

PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

COMMONWEALTH PARLIAMENTARY ASSOCIATION AND INTERNATIONAL COMMITTEE OF THE RED CROSS (STATUS) BILL

Wednesday 6 March 2024

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CLAUSES 1 TO 6 agreed to, some with amendments.

SCHEDULE agreed to.

Bill, as amended, to be reported.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 10 March 2024

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The Committee consisted of the following Members:*Chair:* YVONNE FOVARGUE

Antoniazzi, Tonia (<i>Gower</i>) (Lab)	† Elmore, Chris (<i>Ogmore</i>) (Lab)
† Baldwin, Harriett (<i>West Worcestershire</i>) (Con)	† Hobhouse, Wera (<i>Bath</i>) (LD)
† Bradley, Dame Karen (<i>Staffordshire Moorlands</i>) (Con)	† Johnson, Kim (<i>Liverpool, Riverside</i>) (Lab)
Brine, Steve (<i>Winchester</i>) (Con)	† Liddell-Grainger, Mr Ian (<i>Bridgwater and West Somerset</i>) (Con)
† Clarke, Theo (<i>Stafford</i>) (Con)	† Mackrory, Cheryllyn (<i>Truro and Falmouth</i>) (Con)
Dinenage, Dame Caroline (<i>Gosport</i>) (Con)	† Miller, Dame Maria (<i>Basingstoke</i>) (Con)
† Docherty, Leo (<i>Parliamentary Under-Secretary of State for Foreign, Commonwealth and Development Affairs</i>)	Osborne, Kate (<i>Jarrow</i>) (Lab)
Elliott, Julie (<i>Sunderland Central</i>) (Lab)	† Saville Roberts, Liz (<i>Dwyfor Meirionnydd</i>) (PC)
† Ellwood, Mr Tobias (<i>Bournemouth East</i>) (Con)	Anne-Marie Griffiths, <i>Committee Clerk</i>
	† attended the Committee

Public Bill Committee

Wednesday 6 March 2024

[Ms YVONNE FOVARGUE *in the Chair*]

Commonwealth Parliamentary Association and International Committee of the Red Cross (Status) Bill

10 am

The Chair: Before we begin, I have a few preliminary reminders for the Committee. Members should switch all their electronic devices to silent. No food or drink, apart from water, is allowed. Will Members please email their speaking notes to *Hansard*?

My selection and grouping for today's meeting is available online and in the room and shows how the selected amendments have been grouped for debate. Please note that decisions on amendments do not take place in the order in which amendments are debated, but in the order in which they appear on the amendment paper.

Clause 1

THE COMMONWEALTH PARLIAMENTARY ASSOCIATION

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

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

Clause 3 stand part.

The schedule.

Dame Maria Miller (Basingstoke) (Con): It is a pleasure to serve under your chairmanship, Ms Fovargue, and to bring the Bill to the Committee. I thank all colleagues for agreeing to sit on the Committee and for enabling us to scrutinise the Bill in some detail.

Before I start, I should put on record my gratitude to the secretary-general of the Commonwealth Parliamentary Association, Stephen Twigg, for his steadfast commitment to the CPA and his passionate championing of the Bill; my hon. Friend the Member for Bridgwater and West Somerset (Mr Liddell-Grainger), who is the chair of the international executive committee of the Commonwealth Parliamentary Association, for his support for changing the status of the CPA; and the International Committee of the Red Cross for the incredibly important work it does. I should not forget the Minister, who is in his place today; his colleague, the noble Lord Ahmad; or the formidable team at the Foreign and Commonwealth Office. They have understood the importance of what our organisations do to support democracy around the world and have provided invaluable support and guidance.

Chris Elmore (Ogmore) (Lab): In paying tribute to all those people, the right hon. Lady forgot to mention herself. It is fair to say that getting to this point has been a labour of love for in excess of two years. Those of us on the CPA executive who are in this Committee room to debate the Bill know that she very much spearheaded that work, and she deserves credit for it.

Dame Maria Miller: I thank the hon. Gentleman for his comments, and I recognise his support for all the work that has got us here today.

The Bill was passed unanimously on Second Reading, and I hope the clauses and amendments will continue to have the support of the Government and everybody in this room today. It provides the necessary delegated legislation-making powers for the CPA and the ICRC to be treated in a manner comparable to an international organisation of which the United Kingdom, or His Majesty's Government in the United Kingdom, is a member.

Before the Bill, the Government were unable to treat them in that way, because the powers in the International Organisations Act 1968—particularly the powers in section 1—and the International Development Act 2002 are not available in respect of the CPA or the ICRC. That is because neither organisation is an intergovernmental organisation, but instead each has its own unique constitutional arrangements, reflecting its specific international mandate. Therefore, it is necessary to establish a bespoke enabling power to allow the CPA and the ICRC to operate in the UK.

Turning to the provisions in clauses 1 and 3 and the schedule in more detail, clause 1 enables the conferral on the CPA of the legal capacities of a body corporate. Key capacities relevant to the operation of an international organisation in the UK include concluding contracts, acquiring and disposing of property, and instituting and being a party to legal proceedings.

The clause also enables the provision in respect of the CPA of specific privileges and immunities, which will be determined on the basis of the organisation's functional need and will be specified through an individual arrangement to be agreed upon on completion of the Bill. The clause also enables the provision of specific privileges and immunities in respect of the secretary-general of the CPA. Those are limited to the privileges and immunities set out in part 2 of the schedule.

The second clause in this string is clause 3. This provision is equivalent to section 8 of the International Organisations Act 1968, which allows the Secretary of State to certify questions of fact relating to the status of, or the privileges and immunities conferred on, the organisations. This clause is necessary, as it is intended to assist the courts in establishing the facts relating to the status of persons who may have privileges or immunities.

The third element in this string is the schedule. It is customary practice to grant privileges and immunities to international organisations and related persons. The list of privileges and immunities that may be conferred on the CPA and the ICRC by Order in Council is set out in the schedule and has been informed by the 1968 Act. I say "may" very certainly, because these are things that have to be decided once this paving legislation is in place.

The schedule will allow the Government to agree a framework that is unique and appropriate to the organisations' unique mandates. Conferral of the privileges and immunities may be subject to specific exceptions in accordance with clause 4(2)(b), while any exemption or relief from a tax or duty may be made subject to arrangements or conditions in accordance with clause 4(2)(c).

The actual suite of privileges and immunities to be accorded, including relevant exceptions and limitations, will be determined on the basis of the functional need

of each organisation and will be specified in the Order in Council. I will discuss that further when we come to the next set of provisions, because it is important that it be clear to everybody looking at this debate, which will be a great number of people across the Commonwealth.

The Parliamentary Under-Secretary of State for Foreign, Commonwealth and Development Affairs (Leo Docherty): I am grateful for my right hon. Friend's leadership on this issue and I am very pleased to be speaking in Committee on this important Bill. As laid out by my right hon. Friend, the UK greatly values its long-standing programme partnership with the Commonwealth Parliamentary Association and really appreciates the very important work that it does, right across the Commonwealth, to foster inclusive and accountable democracy.

Treatment as an international organisation will allow the CPA to continue to operate across the Commonwealth and international fora. It will also allow the organisation to participate fully in areas in which it is currently restricted. Therefore I am very pleased to be able to speak in support of clauses 1 and 3 and the schedule; I will just touch on those, if I may.

The powers provided in clause 1 subsections (1) and (2) reflect the constitutional arrangements of the CPA—including its current registration with the Charity Commission for England and Wales—and will facilitate its proposed future operating model. Comparable treatment to an international organisation would be limited to the core international organs of the CPA, such as the secretariat. It is not intended that any privileges, immunities or other facilities are extended to any of the national or subnational branches.

This clause enables conferral on the CPA of the legal capacities of a body corporate. Key capacities relevant to the operation of an international organisation in the UK are to conclude contracts, to acquire and dispose of property, and to institute and be party to legal proceedings. The clause also enables the provision in respect of the CPA of specific privileges and immunities, which will be determined on the basis of the organisation's functional need and will be specified through an individual arrangement to be agreed upon on completion of the Bill. Clause 1(1)(c) enables the provision of specific privileges and immunities in respect of the secretary-general of the CPA. Those are limited to the privileges and immunities set out in part 2 of the schedule.

The clause provides for the Order in Council to specify certain statutory provisions in relation to international organisations that should apply in relation to the CPA, with any necessary modifications. This provision will ensure that the CPA can be accorded comparable treatment to an international organisation—in particular, where the definition of international organisation in the legislation is limited to intergovernmental organisations.

Theo Clarke (Stafford) (Con): I welcome this Bill and I agree that it is a cross-party Bill, with support from across the House. I pay tribute to my right hon. Friend the Member for Basingstoke for introducing it. I recently returned from Sierra Leone as a member of the CPA executive, and it was made clear to me by members of foreign Governments how important this Bill is. I wholeheartedly welcome this change.

Leo Docherty: I wholeheartedly endorse my hon. Friend's comments.

Touching briefly on clause 3, the Bill will enable the Government to treat the CPA and the ICRC in a manner comparable to that of an international organisation of which the United Kingdom, or His Majesty's Government in the United Kingdom, is a member. In keeping with that, this provision is equivalent to section 8 of the International Organisations Act 1968, which allows the Secretary of State to certify questions of fact relating to the status of, or the privileges and immunities conferred on, the organisations.

Clause 3 is therefore necessary, as it is intended to assist the courts in establishing the facts relating to the status of persons who may have privileges or immunities. The legislation is being supported now as compelling business cases have been presented, and parliamentary time and capacity is available.

Before I conclude, let me touch on the schedule. It is customary practice to grant privileges and immunities to international organisations and related persons. The list of privileges and immunities that may be conferred on the CPA and the ICRC by Order in Council is set out in the schedule and has been informed by the 1968 Act. That will allow the Government to agree a framework that is unique and appropriate to the organisations' unique mandates.

Conferral of the privileges and immunities may be subject to specific exceptions in accordance with clause 4 of the Bill, while any exemption or relief from a tax or duty may be made subject to arrangements or conditions, also in accordance with clause 4. I reiterate the Government's support for, and agreement with, the clauses and the schedule.

Wera Hobhouse (Bath) (LD): Does the Minister agree that this Bill creates equal partners in the Commonwealth, rather than the more outdated model where the UK takes the leadership, and does he agree that that is a positive change?

Leo Docherty: I do agree—it is a very positive change.

Dame Maria Miller: I thank the Minister for his wholehearted support for this first clause of the Bill and other hon. Members for their contributions.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

THE INTERNATIONAL COMMITTEE OF THE RED CROSS

Dame Maria Miller: I beg to move amendment 1, clause 2, page 2, line 13, at end insert—

- “(e) provide for protected ICRC information to be exempt from any disclosure requirement imposed by—
- (i) an order of a court or tribunal in proceedings other than criminal proceedings, or
 - (ii) a statutory provision or rule of law.
- (2) In subsection (1)(e), “protected ICRC information” means information—
- (a) that is held by the government of the United Kingdom,

[*Dame Maria Miller*]

- (b) that was obtained by the government from the ICRC, and
- (c) that is confidential.
- (3) For the purposes of subsection (2)(c), information is “confidential” while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the ICRC to expect that it will be so held.
- (4) An exemption conferred by virtue of subsection (1)(e) does not apply to information if the ICRC—
 - (a) has published it, or
 - (b) has agreed to its disclosure for the purpose of the disclosure requirement in question.
- (5) Nothing in this section or in an Order in Council made under it affects the common law rules about the withholding of information on the grounds of public interest immunity.”

This amendment allows for certain confidential information that the ICRC shares with the UK government to be exempted from legal disclosure requirements.

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

Clause stand part.

Amendment 2, clause 4, page 2, line 27, leave out “or privilege” and insert “, privilege or exemption”.

This amendment is consequential on Amendment 1 and ensures that an exemption conferred by an Order under clause 2(1)(e) can be subject to exceptions set out in the Order.

Dame Maria Miller: This section of our discussion focuses on the International Committee of the Red Cross, commonly known as the ICRC. Clause 2 and amendments 1 and 2 run together, although amendment 2 is a consequential amendment to clause 4.

Clause 2 confers on the ICRC the legal capacities of a body corporate, just as clause 1 confers them on the CPA. It is an important move for the organisation, because it enables the provision of specific privileges and immunities in respect of the ICRC. Those will be determined, as with the CPA, on the basis of the functional need of the organisation and will be specified through an individual arrangement, to be agreed upon completion of the Bill.

The clause also enables the provision of specific privileges and immunities in respect of the ICRC’s personnel, who do such important work around the world. They are limited to the privileges and immunities set out in part 2 of the schedule. This provision applies to specified officers of the ICRC—unlike the previous discussion on the CPA—as well as other specified classes of officers and servants of the organisation, for example ICRC delegates posted to the regional delegation in London.

I beg the indulgence of the Committee for the fact that there are two amendments tabled. Amendment 1 specifically relates to clause 2. There were discussions ongoing between the ICRC, myself and the Foreign, Commonwealth and Development Office when the Bill was finalised, and therefore the final discussions on the issue of confidentiality, which is touched upon in amendment 1, were continuing when the Bill was finalised.

Amendments 1 and 2, which amend clauses 2 and 4 of the Bill respectively, provide for the protection of information provided confidentially to the Government

by the ICRC from being used in UK civil court proceedings. This is an important provision for the ICRC and is necessary because of the need to withhold from public disclosure confidential information. Its provision in the Bill would provide assurance that that could take place.

10.15 am

Members who are looking at the issue for the first time may be interested to know that ICRC information’s being used in legal proceedings is a very real risk and concern. Over the past 15 years, the ICRC’s confidentiality has been challenged some 20 times in the UK. It is regularly approached by individuals and their lawyers to disclose information regarding, for example, its detention activities in the UK or abroad or its dialogue with British forces in theatres of conflict. There is a real need to put these important provisions in place, and I am pleased that we were able to work with the Government to get them in place in time.

The ICRC has a unique international humanitarian mandate and mission. It is critical that it is able to operate in the UK in accordance with its international mandate, maintaining a strict adherence to the principles of neutrality, impartiality and independence and its working method of confidentiality. There is precedent in providing such protection. The ICRC has given me a detailed briefing on the provisions it has in place in other states with which it has concluded immunities and privilege agreements in the last 15 years. Those states have also accepted the confidentiality clause, whereby they undertake not to share with any third parties, including in legal proceedings, any ICRC-related information.

The amendment overriding the disclosure of ICRC information in certain circumstances engages the right to a fair trial under article 6 of the European convention on human rights. The Government and the Foreign Office in particular have had to look at a way to balance the need for confidentiality with the need to ensure that we are in line fully with that article. I am pleased to report that the FCDO has incorporated mitigations to the risk in the wording of the amendment by including an exclusion for criminal cases. That is not the case in other countries abroad, but it is the case in the UK to ensure that we balance carefully those important rights.

Leo Docherty: May I commend my right hon. Friend’s words? I will speak briefly to amendments 1 and 2, which are designed to protect information that the ICRC provides in confidence to His Majesty’s Government from being used in UK civil court proceedings. That is necessary, as the withholding from public disclosure of confidential information cannot otherwise be assured. That reflects the ICRC’s standard working method of confidentiality, which is designed to protect its staff and operations in active conflict zones.

That principle also underpins the ICRC’s ability to operate in dangerous locations on sensitive issues, engaging with both state and non-state actors. Confidential information related to the ICRC’s sensitive work includes its engagement with conflict parties on international humanitarian law, mandated under the Geneva conventions, and its work with prisoners, detainees and hostages. Disclosure of confidential ICRC information would damage the ICRC’s ability to perform its sensitive functions when negotiating with conflict parties and put its staff and operations at risk.

The Government are already committed to respecting the confidentiality of the ICRC's information as a matter of policy, and past practice has demonstrated that. This Bill is an opportunity to end any uncertainty about the Government's position and put that practice on a statutory footing. Without such a provision, the ICRC is likely to restrict the information that it shares with the UK, including information that provides important analysis and intelligence related to UK Government priorities.

The amendments do not therefore provide an absolute or blanket exemption from disclosure requirements for all ICRC communications. Important limitations have been incorporated into the amendment, as my right hon. Friend mentioned. For example, the exemption is limited to information that has been communicated by the ICRC to the UK Government as part of its confidential bilateral dialogue related to the ICRC's humanitarian activities.

The amendments also engage the right to a fair trial, as was mentioned, under article 6 of the European convention on human rights. The Government consider this provision both necessary and proportionate, and mitigations such as the exclusion for criminal cases mean that I can confirm that the provision may be exercised in compatibility with convention rights.

If I may touch on clause 2, the ICRC is an essential partner for achieving the UK's global humanitarian objectives. It has a unique legitimacy to engage all parties to conflicts and has unparalleled access to vulnerable groups in conflict situations. The ICRC is frequently the only international agency operating at scale in many conflicts. With regard to clause 2 it is therefore critical, in our judgment, that we enable the ICRC to operate in the UK in accordance with its international mandate, maintaining its strict adherence to the principles of neutrality, impartiality and independence and its working method of confidentiality.

The clause confers on the ICRC the legal capacities of a body corporate. Key capacities relevant to the operation of an international organisation in the UK are to conclude contracts, to acquire and dispose of property and to institute and be party to legal proceedings.

I therefore reiterate our support for amendments 1 and 2.

Amendment 1 agreed to.

Clause 2, as amended, ordered to stand part of the Bill.

Clause 3 ordered to stand part of the Bill.

Clause 4

ORDERS IN COUNCIL

Dame Maria Miller: I beg to move amendment 3, clause 4, page 2, line 24, at end insert—

“(1A) Before laying before Parliament a draft of a statutory instrument containing an Order in Council under section 1, the Secretary of State must consult—

- (a) the Chair of the United Kingdom Branch, and
- (b) the Secretary-General

of the Commonwealth Parliamentary Association.

(1B) Before laying before Parliament a draft of a statutory instrument containing an Order in Council under section 2, the Secretary of State must consult—

- (b) the President, and
- (c) the Director-General

of the International Committee of the Red Cross.”

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

Amendment 4, clause 4, page 2, line 37, at end insert—

“(3) The Secretary of State must lay before Parliament—

- (a) a draft of a statutory instrument containing an Order in Council under section 1, and
- (b) a draft of a statutory instrument containing an Order in Council under section 2

within fourteen days of the passing of this Act.”

Clause stand part.

Clause 5 stand part.

Clause 6 stand part.

Dame Maria Miller: I stress that amendments 3 and 4 are probing amendments to allow the Minister to provide some assurances, not only to the people in this room, including myself, but to other members of the organisations we are talking about today. It is a long-standing practice that privileges and immunities are conferred by Order in Council, and that is not included in the Bill; this is merely paving legislation to allow that to happen.

The clause provides that any Order in Council made under clauses 1 or 2 is subject to the draft affirmative parliamentary procedure. Statutory instruments that are subject to the draft affirmative procedure require the approval of both Houses of Parliament before they come into effect, in the usual way. The clause also provides further detail on the scope and extent of the delegated legislation-making powers under clauses 1 and 2.

In addition, the clauses provide the enabling power, first, for the Order in Council to specify circumstances where privileges or immunities do not apply, whether because of an exception to those privileges or immunities or because they have been waived by the organisation; and secondly, for the Order in Council to specify that fiscal reliefs and exemptions are subject to arrangements or conditions imposed by the Secretary of State or the Commissioners of His Majesty's Revenue and Customs, as the case may be.

I felt it was very important that we had a clear, on the record affirmation from the Government, when they are drawing up these very important subsequent documents for approval by the House, that the appropriate people are involved in those discussions. That is why I have tabled probing amendments 3 and 4.

The effect of amendment 3 is to lay down a formal requirement on the Secretary of State to consult the chair of the UK branch and the secretary-general of the CPA, and the president and the director-general of the ICRC respectively, before finalising the draft Order in Council and laying it before Parliament.

Amendment 4 would require the Secretary of State to lay the draft Order in Council within 14 days of the Act's coming into force. Perhaps when the Minister responds, he could give some assurances regarding the Government's intent to involve the individuals named in amendment 3 in the decisions about what is to be laid before Parliament, to ensure that the Bill works exactly in the way the relevant organisations need it to. I am sure that would always be his intention, but it would be helpful if he could put that intention on the record before we finalise proceedings today.

[*Dame Maria Miller*]

Clause 5 explains that the term “ICRC” means the International Committee of the Red Cross, for the avoidance of any doubt. It also ensures that the definition of “statutory provision” allows for the treatment of the CPA and ICRC as international organisations to be applied in regard to all relevant legislation, primary and secondary, including devolved legislation. That is important because the Bill gives both the CPA and the ICRC treatment comparable to that of an international organisation, so the organisations need to be recognised in the same way across all relevant legislation.

Last, but by no means least, the provisions in clause 6 extend and apply the Bill to the whole of the UK, as a reserved or excepted matter relating to the conduct of international relations. The Bill will come into force on the day on which it receives Royal Assent.

I hope the Minister will respond on those final clauses and leave me in a position where I can withdraw my two probing amendments.

Leo Docherty: I am grateful to my right hon. Friend for introducing the amendments and am happy to give her the assurance that she requires. The FCDO has engaged with the CPA and ICRC throughout the legislative process. The FCDO will consult them both ahead of secondary legislation and work closely with them to agree the arrangements for the appropriate privileges and immunities for each organisation. The FCDO has already committed to lay the draft Order in Council as soon as possible. His Majesty’s Government does not, therefore, think the amendments are necessary, and I ask my right hon. Friend to withdraw them.

On clause 4, it has of course been long-standing practice that privileges and immunities are conferred by Order in Council. The clause provides that any Order in Council made under clauses 1 or 2 is subject to the draft affirmative parliamentary procedure. Statutory instruments that are subject to that procedure require the approval of both Houses of Parliament before they may have effect, as we all know.

The clause also provides further detail regarding the scope and extent of the delegated legislation-making power under clauses 1 and 2. In particular, an Order in Council made under the Bill

“may make different provision for different cases and for different persons”,

and

“may contain consequential, supplementary, incidental, transitional or saving provision.”

In addition, the clause provides the enabling power for two important aspects that are fundamental to the operation and management of privileges and immunities in respect of an international organisation. First, the Order in Council may specify circumstances in which

privileges or immunities do not apply, whether because of an exception to those privileges or immunities or because they have been waived by the organisation.

Secondly, the Order in Council may specify that fiscal reliefs and exemptions are subject to arrangements or conditions imposed by the Secretary of State or the commissioners of His Majesty’s Revenue and Customs. This will facilitate the application to the organisations of the existing administrative schemes and processes in respect of international organisations that are administered by, among others, the FCDO and HMRC.

Clause 5, on interpretation, explains that the term “ICRC” means the International Committee of the Red Cross, as stated in clause 2. It also ensures that the definition of “statutory provision” allows for the treatment of the CPA and ICRC as international organisations to be applied in regard to all relevant legislation, primary and secondary, including the devolved Administrations of Scotland, Wales and Northern Ireland, whenever such legislation is made. This is important because the Bill gives both the CPA and the ICRC treatment comparable to that of an international organisation; therefore, the organisations need to be recognised in the same way across all relevant legislation.

Under clause 6, the Bill’s provisions will extend and apply to the whole of the UK as a reserved or accepted matter relating to the conduct of international relations, and the Bill will come into force on the day on which it receives Royal Assent.

In conclusion, I commend the contribution of my right hon. Friend in a spirit of gratitude.

Dame Maria Miller: I am grateful for the opportunity to respond to the Minister’s comments. I am reassured that the Government intend to fully involve the organisations in the drawing up of secondary legislation. It is an obvious thing to say, but it is good to hear the Minister put that on the record. With that in mind and having received those assurances, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 2, in clause 4, page 2, line 27, leave out “or privilege” and insert “, privilege or exemption”.— (*Dame Maria Miller.*)

This amendment is consequential on Amendment 1 and ensures that an exemption conferred by an Order under clause 2(1)(e) can be subject to exceptions set out in the Order.

Clause 4, as amended, ordered to stand part of the Bill.

Clauses 5 and 6 ordered to stand part of the Bill.

Schedule agreed to.

Bill, as amended, to be reported.

10.32 am

Committee rose.