would reduce the cost of training and ongoing regulation; this would be of proportionally greater benefit to smaller IP firms, including new entrants to the market.[71] In addition, he argued that savings on training fees would, over time, lower IP fees. This would lead to improved returns for creditors, many of whom are small businesses.[72]

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63 House of Lords, House of Commons Joint Committee on the draft Deregulation Bill Report, Session 2013-14, HC 925, 19 December 2013, [online] (accessed 2 April 2014)

64 *The Insolvency Service – Written evidence to the Joint Committee on the Draft Deregulation Bill*, 30 October 2013, online (accessed 29 January 2014)

65 Insolvency Service, '*Clause 10 – Deregulation Bill – partial authorisation of insolvency practitioners*', 23 January 2014, [not online]

66 PBC 4 March 2014 cc217-18

67 The consultation period ran from 23 January to 21 February 2014

68 PBC 4 March 2014 c217

69 PBC 4 March 2014 c218

70 Ibid

71 Ibid

72 Ibid

The Solicitor-General acknowledged that the Joint Committee had referred to concerns raised by parties who submitted evidence on the application of partial authorisation of IPs in Scotland.[73] However, he said that following pre-legislative scrutiny, the Government had made changes to reflect the different treatments of partnership insolvency in Scotland. As a result of these changes, an IP partially authorised in personal insolvency would be allowed to act in relation to Scottish partnerships and for members of them.[74]

Speaking for the Opposition, Toby Perkins argued that clause 15 should be dropped from the Bill. On the Government's first objective to increase competition, he pointed out that some 75% of small firms undertake both corporate and personal insolvency procedures for commercial reasons, so it is likely that only the very large firms would be able to adopt the partial licence.[75] He argued that the measure would create an unlevel playing field across the industry, making it more costly for smaller IPs to compete in an already difficult market - the opposite of what the Government is trying to achieve. He highlighted the fact that both R3, the trade body representing IPs, and the Insolvency Lawyers Association (ILA) had submitted evidence demonstrating that the measure would be regulatory in nature and would not increase competition or lead to lower fees.[76]

On the Government's second objective of reducing training costs, Toby Perkins argued that the take-up of partial licences would be small, on the Government's own estimate only about 100 partial licences to be issued in the first year, and did not justify the potential costs.[77] In addition, he argued that clause 15 would create second-class IPs and reduce professional standards.[78] He referred to an R3 survey in which 80% of its members said that they would not recruit someone who was only partially qualified.[79] He also questioned the practicalities of the measure; when people go to see an IP, how would they know whether they need to speak to a fully or partially qualified practitioner?[80] Kelvin Hopkins also argued that partial authorisation posed a risk to professional standards.[81]

The Opposition had serious concerns that the Government had not properly consulted on clause 15 and had not listened to businesses.[82] Toby Perkins said that although the Government had agreed to further consultation as proposed by the Joint Committee, it was launched on the same day that the Bill was laid in Parliament, giving stakeholders little time to be heard and for changes to be made.[83] He also questioned the evidence that partial authorisation of IPs would lower costs.[84] In concluding his argument, he said that clause 15 should be dropped from the Bill on the basis that it would undermine a successful insolvency regime, was unwanted by the profession and, rather than deregulate, adds a new layer of regulation.[85]

On the question of whether clause 15 should stand part of the Bill, the Committee divided: Ayes 9, Noes 7. The clause duly stands part of the Bill.

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73 Ibid
74 Ibid
75 PBC 4 March 2014 cc222-23
76 Ibid., c222
77 Ibid., c222
78 Ibid., c220
79 Ibid., c221
80 Ibid
81 PBC 4 March 2014 c225
82 Ibid., c223
83 Ibid
84 Ibid., c227
85 Ibid., cc227-28

During the Committee's consideration of clause 17 and Schedule 6 (both were agreed with little debate) Toby Perkins referred back to the sixth sitting, and the Committee's consideration of clause 15. Specifically, he said that the Minister appeared to allege that R3 and the insolvency industry were involved in restrictive practices.[86] He said it would be of interest to the Committee to know whether this really was the Minister's view or whether it was "one of those things that gets said in the heat of battle and does not reflect the Government's view of the industry".[87]

In response, the Solicitor-General said that on clause 15, it was the Government's case that competition lowers costs. He said that IPs provide relief for many people, and paid tribute to their good work. However, as Members on both sides of the Committee knew, established practitioners in any profession are not always keen for there to be competition and lower costs, which can hit their bottom line.[88]

Clause 16, which would streamline the procedures surrounding the circumstances in which auditors cease to hold office, was agreed to without debate.[89]

Reports on conduct of directors

The second of two divisions on the Bill's insolvency provisions took place during the Committee's eighteenth sitting on 25 March 2014. The division was on new Clause 15, proposed by the Opposition, and concerned the provision of insolvency practitioner (IP) reports on the conduct of directors of an insolvent company. New clause 15 would have allowed more efficient, electronic forms to be used in the future.[90]

Committee debate and division

In making the case for the clause, Toby Perkins explained that currently when an IP is appointed to a case, they have a legal duty to file a report on the conduct of the director. Specifically, under Section 3 of the *Insolvent Companies (Reports on Conduct of Directors) Rules 1996*, a hard copy of a D1 form must be completed. This, he claimed, was an expensive requirement. In addition to unnecessary printing costs and the time it takes to fill in forms by hand, the Insolvency Service pays for motorcycle couriers to deliver the forms to the IPs.[91]

Toby Perkins referred to figures that the Opposition uncovered through a Parliamentary Question in 2012 which showed that 10 years ago, 45% of completed D1 forms eventually led to a disqualification of a director, or to a director being given an undertaking by the Insolvency Service.[92] He said that by 2010, that was down to 27%, and now just 21% of those reports lead to a disqualification.[93] In 2011-12, of the 5,401 D1 forms submitted by IPs, only 1,151 resulted in a disqualification or an undertaking.[94] In short, he argued that the disqualification process had failed to keep up.

In proposing the clause, Toby Perkins said that the Opposition was focusing on the small number of irresponsible directors. He referred to a working group set up by R3 in 2011 to design a new online form that would save money, contain better information, and allow the

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86 PBC 6 March 2014 c233; see also PBC 4 March 2014 c226
87 PBC 6 March 2014 c233
88 Ibid
89 PBC 6 March 2014 c231
90 PBC 25 March 2014 c633
91 Ibid., c634
92 Ibid., c633
93 Ibid
94 Ibid

Insolvency Service to access the information they need more quickly.[95] He said that after around a year of work, the project was cancelled because the working group were told by the Department for Business, Innovation and Skills (BIS) that any redesign of the D1 form would not be allowed, due to a moratorium on new regulation for micro-businesses; this was despite the fact that 82% of IPs responding to an R3 survey said they wanted to change to an electronic system.[96] He said that the survey further revealed that 80% of micro-businesses in the insolvency profession—the very businesses the moratorium purports to protect—support the change the Opposition propose.[97]

In response, the Solicitor-General agreed that directors whose misconduct results in the company's insolvency should be disqualified, and 1,000 were last year.[98] With regards to disqualification numbers increasing with D1 reports, he said that a D1 report is necessary in every insolvency case, but in some cases (in a difficult economic period) it is not necessarily misconduct that has led to the insolvency, so there would not always be a disqualification.[99]

The Solicitor-General said that the Government was already in the process of developing a comprehensive package of reforms to the way that director conduct is reported and considered, including streamlining the way in which IPs report and allowing the electronic submission of information in a single form.[100] He argued that such reforms would bring two main benefits. First, office holders would find it easier to report, both as regards the content and the form. Secondly, the reforms would improve engagement between the office holder and the Secretary of State, and therefore produce better information earlier, which would improve the efficiency and efficacy of the enforcement regime. He said that the Government had consulted on the reforms as part of the red tape challenge last year and there was broad support.[101]

The Solicitor-General said that whilst the Government could understand the Opposition's intention behind the proposed new clause, the clause failed to provide sufficient clarity on what would replace the current D1 form and how the various necessary protections would be provided. He argued that it would be better to wait and introduce reform within the context of the wider provisions that the Government has been consulted on.[102]

Toby Perkins disagreed, arguing that the best way forward would be to accept the clause whilst acknowledging that it could be refined on Report.[103] On the question of whether new clause 15 should be read a second time, the Committee divided: Ayes 5, Noes 9. The question was accordingly negatived.

10 Use of land

10.1 Clauses 18-24: Rights of Way

Clauses 18-24 (previously clauses 13-19) represent a "rights of way" package which generally seeks to untangle and speed-up the processes for determining and recording rights of way.

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95 PBC 25 March 2014 cc634-5
96 Ibid., c635
97 Ibid
98 Ibid
99 Ibid
100 PBC 25 March 2014 cc635-6
101 Ibid
102 PBC 25 March 2014 c636
103 Ibid

There is cross-party support for the measures which have been developed over two administrations. The package is based on the recommendations of a 2008 Stakeholder Working Group (SWG) on unrecorded rights of way set up by Natural England. The SWG represents a wide variety of interests from farmers to ramblers and the organisations involved have emphasised that the measures need to be adopted in full for the agreement to remain valid.

In acknowledgement of this hard won consensus, no changes to the clauses were made in Committee. However, groups representing vintage car users and motorcyclists (forming The Land Access and Recreation Association - LARA) remain concerned about the passionate calls from a variety of groups for the Bill to include measures to restrict motorised vehicles on unsealed country roads to prevent damage to these routes by irresponsible users and interference with walkers and riders.

The Government has made it clear that there has been insufficient consultation to include such measures in the Deregulation Bill and has confirmed that this issue will be looked at by a new stakeholder group (see section below). [104]

10.2 Second Reading

The rights of way package was not a major topic of debate at Second Reading despite attracting substantial interest during pre-legislative scrutiny.

Bill Wiggin (Con) questioned how far the Bill would help those seeking to divert rights of way that go through their gardens (Clause 21 - previously 16) and Oliver Letwin confirmed that the government would provide guidance (see section below). Julian Smith asked whether this guidance would also refer to the controversial issue of motorised vehicles on unsealed country lanes. The Minister acknowledged that he had been heavily lobbied on this issue and highlighted the role of Clause 22 which authorises gates on a wider variety of rights of way than at present as relevant.[105]

10.3 Committee Stage

Only one amendment on the rights of way clauses was debated in Committee. This was new Clause 3, a probing amendment by John Hemming (Lib Dem) on the issue of motorised vehicles on rights of way (see below). However, despite overall, cross-party support for the rights of way package, Thomas Docherty (Lab) said that he could not make any "guarantees for Report and the Lords" in terms of tabling Labour amendments on these clauses.[106] He indicated that these amendments would probably related to any outstanding issues still being considered by the SWG as highlighted in their evidence to the Committee (25 February 2014).

Tom Brake confirmed that the SWG will advise on the review panel which is to be established to advise on how well the reforms are working and whether any further measures are required before the 2026 cut-off date for recording previously unrecorded rights of way.[107]

Thomas Docherty (Lab) also sought further information from the Government about the costs to applicants e.g. farmers related to Clause 23. This provides for full cost recovery by local authorities and the Secretary of State when dealing with applications by landowners to divert

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[104] PBC Deb 6 March 2014 c.238
[105] HC Deb 3 February 2014 c. 43
[106] PBC Deb 6 March 2014 c237
[107] Ibid., c238

or extinguish a right of way. Tom Brake undertook to provide further details to the Committee of government research on the likely range of costs.[108]

Motorised vehicles on unsealed roads

The Bill does not include any measures to restrict the use of unclassified, unsealed roads by motorised vehicles. However, at the pre-legislative scrutiny stage of the Bill, a number of organisations such as the Green Lanes Environmental Action Movement (GLEAM) and Peak District Green Lanes Alliance were lobbying for such restrictions to be included to prevent damage to such routes by irresponsible drivers as well as to protect the interests of other users. The interest in this area was such that the Joint Committee considering the Bill commented that it was an area of policy that warranted further attention by the Government.

In general discussion on the rights of way clauses, Kelvin Hopkins (Lab) indicated that he felt that the Committee ought to support those expressing concern about access to unmetalled roads by motorised vehicles. Chris Williamson (Lab) agreed but urged caution in introducing clauses which penalised responsible users.[109]

New Clause 3 – probing amendment

John Hemming tabled a probing amendment requiring the Secretary of State to prepare a report, a year after the rights of way provisions came into force containing an assessment of the burdens and costs caused by the use of mechanically propelled vehicles on unsealed rights of way and providing the power to make regulations in this area.[110] This was in recognition of the concerns voiced at pre-scrutiny stage. The amendment was rejected but Tom Brake MP explained how Defra intended to progress this issue:[111]

> "The proposal is that Defra will work with Natural England to organise the founding of a group with an independent chair and a secretariat, and invite stakeholders with the relevant experience and expertise to join the group. The group will contain a balance of interests and cross all sectors, and will be expected to come up with its own terms of reference."

He commented that one of the difficulties in finding a solution was because there a serious problems in only a small number of places and in many places no problem at all. John Hemming was content with the idea of a new group to look at this.

The Government accepts the need for further reform in this area but has always made it clear that it does not consider amendments relating to motorised vehicles on rights of way as appropriate for the Bill. The Government response (paras 80 and 81) to the Joint Committee's pre-legislative scrutiny had already indicated where the Government *was* sympathetic to further reform and separate legislation:

> There is clearly considerable debate on the need for further reform to the legislation governing the use of motorised vehicles on public rights of way and minor unsealed roads, especially in National Parks. We have sympathy with the concerns of those who have put forward proposals to protect routes that are vulnerable to damage by motorised vehicles.
>
> However, we believe that the motor vehicle issue is quite different in nature to that of recording historical rights of way and completing the definitive map.

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[108] Ibid., c248
[109] Ibid., c236
[110] PBC Deb 25 March 2014 c610
[111] Ibid., c613

> Defra considers that any change to the current government framework for managing motorised vehicles should be the subject of a full public consultation. We believe that this issue needs to be fully debated and a separate package of policy measures formulated for implementation, through legislation if necessary, when a suitable opportunity arises.

Government guidance for Clause 21 (Applications by owners etc for public path orders)

Currently, provisions in the Countryside and Rights of Way Act 2000 (not yet commenced) set out when a landowner can formally apply to divert or extinguish a right of way. However, these are limited to land which is used for agriculture, forestry or the breeding or keeping of horses. Clause 21 amends the Highways Act 1980 to allow the Secretary of State to prescribe in regulations other kinds of land in England where applications can be made. Particular issues that the Government is considering in relation to this clause are where the right of way might pass through commercial premises raising health and safety issues or through the garden of a domestic home, perhaps threatening privacy and security. The clause also gives the Secretary of State the power to determine not to make a diversion or extinguishment order in appeal cases where it is considered that the merits of the appeal do not warrant it.

In Committee, Tom Brake confirmed that the Government intended to supplement the clause with guidance agreed by the rights of way SWG. This guidance will "direct local authorities to work on the presumption that, wherever practicable, public rights of way should be removed, on application, from family gardens, working farmyards and commercial premises where privacy, safety or security is a significant concern".[112]The SWG will be approving this guidance.[113]

Various Members (Thomas Docherty, David Rutley and David Bridgen) raised the issue of striking the right balance in the guidance so that rights of way could not automatically be restricted when farmers did not like the idea of any access to their land and equally that it adequately considered their concerns about access. For example, health and safety on a route taking walkers through land regularly used by heavy machinery or the effects of dogs worrying livestock the proof. Tom Brake confirmed that the draft guidance would account for these concerns as part of the consultation process on it.[114]

11 Erection of public statues (London)

Clause 25 would remove historic controls on erecting public statues in London, which are now covered by the planning system. It is a straightforward simplification measure, and was agreed to without amendment.

12 Housing and development

12.1 Right to Buy (Clause 26)

Clause 26 of the Bill would amend section 119 of the *1985 Housing Act* to reduce the qualification period for the Right to Buy (RTB) in England to three years as a public sector tenant from the current five years. The position in Wales would remain unchanged. The reduced qualification period will also apply to assured tenants in respect of the Right to Acquire.

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[112] PBC Deb 6 March 2014 c241
[113] HC Deb 3 February 2014 c42
[114] PBC Deb 6 March 2014, c243

In Public Bill Committee James Duddridge moved a probing amendment to reduce the RTB qualification period to two years. Alongside this, the Committee considered amendment 8 which would have required the Secretary of State to lay a report before both Houses of Parliament one year after Royal Assent "setting out the effect of Government policy of reducing the qualification period for right to buy on the number of council houses which have been replaced on a like for like basis."[115] Thomas Docherty, for Labour, referred to the Government's intention to conduct an internal review of the impact of the reduction in the qualification period and said "we are simply calling for that to be published and laid before Parliament so that we can judge the success of the policy."[116]

The Solicitor-General, Oliver Heald, explained the thinking behind the move to a three year qualification period:

> It is true that in 1984 the qualifying period was reduced from three to two years, and I am certainly not saying that three years is the answer forever, but three years was where the right to buy policy originally started, and it was proven to have the desired effect of enabling a lot of people to buy their own home. We believe that it will make a solid difference if the qualifying period is three years rather than five.
>
> Councils are now offering flexible tenancies for two years. If we wanted, in due course, to take the step from three to two years, it would be necessary to consult and look carefully at how a two-year qualifying period would fit in with such innovative new tenancies. I am not, therefore, saying never; I would say to my hon. Friend that the measure in clause 21 is a significant step forward. Based on that, I hope that he will be prepared to go with what the Government are proposing for now and perhaps renew his plea in future. The measure will help to encourage home ownership.[117]

He argued that it would be "premature" to report back within a year of reducing the qualification period as "that would not capture the full effect of the policy change" and went on:

> There is no current requirement on landlords to provide data returns to the Department on how many social tenants purchase their homes after a specific length of public sector tenancy, which would be required to fulfil the terms of the amendment on like-for-like values, costs and investments. Any such requirement would place an additional administrative burden on landlords and would need to be funded by the Government.
>
> The Government are committed to reducing burdens on landlords, and we therefore do not intend to impose any additional reporting requirements on them. We believe that the current arrangements will enable officials to monitor the impact of the change to the qualifying period for the right to buy.[118]

The Committee divided on amendment 8 – it was defeated by 9 votes to 5.[119]

Kelvin Hopkins moved that a new clause concerning the RTB be added to the Bill during the Committee's 18th sitting. New clause 6 would have enabled local authorities to set the RTB discount locally. New clause 7 was considered at the same time; this clause would have enabled authorities to retain 100% of capital receipts from RTB sales for reinvestment.[120]

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115 PBC 11 March 2014 c255
116 PBC 11 March 2014 c260
117 PBC 11 March 2014 cc275-6
118 PBC 11 March 2014 c276
119 PBC 11 March 2014 c278
120 PCB 25 March 2014 c628

Responding, the Solicitor-General said that national discount increases "will ensure that social tenants across the country are not disadvantaged by where they live." On the retention of capital receipts he said:

> Turning to new clause 7, as part of the self-financing settlement the Government reduced the overall level of local authority housing debt by £862 million. In exchange for that significant financial benefit, local authorities must return a proportion of their right-to-buy receipts to the Exchequer under a process known as pooling. However, from the introduction of the self-financing settlement in April 2012 to the end of 2013, only £237 million in right-to-buy receipts was paid back and local authorities retained £640 million.
>
> Section 11 of the Local Government Act 2003 enables the Secretary of State to make regulations about the use of capital receipts by a local authority and amounts to be pooled, but the Government have decided that they want local authorities to retain as much of their capital receipts as possible, so that they can invest those receipts in, for example, new social housing or regeneration projects. The Government do not therefore generally pool receipts other than right to buy.
>
> We think that we have struck a fair deal with local authorities. The Government have paid off a significant amount of housing debt, and in return ask for an element to be returned to the Exchequer. We do not pool other housing capital receipts and that gives local authorities the flexibility to invest locally. I urge the hon. Gentleman not to press new clause 7.[121]

New clause 6 was withdrawn.

12.2 Housing strategies (Clause 27)

Clause 27 of the Bill would remove the requirement on local authorities in England to prepare housing strategies. Sections 87 and 88 of the *Local Government Act 2003* would have their application limited to Wales.

The Solicitor-General set out the rationale behind clause 27 during the clause stand part debate in Committee:

> **The Solicitor-General:** Perhaps I can make it clear that the purpose of clause 22 is to remove the power of the Secretary of State to require local housing authorities in England to produce a housing strategy. This is an attempt to tidy up the statute book, because the power has never been exercised since it was introduced more than 10 years ago and there is no intention to exercise it in the future. It is part of the Government's aim to reduce unnecessary central regulation. Councils do not need to be told to have housing strategies; in fact, it has become common practice for them and is a fundamental part of their job. The duty, also here, to prepare a sustainable community strategy is again something which councils do.
>
> This provision will continue to apply in Wales. The Welsh authorities wish to continue to have it available to them, so it has been agreed that the power devolved to Welsh Ministers requiring local authorities in Wales to produce a housing strategy is not affected in any way. There have been discussions at official level. I cannot say that I have spoken to Welsh Ministers, because I have not, but I understand they are happy with the outcome.[122]

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121 PCB 25 March 2014 c630
122 PBC 11 March 2014 c281

12.3 Housing standards (clauses 28 and 29)

The Government introduced two new clauses during Committee stage related to housing standards. These are now Clauses 28 and 29 of the Bill.

The Government launched a technical housing standards review in October 2012 following the red tape challenge. This included a housing standards review consultation. The outcome of the review was set out by the Government in a written statement on 13th March 2014.

> The Government recognises that it is not always possible or desirable to require a single national standard for all new development, and that local discretion is in some circumstances sensible. To facilitate this, the consultation proposed the introduction of new powers in the Building Act which would enable different levels of performance where these were necessary to meet certain local circumstances. These requirements would be triggered by conditions set in a Local Plan, subject to the normal plan making process of evidencing need and testing viability. So today I can announce we are introducing measures to ensure that the system includes new flexibility to respond to local circumstances where needed.
>
> There are significant benefits to this arrangement. Building Regulations apply nationally across England and provide a clear and consistent set of requirements for home builders to meet, and for building control bodies to apply.[123]

The statement also set out the timing for implementing changes, including the new legislation in the Bill:

> Draft regulations and technical standards will be published in the summer, with necessary statutory regulations and supporting approved documents coming into force at the turn of the year. The Government has also today tabled amendments to the Deregulation Bill currently before the House, to make necessary changes to existing legislation to enable this approach.[124]

The statement also announced the winding down of the Code for Sustainable Homes (CSH) as requirements for zero carbon homes are incorporated into building regulations by 2016, although it would consider taking forward some aspects on a voluntary basis.[125] The Environmental Audit Committee was critical of this taking the view that "that the proposed replacement for CSH standards on energy and carbon emissions, the 2016 zero carbon homes standard, has been significantly diluted"[126] Further information on the code and the standard can be found in the Library Note on Zero Carbon Homes.

The Minister summarised the powers of the two new clauses as follows:

> New clause 12 amends the Building Act 1984 to create new powers for the Secretary of State to include optional requirements in building regulations, and new clause 13 amends the Planning and Energy Act 2008 to ensure that local authorities do not stray beyond the building regulations in setting local energy efficiency standards.

Thomas Docherty, speaking for the opposition expressed concern that amendments were being introduced without much detail of what any regulations would look like.[127] He also

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[123] HC Deb 13 Mar 2014 c32ws
[124] Ibid
[125] Ibid
[126] Environmental Audit Committee, Code for Sustainable Homes and the Housing Standards Review, Report, Eighth report of session 2013-14, 11 November 2013
[127] Public Bill Committee March 2014 c555 25

stated that "opposition Members broadly welcome consolidation and simplification, but it is crucial that we do not have lower building standards as a result".[128]

Outside Parliament there was concern that the limits on energy efficiency standards may also have been extended to cover renewable energy provision. This was not the case, which was welcomed:

> An amendment to the Deregulation Bill, currently passing through Parliament, confirmed late last week that local powers to set on-site renewable energy targets for new buildings will be retained - although it also removes the ability to set similar standards for energy efficiency.[129]

And

> The prospect of the rules being watered down caused an outcry from green businesses. Around 50 organisations wrote a letter to Communities Secretary Eric Pickles last week warning that removing the rule would leave a green building policy vacuum until Zero Carbon Home standards are introduced in 2016.[130]

13 Transport

Discussion on the transport aspects of the Bill focused on changes to exemption certificates under the Rail Vehicle Accessibility Regulations, marine accident investigations and the introduction of new measures regarding taxis and private hire vehicles. Other measures, including those related to changes to driving instruction (clause 6 and Schedule 2), motor insurers (clause 7 and Schedule 3), devolution of railway franchising (clause 30 and Schedule 8), international shipping instruments (clause 68) and the *Road Traffic Act 1988* (clause 69 and Part 4 of Schedule 18) were agreed without substantial debate.[131]

13.1 Rail Vehicle Accessibility Regulations: exemption certificates (clauses 31 & 32 and Schedules 9 & 10)

Schedule 9, Part 6 of the Bill proposes changes to exemptions from the Rail Vehicle Accessibility Regulations. The Bill would allow these exemptions to be made and amended by administrative order rather than by statutory instrument in England and Wales and Scotland (to bring it into line with exemption orders granted for buses and coaches; for rail these tend to be limited to Underground metro vehicles). Labour proposed two amendments: one to require a detailed report of any exemption order made by the Secretary of State, the second to reverse the change and retain a system of statutory instruments for making exemption orders.[132]

The minister, Tom Brake, argued that there was already adequate transparency via an annual report to Parliament on exemption orders and the publication of all applications for exemption orders on the DfT website.[133] He also said that moving to a system of administrative orders was proportionate and in keeping with how orders for other vehicles are

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[128] Ibid c556
[129] Business Green, Renewable energy industry celebrates as Merton Rule retained, 17 March 2014
[130] ibid
[131] PBC Deb 4 March 2014 cc211-212; PBC 18 March 2014 cc462-463 [References are to clause numbers in most recent copy of the Bill, HC 191]
[132] PBC Deb 11 March 2014 cc286-8
[133] Ibid., c289

made.[134] Labour pushed its amendment on a report (transparency) to the vote, where it was defeated 11 votes to 6.[135]

13.2 Marine accident investigations (clause 33)

This proposal, to repeal that part of section 269(1) of the *Merchant Shipping Act 1995*, as amended, which requires the Secretary of State to order the rehearing of a formal investigation into a marine accident if new and important evidence which could not be produced at the investigation has been discovered, faced opposition from unions and, in Committee, from the Labour Party.

The Solicitor General explained that the change:

> … frees the Secretary of State from the duty to reopen a formal investigation into a marine accident when new and important evidence is found, but it leaves him with the discretion to reopen such an inquiry. Currently, the Secretary of State is obliged to reopen a formal investigation if new and important evidence that was not available at the time of the original investigation becomes known or there are grounds to suspect a miscarriage of justice. In any other circumstances, the Secretary of State has the discretion to reopen the investigation. The clause pertains to the first limb of those two obligations, namely, that new and important evidence is found. It will remain mandatory to reopen the formal investigation if there are grounds to suspect a miscarriage of justice […]
>
> Each case for reopening will be considered on its individual merits, including, but not limited to, the likelihood of lessons being learned that would improve the safety of current marine operations and ship design; the likelihood of being able to identify the true cause or causes of marine accidents where these have been particularly uncertain prior to the evidence being found; and the likelihood of uncovering information that will provide a deeper understanding of the causes of other marine accidents.[136]

Speaking for Labour, Chi Onwurah stated that this was "emotive and the duty should not be thrown away lightly" and referred to the oft-cited case of the MV Derbyshire:

> There were 14 years between the sinking of the Derbyshire and its being found, yet the way in which it sank had significant implications for maritime safety. What evidence does the Solicitor-General have that the rate of technological advance in maritime travel—it does advance, but not quite on a par with mobile telephony, for example—is such that when a ship is found, the way in which it sank is no longer important enough to reopen an investigation? Both the Gaul and the Derbyshire prompted reinvestigations many years after the original incidents, and in both cases the then Secretary of State refused to reopen an investigation until new evidence became available. That caused decades of extra suffering for the loved ones of those who lost their lives. Imagine what additional suffering would have been caused if, even when new evidence was available, the Secretary of State had still refused to reinvestigate. The removal of this duty will enable him or her to do that.[137]

Ms Onwurah also pointed out that: "To retain the duty to reopen an investigation if the Secretary of State suspects a miscarriage of justice is not likely to happen without an

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134 Ibid., cc289-90
135 Ibid., c291
136 PBC Deb 11 March 2014 cc305-6
137 Ibid., c307

investigation in the first place—how can a Secretary of State suspect a miscarriage of justice without an investigation? This area should not be left to discretion".[138]

The Government and opposition continued to disagree on the fundamental point of there being a 'duty' reopen an investigation and the 'discretion' to do so. Labour pushed the clause to a vote and was defeated 11 votes to 7.[139]

13.3 Taxis and private hire vehicles (PHVs) (clauses 8, 9 & 10)

The addition of three new clauses relating to taxis and private hire vehicles (PHVs) in England and Wales was something of a surprise. The Law Commission was charged with reviewing the (somewhat antiquated) legislation in this area in 2011-12. It published an interim statement of its conclusions in April 2013 and is expected to publish its final recommendations to Government, along with a draft bill, this spring.[140]

While we await the Law Commission's final recommendations, the Government brought forward three new clauses in this area, designed to achieve the following:

- **New Clause 9 Private hire vehicles: circumstances in which driver's licence required**: This amendment inserts a new clause which allows people who do not hold a private hire vehicle driver's licence to drive a licensed private hire vehicle when the vehicle is not being used as a private hire vehicle (for example, a licensed private hire vehicle driver's partner could use the vehicle for a family outing);

- **New Clause 10 Taxis and private hire vehicles: duration of licences**: This amendment inserts a new clause which sets a standard duration of three years for a taxi and private hire vehicle driver's licence and a standard duration of five years for a private hire vehicle operator's licence. A lesser period may be specified only if appropriate in a particular case. At present, licensing authorities could have a general policy of specifying a lesser period; and

- **New clause 11 Private hire vehicles: sub-contracting**: This amendment inserts a new clause which allows a private hire vehicle operator to sub-contract a private hire vehicle booking to another operator who is licensed in a different licensing district outside London or based in London or in Scotland.[141]

Introducing the new clauses, the Deputy Leader of the House of Commons, Tom Brake, said:

> The purpose of [new clause 9] is to free up many families from the need to run a second car by enabling people who do not hold a private hire vehicles driver's licence to drive licensed private hire vehicles when they are not being used commercially […] I recognise that some concerns have been expressed about the safety element and effective enforcement. That is why we have incorporated a reverse burden of proof in the clause. If a driver without a PHV driver's licence is caught driving a licensed PHV with a passenger on board, the clause places the onus on that person to show that the vehicle was not being used as a hire vehicle at the time. In most cases it will be abundantly clear in a matter of seconds that the passenger is in the vehicle as part of general domestic use to which the vehicle can now be put […]

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138 Ibid., c308
139 PBC Deb 11 March 2014, c326
140 Law Commission, *Taxi and Private Hire Services* [accessed 14 April 2014]
141 Explanatory Statements, Order Paper 25 March 2014

> New clause [11] allows private hire vehicle operators to subcontract to each other across licensing boundaries. That will allow private hire vehicle operators to work more flexibly and to grow their businesses. Passengers will be able to rely on their local operator, rather than being turned away when the operator cannot directly fulfil the booking. Under the triple licence requirement, private hire operators are licensed within a district and must use only vehicles and drivers licensed by the same local authority as granted their operator licence. It is important that that requirement remains in place for the moment, although we will revisit the whole issue when we consider the Law Commission's report […]
>
> I shall now discuss new clause [10]. The legislation that covers taxi and private hire vehicle drivers and private hire vehicle operators in England and Wales outside London and Plymouth allows a licensing authority to grant […] a driver's licence for a maximum of three years and a private hire vehicle operator licence for a maximum of five years. The intention at the time was that licences should be for three years and for five years […] The effect of standardising licence duration is that licence holders in areas where the licensing authority currently grants licences for shorter durations will no longer have routinely to apply for renewals of their licences at shorter frequencies than the three or five years' standard duration. Far too many licensing authorities have now adopted a policy of routinely granting driver and operator licences for a period much less than the maximum.[142]

He also explained that he did not see a conflict between bringing forward these 'limited' measures and the longer-term work being undertaken by the Law Commission

> The reason for coming forward with these limited proposals is that there is nothing wrong in principle with addressing some localised issues […] while allowing the Law Commission to do more detailed work on a whole range of issues. I do not think that those two things cannot run in parallel, which is why we have identified the matter as something on which the Government can take action now and that has a significant positive deregulatory impact. It will assist the operators of private hire vehicles and their passengers, who will receive a better service.[143]

Labour opposed all of these changes. Chi Onwurah, Shadow Minister for the Cabinet Office, cited the views of industry and unions in her response to the minister. On NC9 (allowing PHVs to be used for private business by those without a PHV licence), she said:

> Under the new clause, family members may use a PHV as long as they do not use it as a PHV. The Minister suggested that that was totally straightforward, but the proposal is potentially dangerous and deserves full consultation and consideration. […] Enforcement against the illegal use of licensed vehicles would, I believe, be almost impossible. The industry has said that there would have to be a provision for an indicator that a vehicle was off duty or a restriction such as spouses only, with a wedding certificate required as proof. That opens up all kinds of possibilities for confusion and strange altercations on the roadside if the drivers of such vehicles are asked for wedding certificates […] My concern, and the key concern of those I have mentioned, is that the new clause … will increase the number of unlicensed people who can drive a PHV and, therefore, the potential for rogue drivers and rogue vehicles. It will make identifying them more difficult, so the problem will be harder to police.[144]

On NC10 (duration of licences), Ms Onwurah said:

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142 PBC Deb 25 March 2014 cc559-562
143 Ibid., c562
144 Ibid., c566-567

> Industry and unions have expressed concern during the limited time available. The National Private Hire Association and the Institute of Licensing have said that the clause would remove flexibility from councils, and there are already concerns about how effectively drivers are scrutinised. The Minister made some reference to that. There are also concerns that the ring-fenced income from renewing licences would have to be replaced from elsewhere and that, as a consequence, councils may be less likely to obtain information material to each individual licence.[145]

And on NC11 (PHV subcontracting), she said:

> When I book a minicab, I expect to get a car from the company I booked with. Allowing operators to subcontract bookings to cabs licensed in other districts breaks that link. I know from many of the submissions made to me and from talking to other hon. Members that there is a real concern that this will precipitate a race to the bottom in licensing. Specifically, the new clause risks creating minicab flags of convenience. It effectively allows minicab operators to get around local licensing conditions and would also make effective enforcement of local licensing by licensing authorities impossible, thereby further driving down standards […]
>
> As well as decreasing customer choice, the new clause could undermine licensing and enforcement by local authorities, as it undermines their ability to control standards in their areas and could therefore put passengers at risk. As Unite said in its submission:
>
> "Many authorities have policies governing the appearance of both taxis and PHVs to ensure that they are distinctive to the public"—
>
> that is the case in Newcastle.
>
> "This proposal will make members of the public vulnerable to illegal pickups when the (licensed) vehicle is being driven by an unlicensed driver."
>
> We strongly oppose the clause for those reasons.[146]

Labour pressed clause 9 to a vote, but were defeated 11 votes to 5.[147]

14 Communications

14.1 Online copyright infringement

Clause 34 would repeal sections 17 and 18 of the *Digital Economy Act 2010*. Those sections allow the Secretary of State to make regulations granting courts the power to order internet service providers to block access to websites that infringe copyright. No such regulations have been laid and the Government, having received advice from Ofcom, the media regulator, that the measure may not be effective, has indicated that it does not intend to use this power; alternative legal avenues exist.

The Minister, Tom Brake, introduced the clause briefly, stressing that copyright owners were already successfully applying for site-blocking injunctions under section 97A of the *Copyright, Designs and Patents Act 1988* and there was therefore no need for the additional power in the 2010 Act.[148]

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145 Ibid., c567
146 Ibid., c568
147 Ibid., cc575-6
148 PBC 11 March 2014 c327

Responding for Labour, Chi Onwurah argued that removal of the sections from the 2010 Act would have a "significant impact".[149] She questioned whether the Government had a long-term strategy for "connectivity, content and consumers", despite the appearance of a strategy paper last summer under that title, and quoted figures for the extent of online piracy which, in her view, made it essential to retain and implement the 2010 provisions.[150] She recognised that any proposal to block websites raised concerns about freedom of expression but suggested that the 'super-affirmative' procedures built into the 2010 Act ensured that the Government's powers to make secondary legislation under sections 17 and 18 would not be applied without rigorous parliamentary scrutiny.[151] Industry, she asserted, "believes that there is a need for a quick, cost-effective way to stop illegal websites from trading". The Joint Committee on the draft Bill had urged the Government to identify other measures which could be pursued to tackle online copyright infringement: she questioned whether the Government had acted on this recommendation.[152]

In reply, the Minister said that the existing powers were proving effective, with some 40 illegal sites successfully blocked. He emphasised that the repeal would not remove any existing protections from copyright-owners, since the 2010 legislation had never been brought into force "and there would not have been any additional value to it due to the slow court processes that would have been needed for injunctions to be granted". He also said that Government was working with industry to introduce a voluntary copyright alert programme: in a technologically fast-moving environment, this, he believed, would be quicker, more flexible and cheaper than the measures allowed for under the *Digital Economy Act 2010*.[153]

The clause was agreed to on Division.

15 The environment

15.1 Household waste (decriminalisation) and joint waste authorities

Second Reading

Clause 36 of the Bill concerns offences in relation to household waste. It would amend Section 46 of the *Environmental Protection Act 1990* which currently provides that the failure to present waste for collection in a prescribed way may be treated as a criminal offence. Clause 36 would introduce a new civil penalty scheme in place of the criminal offence.

Schedule 11 makes parallel changes to *London Local Authorities Act 2007*, the aim being to ensure a consistent approach in London and elsewhere. Part 3 of Schedule 12 would remove powers to establish Joint Waste Authorities in England. The powers, currently contained in Part 11 of the *Local Government and Public Involvement in Health Act 2007,* have never been used.

Introducing clause 36, Oliver Letwin said the changes were "long overdue".[154] There was little further debate on the Clause at Second Reading although Chi Onwurah voiced concerns that the new fixed penalties could be used by local authorities as a means of raising revenue.[155]

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149 PBC 11 March 2014 c328

150 PBC 11 March 2014 c330

151 PBC 11 March 2014 cc330-1. The 'super-affirmative procedure' requires the Minister to have regard to representations, House of Commons and House of Lords resolutions, and Committee recommendations that are made within 60 days of laying, in order to decide whether to proceed with the order and (if so) whether to do so as presented or in an amended form. An order dealt with under this procedure must be expressly approved by both Houses of Parliament before it can be made.

152 PBC 11 March 2014 cc331-2

153 PBC 11 March 2014 cc335-6

154 HC Deb 3 Feb 2014, c 43

155 Ibid., c 50

Committee Stage

In order to issue a fine, waste collection authorities (WCAs) would be required to demonstrate that a person was causing, through his or her actions, 'harm to local amenity'. The Minister said he recognised that some local authorities had asked for further guidance on how the test should operate:

> [T]o work with local government to produce advice to help local authorities implement the test competently and consistently. The harm to local amenity test will cover putting waste out in a way that causes obstruction to neighbours, impedes access, attracts vermin or is an eyesore. Introducing the test makes it clear that those are the behaviours we want to address, not because we want to penalise people who have made a minor error but because we want to defend the quality of residents' local environments.[156]

Chris Williamson argued there was "no evidence" that councils were abusing their current powers to issue fines in respect of household waste or pursue prosecutions and that the proposals were therefore not warranted and were equivalent of a "sledgehammer to crack a local government nut".[157] Responding, Tom Brake said the experience of "several local authorities" was that "a decriminalised approach worked well."[158]

On the issue of whether the new system would have any of the risks of the current deregulated parking fine schemes, the Minister gave assurances that it would "not be used as a means to generate revenue […]". He said that he did not expect the amount of receipts to be "significant once administrative costs incurred by local authorities are taken into account."[159]

There were no Government or other amendments proposed to clause 36 and the associated Schedules. They were ordered to stand part without a vote.

16 Child trust funds (clauses 38-41)

The Bill includes several clauses to do with aspects of the Child Trust Fund (CTF) regime. Of these, the one that has had the greatest public interest is **clause 40** which provides for new opportunities to transfer existing CTF accounts to other tax advantaged accounts – especially the new Junior ISAs. There has been a persistent campaign to allow such transfers from individuals who feel that their child's account is 'trapped' in a low performing savings vehicle. The Bill also deals with different aspects of the rules in cases where the CTF is not administered within the normal parent/child framework. In particular it includes changes which would allow a wider range of organisations to manage accounts of 'looked after' children – typically those children in care.

In committee the Opposition said that it found the clauses 'generally reasonable'.[160] There was little debate on any of the clauses in this group; even on clause 40. There was a brief exchange about the role of competition within both the CTF market and the Junior ISA market. The Minister, Tom Brake, announced that there would be an overseeing body of practitioners:

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[156] DB Deb 11 Mar 2014 c 337,
[157] *Ibid.,* c 338
[158] *Ibid.,* c 339
[159] *Ibid*., c 340
[160] PBC 13 March 2014 c351

> More generally, the Government are convening a forum of providers, consumer representatives and other expert bodies to monitor the market for CTF and junior ISAs and to discuss how it can best be improved for account holders.[161]

17 Education and training

17.1 Further and higher education sectors: reduction of burdens

Clause 43 and **Schedule 14** contain a package of measures to repeal or amend various provisions which have been considered an unnecessary burden on the further education sector, or are obsolete; some of these powers had never been used. In the short clause stand part debate on clause 43 the Committee agreed that it 'made good sense to deregulate and remove' provisions that had never been used.[162] Toby Perkins used the debate to raise the issue of the value of having qualified teachers in the further education sector. The Minister agreed to discuss this further in the debate on the Schedule; the clause was then agreed without division.

The debate on Schedule 14 continued the discussion on teaching qualifications in the further education sector. The requirement for teachers to be qualified had been revoked in 2007 and provisions in the Schedule would repeal the Secretary of State's powers to regulate the qualification requirements for teaching staff in further education institutions. Committee members agree on the need for good teaching and said that 'qualifications were desirable but not always essential'[163] and that 'more flexibility is needed in the further education sector'.[164] The Minister responded:

> the Education and Training Foundation has responsibility for ensuring the development of a well - qualified effective and up - to - date professional workforce and it is responsible for the standards for FE leaders and teachers. [165]

The Minister stated that 'it is very much for colleges to decide what is appropriate under the circumstances and what is effective for delivering the quality of education that their students request.'[166], without imposing a burden on the sector.

The Schedule was agreed without Division.

18 School provisions - clause 44 and Schedule 15 –

Clause 44 and **Schedule 15** propose measures relating to schools. They would:

- change the procedure maintained schools must follow when drawing up behaviour policies;
- remove the duty on maintained schools to have regard to statutory guidance on staffing matters;
- extend the freedom to set term and holiday dates to those maintained schools not currently able to do so;

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161 PBC 13 March 2014 c356
162 PCB 13 March 2014 morning, Toby Perkins c 363
163 Ibid., Andrew Bridgen c367
164 Ibid., Toby Perkins
165 Ibid., Tom Brake c369
166 Ibid., c370

- amend the requirements for maintained schools to supply Ofsted and other reports to parents; and

- remove the requirement for maintained schools to have a 'home-school agreement'.

The schools provisions were not debated at length at Second Reading, although some opposition Members urged caution on aspects of the proposals. John McDonnell warned that the Government should approach some of the Bill's proposals on education "with trepidation", warning that "near chaos" could break out as a result of the move to devolve the setting of school term and holiday dates.[167] He also expressed concern about the proposals to remove the duty on maintained schools to adhere to statutory guidance on staffing matters, and the removal of the requirement for maintained schools to have 'home-school agreements' in place. Ian Lavery also queried the measures in Schedule 15 which would change the procedures schools were required to follow when drawing up behaviour policies – saying there was a consequent risk that these would be 'watered-down'.[168]

18.1 Committee Stage

There were no amendments – Government or otherwise - made to the clause or Schedule during the Committee Stage. The schools provisions were, however, debated at some length during the twelfth sitting of the Committee. Tom Brake said that it was the Government's intention to "greatly reduce burdens on a whole range schools, not just academies" and that schools were "best placed to take many, many more of the decisions than is currently the case."[169, 170] Toby Perkins said that the opposition was in agreement that schools should have some of the freedoms that the clause and Schedule would bestow on them and that it would support the Government in a vote.[171]

The proposals on school term dates attracted most attention. Mr Perkins sought clarification about how the new system would work in practice so as not to disadvantage parents who might have children at different schools.[172] John Hemming argued that "some sort of sub-regional strategy" was still likely to be needed.[173] Mr Brake gave assurances that the advice to schools would be "updated to state that we expect schools to consider parents' needs when setting term dates and to work with local authorities to co-ordinate dates if appropriate."[174] He also said that removing the local authority's formal role in setting term dates did not mean there would be no local co-ordination.[175]

The clause and Schedule were ordered to stand part of the Bill without a vote.

18.2 Proposed new clauses 16 and 17

Two proposed new clauses, new clauses 16 and 17, tabled by Chi Onwurah, would have amended existing provisions on school organisation. Clause 16 would have amended section 18 of the *Education and Inspections Act 2006* to remove the current barrier to maintained nursery schools wishing to change their legal designation from 'community' to 'foundation', and would have allowed such schools to establish or join a trust. Ms Onwurah argued that allowing maintained nurseries to join trusts would "help to provide a vehicle for parental and

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[167] HC Deb 3 Feb 2014 c73
[168] Ibid., c83
[169] DB Deb 13 March 2014 c 375
[170] Academies are state-funded schools not maintained by the local authority.
[171] Ibid., c374
[172] Ibid., c383
[173] Ibid., c383
[174] Ibid., c379
[175] Ibid., c386

family engagement in early years, to enthuse the trust to further develop an all-through vision of education, further raising levels of aspiration".[176] Clause 17 would have amended the *School Organisation (Requirements as to Foundations) (England) Regulations 2007* to allow that schools could be established as industrial or provident societies.

The Solicitor General said that the Government recognised the "general aim" behind the new clauses, and said they were currently exploring whether maintained nursery schools should have the same benefits as other types of maintained schools.[177] He also said the Government was "more than happy" to explore further the implications of the proposals on industrial or provident societies.[178]

Proposed new clause 16 was withdrawn; new clause 17 was discussed but not moved.

19 Alcohol and entertainment licensing

19.1 Temporary event notices (clause 45)

Clause 45 (debated as clause 38) would increase the maximum number of temporary event notices (TENs) from 12 to 15 per year. During the clause stand part debate, Toby Perkins, the Shadow Minister for Small Business, moved an amendment that would increase the number of TENs to 18 per year.[179]

The Government's alcohol strategy consultation sought views on increasing the number of TENs from 12 per year to either 15 or 18.[180] Of those in favour of an increase, a majority favoured a limit of 18.[181] Mr Perkins therefore asked why the Government had settled on a figure of 15.[182] Tom Brake, Deputy Leader of the House of Commons, replied that only 40% of respondents to the consultation wanted an increase in TENs.[183] He also said that an increase to 18 per year went beyond the purpose of the TENs regime (which is for occasional events only) and was likely to lead to concerns about noise nuisance and crime and disorder.[184]

Toby Perkins withdrew the amendment and the clause was agreed to without amendment.

19.2 Personal licences (clause 46)

Clause 46 would remove the current requirement to renew a personal licence after ten years. Toby Perkins (Labour) said this was "on balance, probably a positive step" although he asked about the safeguards that would be in place to ensure that licence holders did not continue to operate if they were found to have committed a relevant offence.[185] Tom Brake outlined the checks and powers that would continue to be in place and the clause was agreed without amendment.

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176 PBC Deb 25 Mar 2014 c638-9
177 Ibid., c641.
178 Ibid., c642
179 PBC 13 March 2014 c388
180 Home Office, *A consultation on delivering the Government's policies to cut alcohol fuelled crime and anti-social behaviour*, November 2012, p37
181 Home Office, *Temporary Event Notices (TENs): reducing the burdens of the Licensing Act 2003 – final impact assessment*, May 2013, p7
182 PBC 13 March 2014 c390
183 PBC 13 March 2014 c392
184 PBC 13 March 2014 c393
185 PBC 13 March 2014 cc396-7

19.3 Sale of liqueur confectionary to children (clause 47)

Clause 47 would repeal the offence of selling liqueur confectionary to children under the age of 16. There was some debate on whether the alcohol content in liqueur confectionary posed a risk to children but the clause was agreed without amendment.

19.4 Late night refreshment (clause 48)

Clause 48 would enable licensing authorities, in certain circumstances, to exempt a supply of hot food and hot drink from the requirements of the *Licensing Act 2003*. For Labour, Toby Perkins said this was a "sensible new piece of deregulation".[186] The clause was agreed without amendment.

19.5 Removal of requirement to report loss or theft etc of licence (clause 49)

Clause 49 was agreed without amendment.

19.6 Exhibition of films in community premises (clause 50)

Clause 50 would create a new licensing exemption for the exhibition of a film at community premises, provided that a number of conditions were satisfied; these would include there being no more than 500 people in the audience. During the clause stand part debate, Toby Perkins moved an amendment that would lower the limit on audience size to 250 for indoor screenings and raise it to 1,000 for outdoor screenings.[187] The purpose of the amendment was to clarify why the Government chose a figure of 500. In response, Tom Brake said the audience limit of 500 struck the right balance in terms of maximising cultural benefit for community groups while ensuring public safety concerns did not arise from the number of people attending.[188] There was also a "read-across" to the audience limit of 499 for events authorised by a temporary event notice.[189] Labour withdrew the amendment.

An amendment was also moved by Toby Perkins requiring the Government to give a clear definition of "community premises".[190] Tom Brake said that there already was a definition in section 193 of the *Licensing Act 2003* and that the Government considered this to be "sufficiently clear".[191] Mr Perkins did not press the amendment.

During the debate, Toby Perkins raised concerns about child protection and what action could be taken against someone regularly allowing children to watch age inappropriate films.[192] Tom Brake said that he would set out in a letter what actions could be taken.[193] Mr Perkins said Labour would return to the issue during the Bill's later stages.[194]

The clause was agreed without amendment.

19.7 Licensing: review of legislation

During the Public Bill Committee debate of 25 March 2014, Toby Perkins (Labour) moved a new clause 5 requiring the Government, within 6 months of the Bill gaining Royal Assent, to commence a review of all legislation relating to local authority licensing, consents, permits and registrations. The review would have to look at simplifying and consolidating existing

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186 PBC 13 March 2014 c402
187 PBC 13 March 2014 c404
188 PBC 13 March 2014 c408
189 PBC 13 March 2014 c408
190 PBC 13 March 2014 c404
191 PBC 13 March 2014 c412
192 PBC 13 March 2014 c406 and c412
193 PBC 13 March 2014 c412
194 PBC 13 March 2014 c414

legislation and a report would have to be presented to Parliament no later than 18 months after Royal Assent.[195] Mr Perkins said that while Labour supported the alcohol and entertainment industries, there was concern about the potential impact on anti-social behaviour.[196] He also referred to the "huge pressures"[197] that local government was under, cited work undertaken by the Local Government Association (LGA), and said that the new clause would enable a "root-and-branch review of those expectations on local government".[198]

The Solicitor-General replied that government departments had considered the Local Government Association report (*Open for business: rewiring licensing*, January 2014) "very carefully" and that they would continue to seek ways to "deregulate sensibly".[199] However Mr Heald said that he was concerned about the timetable set out in the new clause, that it would involve a "huge piece of work",[200] and that it was not necessary to set out a strict timetable in primary legislation.[201]

There was debate on the work involved and potential savings for local government before Mr Perkins pressed for a division on new clause 5. This was defeated by 7 votes to 5.[202]

19.8 New clauses on the TV licence fee (clauses 51 and 52)

During the Bill's passage through the Commons it emerged that there was strong support among parliamentarians for decriminalising the offence of failing to pay for a TV licence where one is required. At present it is against the law to watch or record TV programmes as they are being shown on TV without a valid licence.[203] This can lead to prosecution, a court appearance and a fine of up to £1,000 (not including legal costs). Where the offender does not pay the fine and the court has exhausted all other methods of enforcement, the defaulter may be sent to prison – a penalty incurred by a small number of defaulters annually.

At Committee stage several new clauses were introduced on this theme. One of these (New Clause 1) had been tabled several weeks earlier. This clause would simply have substituted a civil offence for the criminal one in the *Communications Act 2003*. Andrew Bridgen's purpose in proposing the clause, he explained to the Committee, was twofold: "first, to test the sentiment of the House and its appetite for decriminalising non-payment of the TV licence fee; and secondly, to start a debate about the wider issues and with the stakeholders."[204] Since it had attracted the support of 148 other Members, Mr Bridgen judged that it had achieved its purpose and he did not press it to a vote.

Attention then switched to two other new clauses, which are of significance since they won all-party support:

- New Clause 19 requires the Culture Secretary to carry out a review of the sanctions for licence fee non-payment, looking at the option of switching to a civil penalty system of fines, within three months of the Bill being passed. The review must be

195 PBC 25 March 2014 c620
196 PBC 25 March 2014 c621
197 PBC 25 March 2014 c621
198 PBC 25 March 2014 c622
199 PBC 25 March 2014 c623
200 PBC 25 March 2014 c625
201 PBC 25 March 2014 c623
202 PBC 25 March 2014 c627
203 *Communications Act 2003* s363
204 PBC 25 March 2014 c585

completed within twelve months of being started and copies laid before both House of Parliament and presented to the BBC Trust.[205]

- New Clause 20 introduces a new power for the Secretary of State, through secondary legislation, to change the sanctions that apply to the failure to have a TV licence. The power provides for the sanctions to be changed either by replacing the criminal regime with a civil regime, or by creating a civil regime as an alternative to prosecution for such offences. That power would be exercised in the light of the findings of the review provided for in New Clause 19. Any secondary legislation would be subject to the approval of both Houses of Parliament.[206]

In his speech in support of the clauses, Andrew Bridgen (Conservative) pointed out that cases involving non-payment of the licence fee make up one in nine of the cases heard by magistrates:

> For 20 years the Magistrates' Association, representing the people who deal at the sharp end with non-payment of the TV licence fee, has been calling for decriminalisation. It believes that compliance, which is currently very high at 94.5%, could be improved without recourse to the courts. Indeed, the Magistrates' Association contacted me only last week to reiterate its continued support for decriminalisation.[207]

He suggested that people were getting a criminal record "for the only crime of being poor". The BBC, he argued, should see the move "as an opportunity not a threat" and a means to "reignite" its links with licence fee payers rather than "subjugating" them.[208]

The Solicitor-General indicated that the new clauses had Government support, with two reservations:

> I should point out, however, that that support is given on the basis that the Government will need to tidy up a couple of points on Report. First, new clause 20(1)(b) will need to be amended to see how variable penalties might be determined. The current drafting refers only to fixed penalties; we would want the flexibility to be able to create either type of regime, and to take account of the financial circumstances of the non-payer of the licence fee.
>
> Secondly, we may need to make provision to ensure that any change in sanctions can be extended to the Crown dependencies, following our discussions with the Channel Islands and the Isle of Man. That said, any changes to the new clauses do not alter our support for the key policy principles contained therein.[209]

Chi Onwurah said that the Opposition stood behind the new clauses:

> … The licence fee is key to the BBC's independence and remains the best funding model for it. The Labour Party fully supports a universal model: universal funding and universal service. Nobody wants people to be imprisoned for not paying.

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[205] This is now Clause 51 in the Bill as reprinted following Committee stage
[206] This is now Clause 52 in the Bill as reprinted following Committee stage
[207] PBC 25 March 2014 c588
[208] PBC 25 March 2014 c594
[209] PBC 25 March 2014 cc598-9

> On that basis, we support the clauses to review the penalties and consider possible alternatives. On the basis that a rigorous review will be laid before Parliament before the powers in new clause 20 are taken, we support the clauses.[210]

She also emphasised that the review should look at the options for piloting any decriminalisation: "Piloting could be a good way to identify what the consequences of decriminalisation would be in practice."[211]

Both clauses were agreed to by the Committee without a vote and added to the Bill.[212] The clauses are now clause 51 and 52.

A Library Standard Note describes the background to this issue and summarises the BBC's response to the proposals.[213]

20 Administration of justice

20.1 Repeal of Senior President of Tribunals duty to report (clause 53)

Clause 53 would remove the duty on the Senior President of Tribunals to report each year to the Secretary of State on the standards of decision making by the Secretary of State based on cases which are appealed to the First-tier Tribunal. The duty is imposed by section 15A of the *Social Security Act 1998*[214] and applies in relation to appeals against decisions of the Secretary of State taken in accordance with that Act.

During the Bill's Committee Stage the Solicitor-General explained that the clause:

> repeals the duty on the senior president of tribunals to report annually to the Secretary of State for Work and Pensions on the standards of decision making by the Department for Work and Pensions in decisions whose associated appeal rights are resolved at the first-tier tribunal for social security and child support. This duty is to be removed, with the agreement of the judiciary, because of the development of more effective and direct methods for providing feedback to the DWP and claimants, which have made the production of the report unnecessary. The change also provides a cost saving.
>
> The repeal of the duty is not an attempt to remove transparency or accountability; rather, it represents an acknowledgment of recent reforms to the way in which decision makers and users receive feedback from the social security and child support tribunal. In July 2013, Her Majesty's Courts and Tribunals Service introduced the use of summary reasons in employment support allowance appeals, starting initially in four sites. Under this initiative, a judge provides both parties with a short explanation for the decision reached. The Courts and Tribunals Service is working with the judiciary to implement the provision of summary reasons across other tribunal venues and for appeals brought against other types of benefit claims. Roll-out will be completed this year.[215]

Mr Heald explained further that the clause would not:

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210 PBC 25 March 2014 c605
211 PBC 25 March 2014 cc601-2
212 PBC 25 March 2014 cc607-8
213 House of Commons Library Standard Note 6860, *TV licence fee non-payment: decriminalising the offence*, 10 April 2014
214 As amended by the *Transfer of Tribunal Functions Order 2008*
215 PBC Deb 18 March 2014 c419

> remove the senior president of tribunals' annual report, which is a separate report on the annual performance of tribunals in the Courts and Tribunals Service, which will continue to provide an annual vehicle for the senior president of tribunals to report on performance in each of the jurisdictions.[216]

A Labour Member, Karl Turner argued that:

> In practice, reports may be made by the judiciary regarding poor decision making or otherwise by the Secretary of State. However, due to there being no formal requirement to respond to such feedback, it is unlikely that any such reporting and feedback would have any impact on improving the Secretary of State's decision-making procedures. This amendment also reduces public access to such information, given that it removes the requirement for the Secretary of State to publicise the report. The only method of obtaining such information would be a request through, say, freedom of information. This diminishes transparency.[217]

Although the clause was agreed to without division, Mr Turner said that "Opposition Members are clearly not satisfied or convinced" and "reserve the right to come back to this at a later stage".[218]

Written witness statements (clause 54)

Clause 54 would allow the Criminal Procedure Rules Committee to alter the period in which the parties can object to a written witness statement being tendered in evidence. It was agreed to without amendment.[219]

20.2 Written guilty pleas (clause 55)

Clause 55 would allow the Criminal Procedure Rule Committee to remove the requirement that certain matters must be read aloud in court before the court may accept a written guilty plea. Karl Turner raised a number of "slight reservations" the opposition had about the clause (including that evidence would not be properly considered and that it would be less clear to the public that evidence had been properly considered) but it was agreed to without amendment.[220]

20.3 Criminal Procedure Rules (clause 56)

Clause 56 would allow for the Criminal Procedure Rules to make provisions regarding procedure relating to four types of application made to a judge, including for production orders under the *Police and Criminal Evidence Act 1984* (PACE).[221]

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216 Ibid.
217 Ibid.
218 Ibid.
219 PBC Deb 18 March 2014 c429
220 PBC Deb 18 March 2014 c433
221 Schedule 1 of the *Police and Criminal Evidence Act 1984* (PACE) allows a Circuit judge to make a production order, or in some circumstances to issue a warrant, authorising an investigator to obtain access to some types of potential evidence that investigators are not entitled to seize under a search warrant issued by a justice of the peace. Schedule 5 to the *Terrorism Act 2000*, and section 352 of the *Proceeds of Crime Act 2002*, allow a Circuit judge to issue a warrant for the same purpose as under PACE but in connection with a terrorism investigation or in connection with an investigation into the disposal of the proceeds of crime. Section 59 of the *Criminal Justice and Police Act 2001* allows a Crown Court judge to make an order for the return to its owner of property seized during an investigation. Section 2 of the A*dministration of Justice (Miscellaneous Provisions) Act 1933* allows a prosecutor to apply to a High Court judge for permission to start proceedings in the Crown Court where, for some unusual reason, the case has not been sent for trial by a magistrates' court.

In Committee, the Solicitor-General said that allowing rules to prescribe the procedures for such applications would bring them into line with other, similar applications. He explained the Government's reasons for wishing to do this:

> It is sensible to bring the procedures generally into line for two reasons. First, the existence of different court procedures for applying for different sorts of court orders at the same time causes confusion and leads to avoidable litigation and expense. Secondly, the PACE procedures are inflexible and unhelpfully constrain what the rules can provide in relation to applications for a production order. As the law stands, everyone against whom an application for a PACE production order is made is obliged to become involved and attend a court hearing because of the PACE requirement for having all the parties at the hearing.[222]

He stated that the Criminal Procedure Rules could differentiate between cases where a person wished to appear and those where the application could be determined without a hearing. Setting out the procedure in the rules would also, he said, have the advantage that it could be in much greater detail than in statute and include modern features such as electronic communication.

Following second reading of the Bill, media representatives raised concerns about the effect of the clause on applications regarding journalistic material. A blog post for Inforrm (The International Forum for Responsible Media) written by Gill Phillips, Director of Editorial Legal Services at Guardian News and Media, stated that the clause would:

> … repeal some of the journalistic protections in the Police and Criminal Evidence Act 1984, which currently ensure that there is proper inter partes judicial scrutiny before police applications to obtain journalistic material are granted.

The blog post outlined the concerns:

> The removal from parliamentary scrutiny of such a fundamental free speech protection is worrying. As the Newspaper Society have pointed out, these provisions have been in place for thirty years, were deliberately enshrined in PACE so as to strengthen journalistic protections, have been authoritatively considered by the courts and pragmatically applied by the police, the media and the courts.
>
> Media organisations want the underlying authority to derive from statute, not from delegated rules. They have no objection to the creation of powers to make Criminal Procedure Rules, which would assist in ensuring consistency in police adherence to the existing PACE framework, but strongly object to what they see as the inappropriate use of the Deregulation Bill to achieve this by way of removal of the underlying statutory authority.[223]

In response to these concerns the Government had, said the Solicitor-General, worked with media representatives on an amendment which could preserve the status quo on journalistic material, allowing the existing legislation to apply, with a court hearing remaining mandatory.

The Solicitor-General stated that the Government was also conducting an informal sounding exercise to ascertain whether there are any concerns about the effect of the clause, other than in relation to journalistic material.[224] He stated that if, as he expects, there are none, the

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[222] PBC Deb 18 March 2014 c436

[223] Inforrm blog, *Hidden in the Deregulation Bill: is this another backdoor threat to journalism?*, 30 January 2014

[224] See Ministry of Justice, *Clause 47 of the Deregulation Bill: an invitation to comment on a proposed amendment affecting production orders under the Police and Criminal Evidence Act 1984*, 26 February 2014

Government could table, on Report, an amendment that has been agreed with the media to take account of the journalists' concerns.[225] The clause was agreed.

20.4 Multi-Agency Public Protection Arrangements (clause 57)

Clause 57 concerning Multi-Agency Public Protection Arrangements for those who, in the past, received a disqualification order, was agreed without amendment.[226]

20.5 Prison Closures (clause 58)

Clause 58 (which would remove the requirement for prison closures to be made by Order) was agreed to without amendment. There was a brief debate, in which the Solicitor General outlined the history of the current procedure. He explained that whilst an Order has to be laid before Parliament, it was not subject to any further parliamentary procedure. Decisions on prison closures would, he said, continue to be announced in advance by Written Ministerial Statement.

Karl Turner raised a concern that the Secretary of State could close a prison without any real parliamentary scrutiny. He asked what would happen if a closure controversial. Mr Heald pointed out that, in practice, the orders could be laid after the prison had closed. By contrast, the written ministerial statement gave MPs the chance to comment and campaign. Jim Shannon (Democratic Unionist Party) asked if there needed to be greater Government control over private prisons. Mr Heald said that the Government had to decide the best structure and arrangements for prisons, whether private or public.[227]

21 Reduction in regulation of providers of social work services

Clause 61 would remove the requirement on providers of independent social work services to register with Ofsted. During the clause stand part debate in Committee, the Parliamentary Secretary, Tom Brake, explained that despite mixed views received during the consultation on the proposal, the Government's intention behind the clause was to remove duplication:

> Our position is that, notwithstanding the fact that clearly there were objections, the sensible approach is the one that we are putting forward, which ensures that Ofsted can focus exclusively on its role of inspection and does not get diverted by also having responsibilities for registration. I commend the clause to the Committee.[228]

The clause was agreed to without Division.[229]

22 London street trading appeals

At present, the majority of street trading appeals under the *Local London Authorities Act 1990* and the *City of Westminster Act 1999* are heard by a Magistrates Court. However, appeals of a more general nature (such as a decision to designate a street as one in which street trading may take place without a licence) are heard by the Secretary of State. The Government considers that this is an inefficient and inconsistent approach. Consequently, **Clause 59** would ensure that all street trading appeals are made to the Magistrates Court; they have more expertise in making such determinations. The clause was agreed to without debate.

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225 PBC 18 March 2014 c436
226 PBC 18 March 2014 c440
227 PBC Deb 18 March 2014 cc440-442
228 PBC 18 March 2014 c452
229 *Ibid.*

23 Gangmasters (Licensing) Act 2004: enforcement

Clause 60 would make a somewhat technical amendment to section 15 of the 2004 Act. The Government considers that the power to appoint enforcement officers has the effect that, where appointed, prosecution decisions must be made by the officers and cannot be made by the Director of Public Prosecutions. Clause 51 would clarify the law by providing that section 15 does not prevent the Secretary of State from making arrangements for relevant prosecutorial functions to be carried out by the Director of Public Prosecutions. The clause would apply only to criminal proceeding in England and Wales.

The clause was agreed to without debate.

24 Repeal of local authority duties

24.1 Committee Stage

In the debate on **clause 63** (clause 54 when debated), which repeals the duty to prepare a sustainable community strategy, the Solicitor-General clarified that local authorities will continue to be required to consult with their local communities regarding decision-making. This is enshrined in the statutory Best Value guidance published in 2011, which provides that:

> Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation.[230]

Thomas Docherty questioned whether the repeal of provisions for local area agreements and multi-area agreements, under **clauses 64** and **65** respectively (previously clauses 55 and 56), could put the UK in breach of the Aarhus Convention. The Solicitor-General indicated that he would write to the Committee confirming that this would not be the case.

Clause 66 repeals duties relating to consultation and involvement, though as noted, Best Value guidance on how to engage with local communities remains in place.

25 Legislative reform and legislation no longer of practical use

Clauses 67, **69** and **Schedule 18** make amendments that would make minor changes to the use of dates in legislation and repeal a raft of legislation found to be no longer of practical use. The clauses and the Schedule were agreed to without division, with minor amendments to the legislation repealed under Schedule 18.

26 Growth duty (clauses 70-73)

One of the Bill's key proposals is to impose a statutory duty on non-economic regulators to "have regard to the desirability of promoting economic growth". It would be a new duty and would apply to non-economic regulators specified in secondary legislation. Non-economic regulators within its scope would be those regulating a range of sectors, including health, food, the environment, equality and human rights. The Government has published draft guidance on the proposed duty as well as an impact assessment.

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[230] DCLG, *Best Value statutory guidance*, September 2011, p. 6

26.1 Committee Stage

The growth duty was debated during the Committee's fifteenth and sixteenth sittings. The clause that received most debate was the clause containing the duty: **clause 70** of the current Bill (clause 61 when debated). The other clauses concerning the functions to which the duty relates (**clause 71** of the current Bill; clause 62 as debated) and the power to issue guidance on the performance of the duty (**clause 72** of the current Bill; clause 62 as debated) were debated only briefly and ordered to stand part without division.

Opposition Members raised a number of concerns about the duty in clause 70, principally: its potential for creating a new ground for judicial review; its effect on the regulatory relationship between regulators and those regulated; and whether the clause would achieve sustainable growth.

For Labour, the Shadow Minister for Business, Innovation and Skills, Toby Perkins, moved an amendment that would have replaced the growth duty with a requirement for regulators to publish annual reports that assess the extent to which they had considered the needs of SMEs, and set out details of complaints received relating to the exercise of their functions.[231] Mr Perkins said that the amendment would ensure regulators are "held to account for the ways that they are supporting growth, particularly in small and medium-sized businesses" but that it would avoid the potential for judicial review. On the latter, Mr Perkins said:

> if we go from that to a statutory requirement enforceable in a court of law through judicial review, a major company can go to its regulator and say, "There are going to be some changes around here. The way you regulate us is going to change because we now have this growth duty and the resources to test this all the way in a court of law. Have you, Mr Food Standards Agency?"—or whatever regulator it might be.[232]

He said that the duty would have a chilling effect on regulators, discouraging them from taking actions through fear of having to prove these were needed.[233]

On the express requirement in the amendment for consideration of SMEs, the Shadow Minister for the Cabinet Office argued that the growth duty proposed in the Bill would necessarily favour large business interests:

> Supporting an organisation that has perhaps 40% or 50% of the market will result in far more growth than supporting a small organisation that has a very small percentage of the market. The proposal is necessarily going to increase support for large organisations if growth is measured purely by incremental financial growth.[234]

For the Government, in response to these concerns, the Parliamentary Secretary, Office of the Leader of the House of Commons, Tom Brake, argued that the clause would ensure the "burden of regulation on business productivity will be kept to a minimum and that regulators will be proportionate in their decision making".[235] Mr Brake gave a specific example of the types of issue the growth duty would address:

> I thought it might be helpful to give him an example of disproportionate action on the part of the Food Standards Agency. The rigid application of the hazard analysis and critical control points system caused food Ministers to complain that food hygiene officers tended to favour that more burdensome and complicated system over more

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231 HC Deb 20 March 2014 c483
232 Ibid., c486
233 Ibid., c492
234 Ibid., c487
235 HC Deb 20 March 2014 c520

> manageable, smaller-scale risk assessment processes. The Government view is that a growth duty would address such issues.[236]

On the subject of whether the duty would lead to litigation, Mr Brake said:

> A duty in primary legislation creates a means by which a business can challenge a regulator that has not had regard to growth in its decision making. The challenge can take three forms. I would argue that businesses will use not the last resort, which is judicial review, but the other options open to them—the regulator's internal appeals mechanisms, or the challenging of the enforcement decision at court.
>
> Yes, in the last resort, perhaps a business will use judicial review, if the regulator has failed to apply the duty, or applied it in a way that is clearly unreasonable, but we recognise that judicial review can be a lengthy and resource-intensive way for businesses to challenge regulators' decisions. Our view is that because of the cost associated with it, very few businesses are likely to go down that route when they can instead rely on the regulator's internal appeals mechanisms. It would be difficult for a business to be successful at judicial review. The courts are generally unwilling to substitute their views for those of regulators unless the decision was blatantly unreasonable. I cannot believe that regulators will take decisions that are blatantly unreasonable.[237]

The proposed amendment was defeated on division by nine votes to five.[238]

Chi Onwurah tabled a probing amendment that would have inserted the word "sustainable" into the growth duty, thereby requiring non-economic regulators to, in the exercise of their functions "have regard to the desirability of promoting **sustainable** growth".[239]

Ms Onwurah argued that the growth duty as proposed in the Bill could lead to unsustainable short-term growth, and that the amendment would encourage regulators to focus on growth that lasts over the longer term. A Conservative Member, James Duddridge, said that in certain situations short-term growth may be desirable; for example, if jobs are created for a period of two years when they might not otherwise have been.[240] For the Government, Tom Brake said:

> There was also a concern that by not having a sustainable growth duty that regulators would always promote short-term growth at the expense of long-term economic well-being. It is worth pointing out that the duty absolutely does not compel regulators to promote short-term at the expense of long-term growth. The duty, as drafted, gives the regulator the discretion to take into account both short-term and long-term growth, depending on what is appropriate in the circumstances. For example, when a regulator is considering specific enforcement action, it might be appropriate to consider the impact on short-term growth. When devising its enforcement policy, it might be more appropriate to consider impacts on long-term growth.[241]

The amendment was withdrawn and the clause ordered to stand part of the Bill.

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[236] Ibid., c516
[237] Ibid., c520
[238] Ibid., c532
[239] Ibid.
[240] Ibid., c536
[241] Ibid., c542