

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT ECONOMIC GROWTH (REGULATORY FUNCTIONS) ORDER 2017 DRAFT GROWTH DUTY STATUTORY GUIDANCE

Tuesday 28 February 2017

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The Committee consisted of the following Members:

Chair: MR GRAHAM BRADY

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| † Barclay, Stephen (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Lynch, Holly (<i>Halifax</i>) (Lab) |
| † Beresford, Sir Paul (<i>Mole Valley</i>) (Con) | † McCartney, Jason (<i>Colne Valley</i>) (Con) |
| † Brabin, Tracy (<i>Batley and Spen</i>) (Lab) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Carmichael, Neil (<i>Stroud</i>) (Con) | † Swire, Sir Hugo (<i>East Devon</i>) (Con) |
| † Chishti, Rehman (<i>Gillingham and Rainham</i>) (Con) | † Turley, Anna (<i>Redcar</i>) (Lab/Co-op) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | Umunna, Mr Chuka (<i>Streatham</i>) (Lab) |
| † Esterson, Bill (<i>Sefton Central</i>) (Lab) | † Vara, Mr Shailesh (<i>North West Cambridgeshire</i>) (Con) |
| † Fysh, Marcus (<i>Yeovil</i>) (Con) | |
| † Grady, Patrick (<i>Glasgow North</i>) (SNP) | Sean Bex, Adam Evans, <i>Committee Clerks</i> |
| † James, Margot (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) | † attended the Committee |

Fifth Delegated Legislation Committee

Tuesday 28 February 2017

[MR GRAHAM BRADY *in the Chair*]

Draft Economic Growth (Regulatory Functions) Order 2017

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Margot James): I beg to move,

That the Committee has considered the draft Economic Growth (Regulatory Functions) Order 2017.

The Chair: With this it will be convenient to consider the draft Growth Duty Statutory Guidance.

Margot James: It is a pleasure to serve under your chairmanship, Mr Brady.

The order will support regulatory bodies in the UK in creating a healthier business environment by making regulation more proportionate, transparent and accountable. The Government are committed to ensuring that regulation supports growth and does all it can to unlock productivity in the UK. Better regulation is central to the Government's desire to make the UK the best place in the world to start and grow a business, and a key part of our commitment to driving economic growth and boosting productivity. The Government delivered savings of £10 billion to business over the last Parliament, and we have committed to achieving a further £10 billion of deregulatory benefit for UK businesses in this Parliament through our business impact target.

In the Deregulation Act 2015, we introduced a duty for regulators to

“have regard to the desirability of promoting economic growth”—the growth duty. Alongside the business impact target, that duty supports a positive shift in how regulation is delivered. It will help to reduce the regulatory burdens that hold businesses back and prevent them from getting on with doing business. The result will be another step forward in ensuring that regulation supports growth by freeing up businesses to innovate, creating greater prosperity and opportunity for all.

The 2015 Act establishes the economic growth duty as a legislative requirement for persons exercising a regulatory function. The draft order sets out the specific regulatory functions to which the duty applies, and the statutory guidance has been produced alongside it to assist regulators in fulfilling their new responsibilities at both strategic and operational levels.

Proportionate delivery of regulation plays an important role in supporting competitive markets and improving social and environmental outcomes. Regulatory enforcement that is not proportionate and risk-based imposes unnecessary costs on business, creates uncertainty and undermines investment. How regulation is enforced can have significant effects on businesses' ability and willingness to invest and grow. In particular, there is evidence to suggest that some regulators fail to take sufficient account

of the economic consequences of their actions and place unnecessary burdens on businesses in the exercise of their regulatory functions. To address that, in the 2012 autumn statement, the then Chancellor announced several measures designed to create a healthier business environment by making regulation more proportionate, transparent and accountable.

Bill Esterson (Sefton Central) (Lab): The Minister refers to what the then Chancellor said and mentions that some regulators have not acted supportively for business and economic growth. Will she give an example of a regulator or a case in which that is supposed to have happened?

The Chair: Before the Minister resumes, let me say that because the Question has not been put yet, it is not technically possible for her to accept interventions. Of course, whatever the Minister says now is entirely up to her, but it is important that the Committee should be aware of the appropriate rules of order.

Margot James: I am extremely grateful, Mr Brady, as I am sure the shadow Minister is, for that point of learning, which was not enforced yesterday.

I will not comment on individual regulators, but I see from time to time examples where regulation is applied without sufficient concern for the ways of working in particular sectors. If those regulators were more sensitive to the ways of working, they would apply the regulations to no less effect and with less imposition on the companies concerned.

Although many regulators consider the impact of their actions on economic growth, some do not. Indeed, some regulators think they are unable to take account of growth because they do not have a statutory requirement to do so or their statutory objectives do not refer to growth. Requiring regulators to have regard to economic growth in this way will address the uncertainty of regulators that feel at the moment that they cannot have regard to economic growth and will put the obligation on a statutory footing, thereby complementing regulators' other legal obligations.

The growth duty will help regulators to carry out their functions in a way that is conducive to economic growth, and will ensure that regulatory action is taken only when needed and that any action taken is proportionate. It will therefore encourage regulators to develop more mature and productive relationships with the sectors and businesses that they regulate, driving up the accountability of regulators to the business community. That will help to deliver our aspirations for greater productivity and growth in the economy.

Public consultations were carried out in 2014 and 2015, and there was a further consultation on the scope of the business impact target. Responses were received from a broad cross-section of stakeholders. The majority of respondents to the consultation on the growth duty agreed that regulators should have regard for economic growth and should be accountable for whether they have properly considered business growth in their decision making. One respondent said that

“businesses need to have proportional regulatory burdens that can be monitored and dealt with efficiently so they can focus on growth.”

Another stated that

“regulators should always have a dual responsibility to regulate and to promote economic growth...the two should not be mutually exclusive.”

There were a small number of objections to the inclusion in scope of particular regulators. Those were mainly based on arguments related to the amount of regulatory activity undertaken or the fact that the organisation did not have any regulatory functions.

Having considered those responses, the Government are satisfied that it is appropriate to bring the regulators listed in the instrument within scope of the duty. This measure is an important step towards creating a healthier business environment by making regulation more proportionate, transparent and accountable. I commend the regulations to the Committee.

Bill Esterson *rose*—

Patrick Grady (Glasgow North) (SNP) *rose*—

The Chair: I call Bill Esterson.

2.38 pm

Bill Esterson: It is a pleasure to serve under your chairmanship, Mr Brady, not least because you have created an interesting dilemma. The Minister and I, as well as other Members here, sat in a Committee such as this last week and were told that the Scottish National party spokesperson should speak first. The hon. Member for Glasgow North would do so, had he indicated before me that he wished to speak. However, you are in the Chair, Mr Brady.

The Lord Commissioner of Her Majesty’s Treasury (Stephen Barclay): The Chair is always right.

Bill Esterson: Indeed, so I shall continue. The Chair from last week—

Stephen Barclay: Let’s ask them about it.

Bill Esterson: The Government Whip, from a sedentary position, is being extremely helpful, which happens rarely. I take it that we can now take interventions.

The Chair: Indeed.

Bill Esterson: Thank you for that clarification, Mr Brady.

The Minister set out the case for the regulations. She commented in particular on the Government’s commitment, of which I have no doubt, to create a positive business environment across the UK and to unlock productivity by enabling businesses to invest and grow, as the explanatory notes state. I completely agree with that. The explanatory notes go on to say:

“The way in which regulation is enforced can have significant effects on businesses’ ability and willingness to do this”.

I also agree with that statement. It is a real shame that, when she responded to my incorrect intervention, she chose not to give an example of a regulator that has failed, as the notes state,

“to take sufficient account of the economic consequences of their actions and place unnecessary burdens on business in the exercise of their regulatory functions.”

It would be extremely helpful for Members if we were properly evidenced in our decision making to make sure that the intention of supporting growth and business success is most likely to be achieved by passing these regulations. The success of our economy, its growth and the prosperity of us all are fundamentally important to what the Government are trying to achieve, and that is helped by properly evidenced approaches to policy.

When the Minister responds, perhaps she will consider whether she can give specific examples of regulators where those concerns have been justified. It is right that we attempt to reduce unnecessary regulations, but good, smart regulations underpin fair markets and help to create a level playing field for smaller firms, start-ups and growth companies. They help to create jobs and prosperity. They are essential to the economy and to safety as well. The example of the 2012 Olympics in this country, where nobody died during the construction phase, is a tribute to the success of our regulatory regime. The building of the football stadiums for the 2022 Olympics is in stark contrast, given the death and injury toll for workers on those games. What went on there is a scandal.

Smart regulations protect the safety and rights of workers and businesses, support competition and prevent undercutting and exploitation. We have seen what goes wrong when those things do not happen, whether it is Sports Direct or the actions of Sir Philip Green. Members on both sides of the Committee who support a reduction in regulation should not forget the importance of the financial crisis and the fact that the lack of regulation or safety mechanisms to prevent the excesses of large parts of the financial sector in this country—let alone what went on around the world—was a key contributor to the crisis. We need better regulation, not none, whichever sector we are looking at. As the Federation of Small Businesses said in the Deregulation Bill Committee evidence sessions, people ask only for an avoidance of duplication, to avoid wasting of time as regulations are developed and implemented—not no regulation at all. That informs our response to what is before the Committee today. In the Labour Government, we had the Better Regulation Commission, which reduced the cost of regulation to business in this country by £3 billion a year. It is ironic that we are looking at the growth duty from the Deregulation Act, given that that Act introduced significant additional amounts of regulation for business.

Regulators decide for themselves the balance between promoting growth and applying the regulations for which they are responsible. That will continue to be the case with these regulations. However, how do they know the right balance to strike when they have to respond or be accountable for the regulations?

In Committee debates on the Deregulation Bill, in both the Commons and the Lords, the question was raised of what would happen if there was a challenge—if there was a claim by businesses that the duty for economic growth had been misapplied. The point was made, and accepted by Ministers, that we could see judicial review. That was said by the Minister in Committee.

If that were the case, under pressure from large companies with deep pockets, regulators, most of whom are small with limited resources, would have to decide whether to defend themselves. The potential for significant pressure being brought to bear on the regulator by the strongest in our economy is very real and was raised

throughout the passage of the Bill. What is the right balance? There are competing needs and duties between regulation and the economic duty. One part of an economy would want to see one approach applied, another would want to see a different one.

Good regulation should promote growth and act in the best interests of the industry for which the regulator is responsible. A regulator's duty should be both to support an industry and to ensure compliance with regulations, as is already the case. Why the need for this specific, spelled-out additional duty—the extra requirement of compliance with the growth duty? That comes back again to the lack of specific examples of where it is not happening at the moment, and it makes clear the need to obtain an answer from the Minister.

The Government often say that they want fewer regulations and less intervention, yet here there is more. The question whether the actions of the regulator will support growth will depend on the interests of the person or organisation viewing the way in which the regulator applies that duty. In the nuclear industry, the regulator clearly has a significant responsibility for safety but could take the view that it has to pursue that even further because failure of safety in the nuclear industry would lead to complete economic failure as well. That point was made by a Conservative member of the Bill Committee.

Another example was given by the Institute of Directors in evidence to the Bill Committee. It said that the regulator in a particular sector might not be helping growth in the view of one individual, and some of the evidence suggested the potential for legal challenge and judicial review. Big business might think that regulations hamper growth, although smaller firms say the complete opposite. In that case, if there are conflicting views of what constitutes supporting growth, how will the regulator respond? What decision will they make? What is the basis for that decision?

The big firms will want their interests to be prioritised and those same big firms are in the strongest position to challenge the decisions by the regulator through the courts. That is why, in Committee, the Labour party tabled an amendment requiring regulators to produce an annual report on how they have interpreted these regulations to support small and medium-sized enterprises, to try to ensure support for the creation of a level playing field and a fair market.

Sadly, the Government rejected that amendment. That was a great shame, so perhaps, once these regulations are put into action, the Minister will return to that point and consider whether the measure is something that should be introduced. We perceived it as a way of reducing the potential for legal challenge and judicial review and reducing some of the unforeseen consequences of this additional requirement on regulators.

It is clear that if there is a significant amount of legal challenge—if the lawyers are involved—this could amount to a lawyers' charter. We would see economic growth as a result of greater sums spent on lawyers, but I do not think that is quite what the Government had in mind. We need to be mindful of the danger of significant legal challenge.

We also need to consider the balance between short-term economic activity and the longer-term effect of what regulators will have to do as a result of the duty.

A decision to act in the short term to cut costs of regulation by less application could result in growth—absolutely. However, if that leads to longer-term corner cutting, it would be counterproductive in the long run and growth would be lower. How will regulators make those decisions? Will they be allowed to make them without facing undue pressure for short-term decisions that are not in the interests of the wider economy, and how will that contradiction be overcome?

Safety in many sectors—food, water, nuclear or construction—comes with an additional cost to business, but accidents have a far greater longer-term cost, so getting those balances right is fundamental. The Government say they want growth. The question of short-term versus longer-term interests of businesses is tied up in the kind of growth we want and its sustainability. The threat of legal challenge, the difficulties it will cause to regulators, the additional time and cost pressures on the regulators are surely not what is intended. I wonder whether the threat of legal challenge might lead to less sensible application of good regulation.

If the Government really want to achieve the growth that they have set out—we see that with the development of the industrial strategy Green Paper—support for business and a high-pay, successful niche economy is the only way for this country to thrive. To avoid going in the opposite direction—the Prime Minister warned of the alternative of a low-wage economy; a tax dodgers' paradise off the shores of the continent, along the lines of the Cayman Islands or Singapore—we have to get this kind of measure right. We have to get its application right, otherwise we will see the unintended consequences in the longer term and not the success that I think we all agree is needed.

I look forward to the Minister's answers. We really need to get the balance between short term and long term right, otherwise the growth duty will not end up being the success that it should be.

2.55 pm

Patrick Grady: It is a pleasure, Mr Brady, to speak in this debate. If we are having fun with the procedures now, just imagine the joys that await us when the legislative avalanche of the great repeal Bill hits, with all the statutory instruments and delegated legislation Committees required to extract us from Brexit over the coming however many years.

I accept the Government's good intentions behind the orders, but I would caution that growth is not an end in itself and neither are regulations always, by definition, a bad thing. Indeed, as my colleague from the Labour party was saying, if growth is of the kind that the Prime Minister seems to be threatening by turning the UK into some sort of tax haven if she does not get her way in the Brexit negotiations, it is, in fact, counter-productive. A race to the bottom has all kinds of societal impacts that are not automatically to the good or for the benefit of everyone.

I would encourage the Government to look at the Scottish Government's approach to these issues. The Scottish Government have a stated corporate purpose to create

“a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.”

It is not just growth as an end in itself that, by definition, must be a good thing. We need a sustainable economic

growth that makes sure that the benefits are felt across society. Under the First Minister, there is an emphasis within that measure and the accompanying national performance framework on tackling inequality, so that growth is a driver to social ends. The social ends are not just a happy benefit that may or may not come about as a result of growth driven for whatever purpose.

I would echo the questions from the Labour spokesperson: it would be useful to have some examples of when the Government think regulations have got in the way of economic growth and stopped the economy growing. How do the Government expect regulators to attain the regard being asked for in the statutory instrument? In particular—the hon. Member for Sefton Central touched on this toward the end of his contribution—is this not in itself a form of regulation? We are regulating the regulator, so how are duplication, over-complication and bureaucracy going to be avoided?

2.57 pm

Margot James: I thank hon. Members for their questions. Both the hon. Member for Glasgow North and the shadow Minister discussed the nature of regulation and I think there is some agreement—I would hope so anyway—that we are about better regulation, smarter regulation and regulation that is appropriate to the sector of society or the economy it is attempting to regulate.

I would like to put on record the fact that the notion that the Prime Minister was espousing some alternative for this country—its being, as the shadow Minister mentioned, a low-wage tax dodgers' country on the edge of Europe—is the absolute antithesis of her aspirations. The notion of regulation is very important to the industrial strategy. We want to achieve a state where the regulators have a responsibility, as do all sectors of the economy and businesses operating within it, to support the economic growth that we all depend on. The shadow Minister said surely they were doing that already. Many do, and that is a good thing, but because they do not have a statutory obligation to ensure they have a duty to promote growth alongside their other responsibilities, some of them are not aware of it or, worse still, some think they do not have to do so. That is the purpose of the measure, and the response of the Federation of Small Businesses was that it would be a good thing if all regulators realised they had a responsibility to promote growth where appropriate. [*Interruption.*] Does the hon. Member for Sefton Central wish to intervene? I get a sense that he does. I am quite happy to give him the floor.

Bill Esterson: It is baffling, Mr Brady. The Minister has said twice that there is concern about regulators that are not promoting growth, but she is not giving us any examples. Without a proper evidence base, it is extremely troubling that the Government are doing something that does not stack up, that lacks the support to say that it is needed. Just one example, please—that is all we are asking for.

Margot James: I am not going to name individual regulators. The hon. Gentleman can read the consultation that lies behind the introduction of this regulation, from which I am sure he can get a feel for the sectors that are in need of this duty.

Talking in the abstract, we want to see regulators providing more proportionate decisions; we want to see a reduction in administrative burdens, inspection costs, duplication of information, and reliance just on external contractors. Businesses do not want to feel that regulators are faceless bureaucrats, but that they are approachable and supportive of their overall success. Some regulators are better at that than others. The purpose of the measure is to try to bring the rest up to the standards of the best. For more detail, I urge the hon. Gentleman to read the consultation.

Turning to other matters that the hon. Gentleman raised, he cited the Olympics as a regulatory success, and contrasted them with the financial crisis. He said there was not enough regulation to deal with that and the fact that, in his words, “all parties were on the side of less regulation.” I do not think that was the case. As my hon. Friends have pointed out, there were 6,000 pages to regulation at the time. The root cause of the problem was not the lack of regulation, it was the impossibility of enforcing those regulations, and the fact that there were too many regulators with a finger in the pie.

We want to see regulators balance their regulatory purpose with their duty to promote growth. The hon. Gentleman was concerned about legal challenges and the imbalance of power between large companies and relatively lightly resourced regulators. While, in principle, it is possible for a legal challenge to be brought, the statute and the regulations require that regulators have regard to the desirability of promoting economic growth. Providing a regulator does so, a legal challenge would fail, so there is no real prospect of a court being asked to consider the particular balance being struck by a regulator. That balance is up to the regulator and if they have good reason for their decision—if they have considered their duty to promote economic growth but concluded that, on that occasion, it is trumped by another of their other duties—they will merely have to demonstrate that reasoning. I hope that that reassures the hon. Gentleman.

The growth duty is a key element of our agenda to improve regulation in the UK, and these regulations will support a positive shift in the way in which regulation is delivered by reducing the unnecessary burdens that hold business back and prevent them from getting on and doing business. They will therefore help to ensure that regulation supports growth, and will create a healthier business environment by making regulation more proportionate, transparent and accountable.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Economic Growth (Regulatory Functions) Order 2017.

DRAFT GROWTH DUTY STATUTORY GUIDANCE

Resolved,

That the Committee has considered the draft Growth Duty Statutory Guidance.—(*Margot James.*)

3.4pm

Committee rose.

