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GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE BILL [*LORDS*]

Third Sitting

Thursday 11 February 2016

(Morning)

CONTENTS

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The Committee consisted of the following Members:

Chairs: † Sir David Amess, Ms Karen Buck

† Argar, Edward *(Charnwood)* (Con)
† Barclay, Stephen *(North East Cambridgeshire)* (Con)
Bardell, Hannah *(Livingston)* (SNP)
† Brennan, Kevin *(Cardiff West)* (Lab)
† Brown, Alan *(Kilmarnock and Loudoun)* (SNP)
† Churchill, Jo *(Bury St Edmunds)* (Con)
† Creagh, Mary *(Wakefield)* (Lab)
† Esterson, Bill *(Sefton Central)* (Lab)
Flint, Caroline *(Don Valley)* (Lab)
† Frazer, Lucy *(South East Cambridgeshire)* (Con)
† Howell, John *(Henley)* (Con)
† Lewis, Brandon *(Minister for Housing and Planning)*
† McKinnell, Catherine *(Newcastle upon Tyne North)* (Lab)
† Mackintosh, David *(Northampton South)* (Con)
† Morden, Jessica *(Newport East)* (Lab)
† Pawsey, Mark *(Rugby)* (Con)
† Solloway, Amanda *(Derby North)* (Con)
† Soubry, Anna *(Minister for Small Business, Industry and Enterprise)*

Joanna Welham, *Committee Clerk*

† attended the Committee

Public Bill Committee

Thursday 11 February 2016

(Morning)

[Sir David Amess *in the Chair*]

Enterprise Bill [*Lords*]

Clause 6

Reports on complaints

11.30 am

Bill Esterson (Sefton Central) (Lab): I beg to move amendment 55, in clause 6, page 6, line 12, leave out "may" and insert "must".

This amendment would require the Commissioner to publish a report of the enquiry into, consideration and determination of a complaint made under the SBC complaints scheme.

Good morning—and welcome back, Sir David. May I say what a fine question you asked in the Chamber this morning? Your point about switching energy suppliers is important, and it could well have been the subject of an amendment to the remit of the small business commissioner.

The Chair: Order. Flattery will get you everywhere.

Bill Esterson: Of course, that has nothing to do with why I said any of that.

Like the amendments we moved on Tuesday, amendment 55 would preserve anonymity for a complainant. The amendment would introduce the threat of naming and shaming large companies that rely on the unwillingness of their suppliers to come forward as a means of paying their suppliers late. The need for naming and shaming was raised by the Minister's colleague, the hon. Member for Huntingdon (Mr Djanogly), on Second Reading:

"On the complaints side, the SBC can demand and order little. For example, the commissioner will not be able to order the production of documents from a company that has been complained about. Given the lack of hard powers for the SBC, the question is how effective they will be. I think that a big part of the answer will be the SBC's ability to name and shame."—[*Official Report*, 2 February 2016; Vol. 605, c. 829-30.]

The Minister accepted that on Tuesday. The hon. Member for Huntingdon went on to ask the Minister to explain how the legislation, as it stands, will allow for naming and shaming, and I repeat that request.

The amendment, originally moved in the other place, would introduce a stark solution: that every complaint will be published. I trust that the Minister appreciates that this is a probing amendment, our intention being to continue exploring the idea of how exactly the presence of the small business commissioner will encourage good payment practice when phone calls to chief executives and signposting to small businesses do not achieve the intended result. How will it happen without publishing every unresolved complaint? When direct approaches have not worked, what will be the small business commissioner's role in making that difference in improving late payment practice in individual and general cases?

The comments made by Lord Stoneham when he moved the amendment in the other place are worth considering:

"we are again seeking more effective powers and oomph for the Small Business Commissioner. We are assuming that if the complaints scheme is entered into, there will be a period before the initial approach is made for some sort of opportunity for conciliation. Indeed, I would have thought that most issues should be encouraged towards resolution before going into any kind of formal complaints scheme or procedure."

He was making the argument for mediation's being a direct part of the small business commissioner's remit, as we discussed on Tuesday. He continued:

"To encourage that process and to provide an incentive to settle matters quickly and informally, some pressure should be applied. Once we have entered into the formal complaints scheme or procedure, a report would then be published and the respondent would be named.

The respondent may fear that they would attract unwanted publicity if matters were published in this way, but if the respondent has no concerns that they have done anything wrong and there is nothing they need to put right, they should have no anxiety about this, and that could be another way of applying pressure to get something resolved."

Or, as Lord O'Neill of Clackmannan said rather more bluntly:

"It offers to put teeth into the legislation, and I think it is useful for us to get a greater degree of accountability—a bit of an edge…the softly-softly approach is okay, but it should be, 'Walk quietly, but carry a big stick'."—[*Official Report, House of Lords,* 28 October 2015; Vol. 765, c. GC207-GC208.]

I think it was President Wilson in the early part of the last century who said that, but it is no less effective when quoted by Lord O'Neill. Where is the "big stick" in the small business commissioner's role?

The Minister for Small Business, Industry and Enterprise (Anna Soubry): It is a pleasure to serve under your chairmanship, Sir David. I cannot comment on what happened earlier in the day. No doubt you said some wise words—but that is just me being a creep.

The hon. Member for Sefton Central is right to table the amendment. I do not want him to press it to a vote, but he is right to probe the matter; it raises important points. First, the primary function of the small business commissioner is to address the problem of late payments and, secondly, their success will depend largely on their own abilities. It will depend on their having credibility with big businesses—so that those will be in fear of not responding to a phone call, taking action or engaging; and on their having the respect of the small business community, which will know that that person is its champion.

The next question is what the commissioner can do to achieve what we all want, which is a change in the culture of late payments. Having discretion, rather than leading to a "softly, softly" approach, can be an extremely powerful tool—more powerful than an arbitrary "They will publish." The discretion to publish is the key tool, because the commissioner needs to consider the appropriateness of publishing a report and naming a respondent, in the light of the particular facts of each case. Having discretion preserves their independence. To put things in crude terms, the commissioner can say

to someone: "Look, it's very simple. Either you sort this complaint out in favour of the small business, or I will remind you of my powers, in my annual report, to publish your name." I think that discretion will be hugely important.

There is something else. A complaint based on a very particular circumstance may have no wider public interest application. It may be a valid complaint but it may not need to go into the public domain, because that serves no wider interest. It may be resolved immediately and not warrant the resource and time required to publish it in a full report. It can be simply and swiftly sorted out.

The commissioner's power to choose not to publish a report is a key incentive for businesses to work constructively with the commissioner. We do not want to lose the drive for cultural change that I have mentioned. We also have evidence that a discretionary approach works. The Australian small business commissioner, of whom we have heard much, exercises his power to name respondents in exceptional circumstances. He uses influence, authority and the threat of reputational damage to resolve cases successfully.

The commissioner will, as I have said, act impartially towards both parties, and be independent of Government, but both parties must have confidence in his or her approach, and many of our stakeholders have said that the level of transparency I am outlining would be effective in changing payment practices in individual cases, and more broadly.

I hope that that reassures the hon. Gentleman. We have considered the issue carefully and we think that discretion is the stronger way to get what we all want.

Bill Esterson: As ever, it is very important for us to be as accurate as we can in our comments. I should make a correction to what I said when I was testing the Committee on American history: as I am sure everyone knew, it was of course Teddy Roosevelt who made the comment about walking softly and carrying a big stick. I thank my hon. Friend the Member for Cardiff West for his prompting on that point.

I take on board the Minister's comments about credibility, the fear of not responding, and the commissioner's ability to ensure that a chief executive will take the phone call and that the matters will be addressed down the chain. The amendment is about situations where that does not happen. Taken as a package, I think it is in the category of areas where, as the office develops, we may need to come back and consider again how the commissioner is able to work, and whether, if things are not going well enough, such an approach is needed.

I mentioned mediation and its effectiveness in avoiding the need for punitive action, including naming and shaming, which could be quite difficult. Naming and shaming is one of those areas where it could cause problems for the ongoing business relationship between a small business and its customers. Ideally, we want not to be in the position where there have to be reports about individual cases of late payment. However, if we get to the point where this is a voluntary approach in the reports that the commissioner publishes, then I hope that the commissioner and the Minister will think again at that stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Clause 7

SCHEME REGULATIONS

Bill Esterson: I beg to move amendment 56, in clause 7, page 7, line 24, leave out paragraph (vii)

This amendment would remove from regulations the power to dismiss a complaint which the Commissioner considers has previously been considered under the complaints scheme or by another complaints-handling body, ombudsman or regulator.

The amendment would remove from regulations the power to dismiss a complaint that the commissioner considers has previously been considered under the complaints scheme or by another complaints handling body, ombudsman or regulator. It is about the nature of the complaints that the commissioner will deal with.

On Tuesday, by means of a number of groups of amendments, we discussed our concerns about narrowness of remit, given how the small business commissioner's office is set up. We believe that, to do the job properly, the commissioner needs to have much more flexibility about the issues that they investigate. Amendment 56 would remove from regulations the power to dismiss a complaint that has previously been considered by another organisation. The logic is fairly simple. We hope that the small business commissioner will offer a markedly different function from existing regulators and ombudsmen. What would be the point of creating the office if that were not the case?

It does not seem right automatically to discount complaints just because they have been looked at by another complaints handling body. It may be that the complaint process took too long under the other body or that the ombudsman found that it fell outside their scope. The amendment would allow the small business commissioner to consider something that it had not been possible properly and fully, in the opinion of the commissioner, to consider elsewhere, even if, as far as the other body or ombudsman was concerned, it had been considered. We are concerned that, under the current Bill, some complaints could fall through the gaps.

The Minister has talked a number of times about the need for flexibility for the commissioner. That is the reason that she has given for opposing or asking us to withdraw a number of our amendments, which would have laid out the small business commissioner's functions in greater detail and widened the remit considerably. We are now asking for that flexibility. If a complaint comes to the small business commissioner, let them decide whether they will investigate it, instead of there being a prescriptive approach that may tie the commissioner's hands over an issue that they might like to run with. Amendment 56 would allow them to be the arbiter of whether another complaints handling body has given the matter sufficient consideration.

Anna Soubry: The scheme regulations, as outlined in clause 7, will set out details of how and when complaints should be raised with the commissioner. They may also, among other things, set out factors or circumstances in which the commissioner can refuse to consider a complaint; the circumstances can change.

The Bill does not prevent the commissioner from reconsidering a complaint that has been raised somewhere else, but it enables them to refuse a complaint when that

[Anna Soubry]

is appropriate. In other words, it comes back to the power to trust the commissioner to exercise discretion according to the particular circumstances of a complaint. I think that is absolutely right, because it is not prescriptive. It vests power with the commissioner and it trusts the small business commissioner to do the right thing depending on the particular circumstances.

11.45 am

I am an old lawyer, and one thing that really annoys lawyers is when Parliament—no doubt for the very best of reasons—is overly prescriptive and does not put down in legislation, "Save for exceptional circumstances", which gives the ability to look at the peculiarities that often arise.

It is easy for us to sit in this place and sometimes to see things in black and white. Sometimes we are not able to imagine a particular set of circumstances that suddenly can arise in real life. The judge—or, in this case, the small business commissioner—is then left without any discretion at all and has to rush down a route that he or she knows is absolutely wrong, because we failed to allow that discretion. That is what the scheme regulations will do: vest the power of discretion with the small business commissioner. That is good law, which is why I resist the amendment.

Bill Esterson: I take on board the Minister's comments and I remind her that we are as keen for flexibility as she is. It is important to discuss these matters and to get her comments on the record. She has now made her comments and I am sure that, as the office of the commissioner develops, her words will be an important reminder of exactly what is intended and exactly how the commissioner should work. My understanding of the way in which legislation is crafted is that the Minister's comments in Committee have legal standing. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 7 ordered to stand part of the Bill.

Clause 8 ordered to stand part of the Bill.

Clause 9

Annual report

Bill Esterson: I beg to move amendment 58, in clause 9, page 8, line 42, at end insert—

"(d) outlines a summary of relevant complaints made by—

(i) small businesses against other businesses and

(ii) small businesses against government departments.

(1A) In subsection (1)(d) "relevant complaint" has the same meaning at subsections 4(3) and (4)"

This amendment would require the Small Business Commissioner's Annual Report to outline complaints made by small businesses against other businesses and against Government departments.

The Chair: With this it will be convenient to discuss amendment 59, in clause 9, page 9, line 3, leave out "Secretary of State" and insert "Commissioner"

This amendment would require the Small Business Commissioner to report directly to Parliament.

Bill Esterson: Amendments 58 and 59 relate to the issue of the commissioner's annual report. We ask for the report to include complaints made by Government Departments, which is consistent with other points we have made in earlier amendments. We also ask that the commissioner, rather than the Secretary of State, reports directly to Parliament. We have called for the remit of the small business commissioner's work to be widened in a number of ways, but the inclusion of the public sector is one of the most important elements of our request, hence amendment 58.

The importance of including complaints made by Government Departments boils down to the expectation of what small businesses want and expect from the small business commissioner. Small businesses that face the problem of late payments do so in the public sector and in the private sector, and it is only right that the annual reports reflect where the complaints come from and who the sources of the late payments are. The issue of late payments is one of the most crippling faced by small businesses. It seems to us and to small business organisations that have commented on the provisions that it is arbitrary to narrow down and attack only one part of the problem by considering only the private sector—and the larger element of the private sector, at that.

The amendment reflects the crossover between Government Departments and big business when it comes to late payments. Government Departments sign the prompt payment code. They are expected to pay their suppliers in good time; the target is to pay within five working days and that is a good standard. However, only 18 of the Government's 33 biggest suppliers, all of which are major businesses, are signatories of the code. That means that 15 major suppliers are not signed up to the prompt payment code. As a result, it is quite likely that smaller suppliers in the supply chain—particularly of those 15 that have not signed up to the code—are victims of late payments in a contract that, ultimately, comes from the Government. That includes the issue of the construction sector and cash retention, which we discussed on Tuesday.

The situation is complicated further still with contracts of the size we are considering. We talk about the 33 largest suppliers to the Government, but there is often a chain of a number of suppliers. Of the 18 suppliers that are signed up to the code, how many of their suppliers are signed up to that same code? There are relatively large businesses, which may also be late payers, in the middle of supply chains, and in a supply chain of three, four or five companies, the smallest firms at the end of the chain are often the ones that bear the brunt.

The amendment is important because it is not just a case of saying that the small business commissioner should be able to report on the complaints of small businesses against Government Departments. The point is that some of the biggest contracts that a small business gets in the private sector can be part of a chain that leads back to Government Departments, and we want the commissioner to be able to name and shame chronic late payers in the annual report. I know that the Minister agrees with my point about naming and shaming.

We also want the small business commissioner to offer something of a strategic approach—an overview of problems that run through major supply chains—in the annual reports. The fact is that supply chains are often a muddle of private and public sectors, and big business and Government Departments. A line of investigation might not start with a complaint against the public authority, but it might implicate the public authority as part of the chain. Will the Minister clarify whether that will be in the scope of the small business commissioner? I have raised that point with her before and I am not entirely sure that I have had a clear answer. Perhaps she will address that either now or at the end.

Anna Soubry: At the end.

Bill Esterson: We want the small business commissioner to follow an investigation to wherever it leads. If it leads to the shortcomings of Government Departments' enforcement of the prompt payment code, their slip-ups on paper-based invoices that lead them to be late payers, their dealings with a company that is a major late payer and is benefiting somewhere down the supply chain from taxpayers' money, we want to know about it in the annual report. Covering those complaints in the small business commissioner's annual report would say as much about how we view the small business commissioner as it would about what we want the report to include.

Amendment 58 is a statement of intent that we would give the small business commissioner a certain standing. It would send a message to more than 5 million businesses that when they have a complaint, they will have someone to communicate it to. Crucially, that person will have the authority to take the complaint all the way to Government and to Parliament, hence amendment 59.

There are two very different models on offer that provide examples to follow: the Australian small business commissioner and the American Small Business Administration. What they have in common is that they provide a vehicle for the concerns of small businesses to reach the very highest level. The Australian small business commissioner reports directly to the Australian Parliament and can submit special reports directly to Parliament whenever they feel it appropriate. What we are asking for is much simpler, because it is an annual report to Parliament. It seems that the Australians appreciate, more than this Government, the concern that reporting just will not happen if the small business commissioner is toothless. Under the provisions of the Bill, the commissioner will be toothless because there is nowhere for them to take their findings, and the reliance—or, as we discussed on Tuesday, dependence—on the Secretary of State gives rise to concerns that reporting will just not happen.

The American Small Business Administration works strategically across government and ensures the views of small businesses and entrepreneurs are better heard in policy making. It gives small businesses a voice in government. The Small Business Administration reviews congressional legislation and conducts nationwide studies on the impact of regulation on small businesses. It is able to testify on behalf of small businesses when legislation is being debated.

We have to ensure that the small business commissioner is able to include in their report those points that make a difference to policy making and to small businesses. Whether this is through a nationwide survey that challenges supply chains ranging across the public and private sector; through a trend in small business complaints the small business commissioner has spotted over the year; or through their first-hand expertise on the concerns of small businesses that the small business commissioner wants to lay before policy makers; we have to give them the authority and opportunity to present the information that small businesses need us to see. Without giving the small business commissioner that authority in their annual reports, we are in danger of giving small businesses nothing more than a sympathetic ear.

Anna Soubry: I begin by drawing the Committee's attention to my previous comments when we debated the remit of the small business commissioner and why I urged the Committee not to agree with the hon. Gentleman's amendments to increase their remit to include public authorities.

I advanced that argument for a number of reasons, notably because the legislation is about small business and its relationship with larger businesses and because there are many other ways that small businesses can raise a complaint against the public sector. We do not want to duplicate much of that very good work. It is also important to remember that in March last year the Government restated our long-standing commitment to pay 80% of undisputed invoices in five days, with the remainder being paid within 30 days. Central Government are now required to report on that on the infamous gov.uk website.

Perhaps even more importantly—I hope this addresses specifically the very good point the hon. Gentleman makes about whether or not the good policy of payment is being trickled all the way down through the supply chain—the Public Contracts Regulations 2015 require 90-day payment terms to be passed down what we call public sector supply chains. That is what the regulations state. We all know that they must now bear fruit so that that becomes the absolute standard practice.

I tread carefully, because I am going to mention something that may cause a small titter among members of the Committee: the mystery shopper scheme—[*Interruption*] Exactly. It has unfortunate title, because it does not fully explain what it does. The important thing is what it does and it does that very well. It takes up these sorts of issues in the supply chain and makes sure that the regulations are being put into practice.

I urge the Committee not to support the hon. Gentleman's amendment on the annual report and complaints against the public sector for all the reasons that I have given before—[*Interruption*] Sorry, I just can't read that. I have been helpfully passed something about the mystery shopper; somebody's writing is worse than mine and that is quite something. It says that if the ultimate customer is a Government Department or public sector, then the mystery shopper applies at the end of the chain. I'm not sure I understand that, but I'm sure it is terribly important. We will get some clarity on that when I next rise.

Bill Esterson: May I intervene?

Anna Soubry: Of course; it might help me to understand this note.

Bill Esterson: While I intervene, the Minister might want to get another copy of the note. The question we were trying to get answered was what happens when the public sector is the ultimate end of the chain and something goes wrong in that chain. Will the commissioner have the opportunity to investigate all the way to the public sector and not just the private sector elements of the problems with late payment? It could be the second, third, fourth or even fifth stage of the supply chain. I hope I have given the Minister long enough to get her notes.

12 noon

Anna Soubry: As ever, my excellent Parliamentary Private Secretary knows more than I do. When the public sector is at the end of the chain it matters not, because if it is a question of going business to business in the rest of the supply chain, of course the small business commissioner will be able to act on any complaint about any of the relationships between businesses in that supply chain. That is the most important. Then when government becomes involved we have the mystery shopper scheme; but in any event we have all the other places to take complaints, such as the ombudsman, as was previously outlined.

Finally, I do not think that there is a need for the commissioner to lay the annual report. The Secretary of State must lay the annual report before Parliament unaltered; the commissioner's doing it would make no difference at all. It would not increase their independence, so the amendment is what lawyers would call otiose. It is not necessary, because I am confident—I hope others agree—that the Bill delivers as we want it to.

Bill Esterson: The more the Minister says the words "mystery" and "shopper" together, the more I think her listeners suspend belief in the effectiveness of the scheme. As I think I said on Tuesday, I am familiar with mystery shopper schemes in the private sector and they can be effective, but the idea is not inspiring confidence.

Anna Soubry: I think we agree that the title may not be the best one, but that does not matter; it is a question of whether the job gets done. The evidence is clear: the scheme works extremely well.

Bill Esterson: I hear what the Minister says. I am afraid that, to anyone listening to our deliberations, the way hon. Members have laughed several times at the description would suggest that confidence may be lacking in whether the scheme will be as effective as it needs to be. There might be work to be done there.

The point about the supply chain is that if only 18 out of 33 major suppliers are signed up to the prompt payment code, and the Government are unable to make that 33 out of 33, and if Departments do not make sure that late payment is not a problem throughout the supply chain, something will have to change. Given that we are setting up an office called the small business commissioner, and that often it is small businesses that are the victims of late payment in the relevant situations, we need the commissioner to be able to consider public sector involvement all through the chain. The Minister said, as we discussed on Tuesday, that complaints are being dealt with elsewhere in a number of ways, but it is clear that that is not happening sufficiently well at the moment, and that a lot more work is needed.

In discussion of the amendments on the annual report, the Minister said we should not restrict the small business commissioner by insisting they could not do something in that case. I think that is a fair representation of what she said. She is now saying, with reference to the present group of amendments, as she did on Tuesday on a similar set of amendments, that the commissioner cannot investigate the public sector. Following the logic of what she said about the previous group, the commissioner should really investigate the public sector.

Anna Soubry: I thought we had established that we do not want to extend the remit of the small business commissioner. We want him or her to concentrate specifically on late payment between small businesses and larger businesses. We do not want to go into the public sector because we take the view that the existing schemes that are available—the ombudsman and all the others that I have described—are beginning absolutely to tackle that job.

As a Minister, one works with all the different commissioners and people such as the Groceries Code Adjudicator and there is never anything to preclude the small business commissioner from being able to raise any matter at any time—on the contrary, I would expect him or her to have that sort of relationship with any Minister in my role. I hope that gives the hon. Gentleman some satisfaction that if there were a feeling that things were not working in any other field, they would be able to raise that with the Minister. That was a bit long; I am sorry, Sir David.

Bill Esterson: I am glad that the Minister made such a long intervention. We are going to talk about the relationship with Government Departments when we discuss my next amendment. The problem is that we do not accept that there should be this restriction because of the relationship between the public sector and business and the way that the supply chains operate. The Government do not agree. We have a profound disagreement on this point. We base our evidence on what goes on elsewhere in the world—in Australia and America—with very successful systems, which very much have a wider remit that ensures the commissioner, or the Small Business Administration in the case of America, can investigate and report on the activities, operations and behaviours of the public sector in the way it deals with its suppliers, as well as the private sector.

Fundamentally, it is important to consider the private and the public sectors when thinking about how an economy operates and how contracts and payments are made. The Government are resisting this point, and we may well come back to it once the commissioner is up and running. We tested the Committee's opinion on the inclusion of the public sector earlier and I do not feel the need to test it again. I think we know what the Committee as a whole thinks of this. With those remarks, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 9 ordered to stand part of the Bill.

Clause 10

REVIEW OF COMMISSIONER'S PERFORMANCE

Bill Esterson: I beg to move amendment 60, in clause 10, page 9, line 26, at end insert—

'(7) The Commissioner may assist the Government, including its agencies, to develop legislation, procedures and administration that provide alternative ways in which small businesses can comply with the requirements of the legislation, procedures and administration.'

This amendment would allow the Small Business Commissioner to assist other parts of Government, including the Secretary of State to develop procedures and processes.

The Minister just started to talk about relationships with Ministers, and this amendment is about the small business commissioner working with all parts of Government—including, but not limited to, the Secretary of State for Business, Innovation and Skills—to ensure that Government, their agencies, and all connected with the Government can be included in understanding what comes from the commissioner as a result of their relationship with small business when it comes to legislation and administration.

The amendment aims to help small business, and to help Government get their relationship with and the requirements of small business right as far as possible. It is drawn from a fundamental part of what the US Small Business Administration does. In addition to the signposting functions, which are very much a part of the Small Business Administration's functions that the Government have chosen to adopt, the United States has a whole department devoted to giving small businesses a voice in government.

The US Small Business Administration's Office of Advocacy advances the views of small businesses before Congress, the White House, the federal agencies, the federal courts and state policy makers. It has a three-pronged approach. First, it provides a nationwide source of small business statistics, making it the point of reference for policy makers on the impact that Government regulation and legislation are having in the small business community —on its most pressing concerns—and up-to-date frontline feedback on the challenges it faces from one year to the next.

Secondly, having a base in the federal Government gives it a permanent, independent voice with which to channel concerns to the highest level of government. Thirdly, as the watchdog for the Regulatory Flexibility Act, it is in a position to link its research and advocacy with an effective mechanism to bring small business concerns into the regulatory process. It has a finger on the pulse of small business concerns and a seat at the table for regulation and policy making. This is what we are trying to achieve with amendment 60.

By looking at the example of the US Small Business Administration, we see that the measure is entirely possible and can be used to great effect. Amendment 60 simply makes sure that when we set up the small business commissioner here, we will give them a clear mechanism to work strategically across Government to ensure the voices of small businesses and entrepreneurs are better heard in policy making.

Before last year's general election, Labour said we would create a UK version of the US Small Business Administration, which would concentrate all business support and policy in one organisation. At the Federation of Small Businesses conference at the start of 2015, the then shadow Secretary of State for Business, Innovation and Skills, my hon. Friend the Member for Streatham (Mr Umunna) said,

"So Britain can grow its way out of the cost of living crisis and build a balanced recovery built to last, we need to do all we can to help our small businesses grow, create new jobs and meet their aspirations. We need government to be a better servant—and customer—of our small businesses and to make sure that entrepreneurs' voices are heard at the top table. A UK Small Business Administration is necessary to realising this ambition. Based on the best examples from around the world, a UK Small Business Administration would create a step change in the opportunities for small businesses from government procurement and improve the quality of support available, operating along a proper British Investment Bank and a network of regional banks to ensure that start-ups and established firms can access the finance they need".

Amendment 60 joins up the complaints from small businesses that the commissioner will receive and makes sure that this is factored into the implementation and development of regulations and Government policies. We have worded this carefully. We are not talking about making sure that the small business commissioner only has a seat at the table with the Department sponsoring them—they already have that, by definition. We do not doubt that he or she will have an open line of communication with the Business Secretary and his or her team.

If we are to effect real change, the commissioner needs a seat at the table right across Government Departments. Whether they come from the Cabinet Office, the Treasury, the Department for Communities and Local Government or any other Department, policy making and regulations have a tangible impact on small businesses. Amendment 60 will make sure that the small business commissioner is a part of this process, not confined to one Department. It seeks to ensure all the benefits to small business, jobs and the wider economy that we should all have in mind as we seek to develop this legislation and create the office of the small business commissioner.

Anna Soubry: The Bill already includes an absolute duty on the commissioner to prepare and publish an annual report, which must include any recommendations on how matters he or she has encountered might be addressed. That provides the very mechanism for the commissioner to raise suggestions from his or her experience. I very much want the small business commissioner to keep their firm focus and all their attention on the issue of late payment and the relationship between bigger businesses and small businesses.

12.15 pm

We would all agree that this will depend on the character, ability and standing of whoever is appointed as the small business commissioner, but the last thing I want is for them to be sitting in meetings and talking shops. There is a danger that anything in Government, wherever or at whatever level, can turn into a bit of a talking shop, but I do not want the commissioner to be stuck in meetings; I want them looking at the complaints and then literally picking up the phone and/or doing a thorough investigation and not holding back. They must have the time to conduct an investigation. If necessary, they can then make reference to things in their annual report in the most robust of ways. That is the absolute role of that person. In any event, the small

business commissioner will also be able to make impartial recommendations to help other branches and agencies of Government address the needs of small business. That is already in the legislation.

Finally, I take the view that the people who know best about business are actually those who are running business. I pay tribute to the Federation of Small Businesses, because it is beautifully and perfectly placed, particularly at national level—I have also seen good examples at a local level—to hold to the fire the collective feet of Government, agencies and all the other bodies involved in local and national Government. I trust organisations such as the FSB to do much of the work that the hon. Gentleman wants to be done. It is not the role of the small business commissioner to do that work for all the reasons that I have already outlined.

Bill Esterson: Like the Minister, I have a high regard for the Federation of Small Businesses and I have a good relationship with many of its officers. John Allan, the national chairman, lives in a constituency neighbouring mine. He is a fine man and has been a strong advocate for the organisation in his time in post, as have many other officers.

One of the interesting things about the Minister's comment on the FSB is that the organisation wants many of the amendments that we have tabled in Committee and were tabled in the Lords. If the Government were actually listening to, working with and acting on the recommendations of the FSB, perhaps they would have accepted more of those amendments or included them in the draft legislation. Perhaps the Minister will reflect on that interesting comment and come back on Report with some of the amendments proposed by the FSB and debated here over the past few days as well as in the Grand Committee and on Report in the Lords.

The Minister said that she does not want the small business commissioner sitting in meetings all day when the challenges of late payment need addressing. I completely agree. She will have noticed that I described how the US system operates: a whole department, the Office of Advocacy, is devoted to the relationship with Government, doing the kind of work that I indicated would be beneficial. That is the sort of system that would achieve what amendment 60 proposes.

Government action and legislation have a profound impact on business, on the economy, on business relationships and on businesses being paid on time. That is why it is important that the Government are lobbied and listen to the lobbying. Along with the FSB, the Institute of Directors, the British Chambers of Commerce, the CBI, a range of excellent trade organisations and many individual businesses have an important role to play and have good relationships with Government Departments, Ministers, and Members of Parliament, whether from the Government or Opposition.

There is a lot to be said for the small business commissioner's having a formal role and relationship with all Government Departments, given the important way in which small business operates in this country and how it contributes to a successful and thriving economy. Again, perhaps this can evolve over time. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 10 ordered to stand part of the Bill.

Clauses 11, 12 and 13 ordered to stand part of the Bill.

Clause 14

Extension of target to provisions made by regulators

Bill Esterson: I beg to move amendment 61, in clause 14, page 12, line 6, at end insert—

'(1A) In subsection (2), after "means" insert"—

(a) all regulatory provisions made under section 2(2) of the European Communities Act 1972,

(b) regulatory provisions made by statutory instrument which are subject to the affirmative resolution procedure in both Houses of Parliament, and""

The amendment would require the Government's business impact target to cover the impact of EU Regulations or regulatory provisions made my statutory instruments which are subject to the affirmative procedure.

The Chair: With this it will be convenient to discuss the following:

Amendment 62, in clause 14, page 12, line 18, at end insert—

'(4A) In section 21 of the Small Business, Enterprise and Employment Act 2015 (duty on Secretary of State to publish business impact target etc), at the end of subsection (2) insert "and must consist of—

(a) a nominal component, reflecting the total number of regulations, and

(b) a monetary component, reflecting the discounted cash flow.""

This amendment would ensure that the report includes an up-to-date tally of regulations, and the cost to business of those regulations.

Amendment 63, in clause 14, page 12, line 18, at end insert—

'(4B) In section 21 (3)(b) of the Small Business, Enterprise and Employment Act 2015, after "methodology", insert ", verified by the independent body appointed under section 25".

This amendment would require the Secretary of State to publish the methodology used for assessing the economic impact of regulatory provisions and would require the methodology to be verified by an independent body.

Amendment 64, in clause 14, page 12, line 18, at end insert—

'(4C) In section 23 of the Small Business, Enterprise and Employment Act 2015 (duty on Secretary of State to publish reports) after subsection (3)(f) insert—

"(g) a list of all the impact assessments that relate to the regulatory provisions for which a list is required under subsection (3)(f), including the names of the authorising Ministers, the names of the Senior Responsible Owners for quality assurance, and the assessments of the independent body appointed under section 25."

This amendment would require the Secretary of State's report to include a list of all the impact assessments relating to regulatory provisions which have come into force or ceased to be in force during the reporting period, including the names of the authorising Ministers and Senior Responsible Owners for quality assurance and the assessments of an independent body.

Bill Esterson: We now move away from discussing the creation of the small business commissioner to consider some of the wider aspects of the Bill. This group of amendments looks at the impact target. I will start with amendments 62 and 64.

The Government used to publish a twice-yearly statement of regulations. It might have been a bit of a blunt instrument because the relative impact of these regulations

can vary enormously. However, it was a simple mechanism to ensure that the Government were publishing a tally of new regulations that had come into force during the reporting period. Lord Stevenson of Balmacara noted in Grand Committee that publication of the statements had stopped since the general election, and he asked Baroness Neville-Rolfe to find out why. I cannot see an answer to that question anywhere in *Hansard*; I apologise if I have missed it. Can the Minister tell me why the biannual statements stopped?

Amendments 62 and 64 deal with two important points on regulation that are too often overlooked: honesty and accountability. Amendment 62 suggests having a warts-and-all tally of regulations in the business impact target. It specifically calls for both a nominal component to give an update on the number of regulations, and a monetary component that tots up the total cost to businesses of the regulations. Amendment 64 ensures that, when we publish the reports, there is a chain of accountability so that everybody knows who has approved a new regulation and who is responsible for it.

The reason for amendment 62 is simple. While the Government have not been providing the reports, the Regulatory Policy Committee has. The committee found that, of 13 recent assessments, 10 showed increases in the overall cost of regulation. The Minister will tell us later that the Government have reduced the cost of regulation by some astronomical amount; she will probably cite a figure of £10 billion.

Anna Soubry: Absolutely!

Bill Esterson: The Regulatory Policy Committee seems to be pointing at something slightly different. For some reason, the 10 increases in the overall cost of regulation that the Committee found were not reflected in Government statements on regulatory savings. Why that happened is an interesting question.

It also emerged that many Government regulations—just under half—were considered to be out of scope by the Government. Therefore, when the Minister no doubt gives the figure of £10 billion in a few minutes' time, one must wonder what the true figure might be. The regulations increased the costs to business, but they are important for Government and I agree that they should be important. However, they were not reflected in the Government's in-scope or out-of-scope scenarios. Many regulations come from the European Union, the mention of which will cause Government Members to start to—

Mary Creagh (Wakefield) (Lab): Swivel-eyed!

Bill Esterson: I could not possibly repeat what my hon. Friend just said, but their ears will prick up and they will become interested. One or two of them will no doubt want to jump up and say something about the European Union.

The Government have an interest—*[Interruption.]* Government Members are being very well behaved today, which is remarkable. The Government have an interest in ensuring that they are seen to be reducing the regulatory burden, but when that is not the case, the Government cannot simply stop reporting it—for just under half the regulations—or shift the goalposts to make the situation look better than it is.

The Lords had a full debate on the matter and when those points were made there really was no response to say that that was not what had happened. When the Government report, they should be up front with businesses about who is responsible for the regulations. The reality is that business is interested in the overall impact of regulations, not where they come from. Ultimately, the issue is about the overall cost, not the cost of some regulations and not others, that really affects the business environment and businesses' ability to operate as effectively as possible.

Amendment 61 would require the Government's business impact target to cover the impact of EU regulations or regulatory provisions made by statutory instruments subject to the affirmative procedure. The Regulatory Policy Committee reported that

"nearly half of the approximately 1,000 laws enacted during the previous parliament were outside the scope of the Government's… One-in, Two-out rules. Nearly 70% of these were of EU origin."

If regulations have an impact on small businesses, it is important that they are considered within the scope of the business impact target. Otherwise, businesses will not be able to trust what it is being told, which is the point that I was making a moment ago.

It seems a false distinction to rule such regulations out. The origin of the regulations is different and the route when trying to make them work better for the business community or seeking to remove them would be different, but does the perspective of small businesses differ when a regulation comes from the EU? I do not think so. As Lord Stevenson said in Grand Committee,

"I do not honestly think that businessmen and women would care whether the regulations they have to work to come from this place or across the channel. However, they have an impact on their work and therefore I think that we should fess up and try to get a measure into play in the way that we think about all regulation that impacts on business."—[*Official Report, House of Lords,* 28 October 2015; Vol. 765, c. GC229.]

I have heard the argument before that the point of the assessment is to focus on what we can control and change. That is important, but it is not a reason not to include such regulations because it gives a false impression of the cost of regulation and entirely misses the point. After all, the same EU regulations are applied differently in different EU member states. Perhaps there is an opportunity to learn from how other EU states apply regulations, if they are able to do so in a way that has a lower cost to business and a smaller impact on business than we currently find.

12.30 pm

We should be on top of making sure that we are putting EU regulations to best use in the UK. We cannot do that if we pretend they do not exist when we are assessing the business impact target. EU regulations cost businesses £1.6 billion in the last period that the Regulatory Policy Committee was assessing, but they were never taken into account. Perhaps that suits the Government, as it would make a sizeable dent in the savings they have been congratulating themselves on. The point is that if regulations affect business and the Government have a genuine interest in making a frank assessment of the impact of regulations on business, it should not matter where the legislation originated.

I now want to talk about amendment 63. At its broadest, this group of amendments focuses on strengthening the work of the Regulatory Policy Committee.

As an independent body, the committee takes a holistic view of the impact of regulations that affect businesses across the UK. The problem, which the amendments are intended to address, is that the work of the RPC is hampered when the Government set the objectives and methodology and decide what is or is not in scope. They take a valuable body and hamstring its efforts to offer an assessment of regulations.

The reason for amendment 63 was summed up best by Lord Stevenson in Grand Committee. He said:

"it seems a little odd that the Government can choose the game they are playing, can set the goalposts at the distance apart that they wish and then score as many goals as possible and claim a victory, when in fact there is another game going on elsewhere where people are being beaten up by what in their view is excessive regulation, often gold-plated, and we do not seem to get transparency."—[*Official Report, House of Lords,* 28 October 2015; Vol. 765, c. GC232.]

Very well put.

Amendment 63 cuts to the heart of the matter. At the moment, the Government decide the methodology and we end up with a skewed version of the impact of regulations. Amendment 63 would reverse this relationship. Instead of an independent body working to the Government's methodology, we would see the independent body verifying the Secretary of State's methodology. Publishing that same methodology would make it open to wider scrutiny. Having it verified would invite greater confidence in the objectivity of the assessments carried out.

The Chair: Order. I apologise to the Committee for the coldness of the room. The mechanism for closing the window is either jammed or broken. Help is on the way. It will probably be closed manually, when ladders arrive, during the luncheon break.

Anna Soubry: Thank you, Sir David. Actually, as a woman of a certain age I find it makes a great change. I was so worried about the hon. Member for Wakefield that this must go on the record: she was so cold that she had the hood of her jacket up. As I am mentioning her, may I congratulate her—she is now putting her snow mittens on—on her election yesterday? We all wish her well in her new role, which I am sure she will, unfortunately, play extremely effectively.

I must take issue with the hon. Member for Sefton Central about the previous Government's achievement, which was great, in making huge savings to the costs of businesses across the piece, by way of reducing regulation. Our policy of one in, two out, was particularly successful, and I am helpfully reminded that in 2015 the World Bank rated the United Kingdom sixth out of 189 economies as a place to do business because of the reduction in regulation. Of course, this country was the first to adopt one in, two out. We have done incredibly well and our global competitiveness has increased as we begin to deregulate and untangle the abundance of red tape that often strangled business.

It was a pleasure in the previous Government, at a very low level, to take part in some of the great work that is often done behind the scenes, led by an excellent team of civil servants to whom I pay huge tribute. There is one in particular whom I often describe as the guru of deregulation. She has the most brilliant and incisive brain for untangling red tape—looking at where we overly regulate and at how we can do things better. It is now an even greater pleasure in this role to be right at the core of that work. It is often done very quietly but the benefits to business are huge. We have set ourselves another target to achieve savings of another £10 billion in the next five years. It will be difficult and I do not try to pretend otherwise, but that is one of the things addressed in this part of the Bill.

On amendment 61, we will focus the business impact target on the things that the Government can control. Gold-plating will therefore continue to be included. The burden of the legislation and directives that come from the European Union are better tackled at source. I strongly take the view that the package delivered by President Tusk delivers reforms in economic governance, competitiveness, sovereignty, benefits and the movement of labour that are exactly along the lines that we want to see in the future of the European Union.

I want to stay in the European Union, although I want reform. A wind of change is blowing. My Prime Minister has caught that wind and he is turning it into a gale. This movement to deregulate, to reduce the regulation on business and to change the way we do things in the European Union will gather momentum and pace, and those reforms will come to full fruition. The Government will continue to report administratively on the impact of all significant European Union regulation and have that impact independently validated. That is the point: all the work we do is independently validated.

Bill Esterson: The Minister's support for staying in a reformed European Union is no surprise; I have heard her say that before. I completely agree, but I mentioned making the most of European Union regulations and learning from what goes on in other countries so that we can benefit from them and so that they do not become onerous or a cost to business. Does she take that point on board? What more does she think she and her fellow Ministers should be doing to ensure that regulations from the European Union are not onerous and can be more beneficial? Can we learn from the way other countries apply them?

Anna Soubry: Yes, we always want to learn from what other member states do, but gold-plating was a valid criticism—particularly, I could say, under the 13 years of Labour Government, but that would be a cheap political point that I would not want to make. In all seriousness, this nation did gold-plate things. One of the great tasks that has been performed and completed in the past five years—and which continues to be addressed—is whether we continue to gold-plate. We make it clear to all Government Ministers, Departments and so on that they should not gold-plate, but it is work that we continue to do. If we can learn from other member states in the European Union as to how to ensure we do not do that, so much the better. To finish on amendment 61, affirmative statutory instruments are already captured under the Small Business, Enterprise and Employment Act 2015.

Amendments 62 and 63 would limit the options of future Administrations in determining their target and would give an unusual amount of power to an unelected verification body. It is the Government who should determine the nature of the target, how it is measured

and by what methodology. We are consulting the Regulatory Policy Committee about the methodology for this Parliament and will publish it soon.

I respectfully suggest that amendment 64 duplicates existing administrative requirements to publish impact assessments in the name of the responsible Minister alongside related legislation. In my new role, although it feels as though I have been there for some time, I have seen that the work on deregulation—in terms of the detail into which we all go and the aspiration and targets placed upon Departments—is quite outstanding. The demand is effectively set by a desire to achieve financial targets. None of us really like targets, but, goodness me, they are a fabulous driver for all of us to look at the existing regulation and anything new coming in to ensure that business is not over-regulated, invariably at huge cost to it.

Finally, the hon. Gentleman asked about the statement on new regulation. It has been replaced by an annual report under the business impact target that will be published this June and annually thereafter. That is the better way forward. Though interesting points were raised that, as ever, were listened to, I urge hon. Members not to support the amendment on the basis of all I have said.

Bill Esterson: It is really important to say that we agree on not having unnecessary regulations; I take on board the Minister's point about that. I gently say to her, however, that small businesses are extremely concerned about some recently proposed additional regulation, not least the introduction of quarterly filing or additional reporting of tax information and the feared potential implications for extra bureaucracy. We have discussed that issue elsewhere. I do not know whether you would welcome a discussion on that now, Sir David, but such proposals cause concern. The Minister needs to be aware that there is a sense the Government need to think a few things through more carefully.

The point that the Regulatory Policy Committee was making was that by not including just under half of regulations, the Government are not counting them and are not showing that the gold-plating the Minister speaks of is not still happening. It leaves the sense that the Government are embarrassed by the fact that they have not done more to remove what she described as gold-plating or to learn from how some of our friends in the European Union have managed to apply EU regulations in a more cost-effective way, or done enough to reduce the cost of regulation from the European Union. That is why we agree with the Regulatory Policy Committee that such things should be within scope.

12.45 pm

Among other things, the amendments highlight that if we measure and publish the methodology about something as important as regulation and its cost to business, we improve the chances of addressing those costs and the impact and of improving the business environment. That is one reason we tabled the amendments. The phrase "what gets measured gets done" is very true. By concentrating time and effort in government on these points and by ensuring that a proper, full and accurate measure is taken and that there is transparent reporting on how the Government are going around hitting their business impact targets, everybody in the business community is in a much stronger position to understand and have confidence that everything that can be done is being done.

I take the Minister's points. We have had a good debate on this matter, as we did in the Lords. With those remarks, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 14 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 15

Duty to report on effect of regulators' code

Mary Creagh: I beg to move amendment 78, in clause 15, page 13, line 8, after "in", insert

"section 21 (duty to have regard to the regulatory principles) and"

This amendment would make it clear that the reporting requirements include reporting on the duty under section 21 of the Legislative and Regulatory Reform Act 2006 to have regard to a defined set of regulatory principles.

The Chair: With this it will be convenient to discuss the following:

Amendment 79, in clause 15, page 13, line 10, after "which", insert "section 21 and"

See explanatory statement to amendment 78.

Amendment 80, in clause 15, page 13, line 14, after "businesses", insert

"and such other persons as the regulator considers appropriate"

In conjunction with amendment 78, this amendment would require each relevant regulator to report not only on the views of businesses (and 'other regulated persons'), but also on the views of such other persons as the relevant regulator considers appropriate.

Amendment 81, in clause 15, page 13, line 16, at end insert—

"(iii) of the effect of the duties under sections 21 and 22 on the proper exercise of its relevant functions;"

This amendment would require each relevant regulator to report on the effect of the performance of the duties on the proper exercise of the regulatory functions to which they apply.

Amendment 82, in clause 15, page 13, line 18, after "in", insert "section 21 and"

See explanatory statement to amendment 78.

Amendment 85, in clause 15, page 13, line 41, after "in", insert "section 21 and"

See explanatory statement to amendment 78.

Amendment 86, in clause 15, page 14, line 28, at end insert—

""businesses" includes businesses and other regulated persons;"

Amendment 87, in clause 15, page 14, line 30, after "by", insert

"section 21 to have regard to the principles in subsection (2) of that section and"

See explanatory statement to amendment 78.

Amendment 83, in clause 15, page 13, line 31, at end insert—

"(d) the persons from whom information should be obtained for the purposes of a performance report.

This amendment would make provision for guidance to be issued on who should be asked for information for the purposes of preparing a performance report.

Amendment 84, in clause 15, page 13, line 31, at end insert—

"(6A) Before making guidance under subsection (5), the Minister must consult—

(a) persons carrying on businesses; and

(b) such other persons as the Minister considers appropriate."

This amendment would require the relevant Minister of the Crown to consult businesses and such other persons as the Minister considers appropriate before making guidance relating to the performance reports.

Amendment 88, in clause 16, page 15, line 13, after "businesses", insert

"and such other persons as the regulator considers appropriate"

See explanatory statement to amendment 80.

Amendment 89, in clause 16, page 15, line 15, at end insert—

"(iii) of the effect of the duties under section 21 and 22 on the proper exercise of its relevant functions;"

See explanatory statement under amendment 81.

Amendment 90, in clause 16, page 15, line 30, at end insert—

"(d) the persons from whom information should be obtained for the purposes of a performance report."

See explanatory statement to amendment 83.

Amendment 91, in clause 16, page 15, line 30, at end insert—

"(5A) Before making Guidance under subsection (4), the Minister must consult—

(a) persons carrying on businesses; and

(b) such other persons as the Minister considers appropriate."

See explanatory statement to amendment 84.

Amendment 92, in clause 16, page 15, line 42, after "businesses", insert

"and such other persons as the Minister considers appropriate"

See explanatory statement to amendment 80.

Amendment 93, in clause 16, page 16, line 9, at end insert—

"(11A) In this section—

"businesses" includes businesses and other regulated persons."

Mary Creagh: I apologise to the Committee, but I cannot feel my face anymore. It is quite cold in here. I appeal to the Chair that if the coldness carries on after lunch, perhaps we can all have a round of hot coffees from the Terrace cafeteria. I beg to move!

I thank the right hon. Member for Broxtowe for her congratulations, and I thank hon. and right hon. Members from all parts of the House. Whether or not they supported me for Chair, they have got me. I want to begin by talking about the Environmental Audit Committee and its environmental scorecard on the Government. In 2014, the Committee asserted that environmental regulations represent

"the essential underpinning of environmental protection."

They also, of course, represent the essential underpinning of consumer protection and of health and safety for workers and the general public. Statutory regulators play an important role in the effective implementation and enforcement of environmental regulations.

We have had a drive to reduce the burden of regulation on business. We have seen that with the changes made by the Small Business, Enterprise, and Employment Act 2015, section 108 of the Deregulation Act 2015 and section 22 of the Legislative and Regulatory Reform Act 2006. My party is pro-business; we see it as essential to our society. We want to see industry growing. We are pro-growth. We are also pro-good regulation. In my time as shadow Environment Secretary, I lost count of the number of times when businesses would come in and complain about other businesses that were able to undercut them on price because of their ability to ignore the regulations.

People want to do the right thing in this country. We are lucky enough to have businesses that are so law-abiding and wish to do well on the basis of good business, good growth and green growth. One thing in the clauses is the Government's failure perhaps to understand the role of regulation in promoting green growth, and I will give some examples of that towards the end of my remarks.

Good regulation protects the citizen from the powerful, whether those interests are of the commercial sector, the state or other large bodies. Good regulation protects patients, the old, those with disabilities, our built environment, our natural environment and many other areas of our lives. I tabled the amendments, which are probing, because I want the Minister to say what protections will be outlined if the measures go through. I have particular concerns about the proposal in clause 17 on Ofwat and the Office of the Rail Regulator. The duty of a regulator is to protect the public interest and there could be some very difficult decisions for those regulators.

I do not believe that there is evidence to suggest that the UK is over-regulated or that there are significant unnecessary costs associated with existing regulations, despite what the Minister said about so-called gold-plating. The costs associated with environmental regulations account for less than 2% of business sector turnover on average. If we focus solely on the costs of regulation to business, we ignore the wider socioeconomic and environmental benefits that regulations are intended to provide. Evidence suggests that the benefits of environmental regulations—only some of which can be quantified—cover the costs three times over.

I would like to give some examples of the costs and benefits. The Minister said earlier that they could be obscure and that we are not sure what they are, but regulators operate in the framework of UK law and European Union law. All the transposition of EU directives is subject to Whitehall cost benefit decisions. I have asked a variety of parliamentary questions on certain EU frameworks and I want to give the Committee some examples.

Back in 1995, it is generally accepted that the UK was seen as the "dirty man of Europe"—a slightly sexist phrase, but one that I am happy to use for the purposes of this discussion. Some 83% of household waste went to landfill and just 7% was recycled or composted. Younger members of the Committee may find it hard to remember those bad old dirty days. Basically, everything went into a bin in the kitchen. By 2014, thanks to a series of EU directives, which were transposed without gold-plating by the previous Labour Government in a very flexible way that allowed local authorities to make the right decisions about what was right in their communities and where they wanted to invest, the UK's recycling

rate had reached 45%. During that time, as our understanding of the finite nature of resources developed—whether they were wood, plastic or paper—and businesses understood that in order to have a sustainable and secure supply chain of raw materials, we could not keep on relying on raw products; we had to develop and grow our recycling industry and base. Hundreds, if not thousands, of new businesses were created in the recycling industry.

That is an example of good regulation creating green growth, green businesses and green jobs. The UK currently recycles 90% of construction materials, well ahead of other countries. We are seen as world leaders, for example, in civil engineering with the Crossrail and Olympics projects, both landmark Labour Government achievements, taking out the spoil and taking it away—by barge in the case of the Olympics, at a nice steady 3 miles an hour—and using it to create new nature reserves in Essex.

I also want to talk about the EU's water framework directives. Again, younger members of the Committee may find it hard to believe that swimming in Blackpool as a child some 30 or 35 years ago, I emerged covered in oil. When people talk about the good old days, they forget just how good they were. Some 99% of British beaches now comply with EU minimum standards on cleanliness. What does that mean? We cannot really quantify the benefits to our seaside towns, but obviously cleaner beaches mean more tourists and stronger local economies.

In 2014, the Environment Agency, in response to a parliamentary question that I submitted, estimated that the net benefit in England and Wales of implementing the EU water framework directive will be £9 billion by 2027—that is £9 billion of benefit to the UK economy for transposition of that directive.

On air quality, we can similarly see that the UK's nitrogen oxide—NOx—emissions have fallen by more than two-thirds, reducing the risk of respiratory disease. Over the same period, sulphur dioxide emissions in the UK dropped by 95%. Sulphur dioxide is what gives us acid rain, and when it goes into rivers and particularly into copper piping, it leaches away the copper from the pipes. This was particularly a Scandinavian problem. Perhaps they had more copper pipes or more blond people, but when blond people washed their hair, it turned green because of the acid rain. Again, that is another example of the good old days when industry was able to pollute the atmosphere, and there were unintended costs and consequences not only in terms of environmental degradation, but for blond people suffering green hair. That is probably not something we can quantify, but it must have been quite embarrassing for a child at school. However, those consequences have now been taken out.

We have another five minutes, so I will carry on. My examples illustrate some of the many benefits that regulation brings in terms of green growth and environmental benefits. Clauses 15 and 16 introduce reporting requirements on regulators in respect of their duties under the Legislative and Regulatory Reform Act 2006 to have regard to the code of practice and to the desirability of promoting economic growth. So regulators will have to produce an annual performance report setting out the effect that the duties have had, making explicit reference to the views of any affected businesses. My amendments would require widening that out from businesses so that the whole voice of civil society is heard in that report.

The duties risk unintended consequences. They have an overriding effect on the exercise of regulatory functions, and that could incentivise regulators to give greater emphasis to narrowly defined economic considerations and potentially compromise the protection of the environment—and the citizen, the disabled, the worker and the consumer. It could also compromise the responsibility of regulators to act always in the public interest. In both cases, the exercise of regulatory functions in accordance with their original purpose is not emphasised as a key consideration for regulators. I think that that is problematic.

In their response to the consultation on the growth duty, the Government stated that the duty would not

"compromise the independence of regulators or undermine the importance of the essential protections that they are there to deliver".

However, the Joint Committee on the draft Deregulation Bill concluded that additional safeguards were required to ensure that the duty would not

"take precedence over regulation and that the overriding and principal objective of regulators remains the protection of the public interest."

A proposal to amend the relevant clauses to make it clear that the duty would apply only in so far as it was consistent with the proper exercise of the regulatory functions was narrowly defeated in the House of Lords in February 2015. As currently drafted, the proposed reporting requirements are disproportionately focused on the views of businesses as to the effect of the performance of the duties. This is in spite of the risk that they may have an overriding effect on the regulatory functions to which they apply, with unintended consequences for the protection of the environment and the wider public interest.

Secondly, the stated aim of the new reporting requirements is

"to ensure regulators are more transparent about the action they have taken",

and to

"allow Government, business and other interested stakeholders to hold regulators to account on how they have performed"

in respect of the duties. As I have said, I have concerns about this.

The amendments that I have tabled would make four changes. First, they would require each relevant regulator to report on the effect of performance of the duty under section 21 of the Legislative and Regulatory Reform Act 2006, as well as on the performance of the duties under section 22 of the LRRA and section 108 of the Deregulation Act 2015.

Secondly, in respect of the duties, the amendments would require each relevant regulator to report not only on the views of businesses and other regulated persons, but on the views of such other persons as the relevant regulator considers appropriate. Thirdly, they would require each relevant regulator to report on the effect of the performance of the duties and on the proper exercise of the regulatory functions to which they apply. Finally, they would require the relevant Minister of the Crown to consult businesses and such other persons as the Minister considers appropriate before making guidance relating to the performance reports, and such reports to be made public.

Ordered, That the debate be now adjourned.—(*Stephen Barclay*.)

1 pm

Adjourned till this day at Two o'clock.