PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DIGITAL MARKETS, COMPETITION AND CONSUMERS BILL

Tenth Sitting

Tuesday 27 June 2023

(Afternoon)

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not later than

Saturday 1 July 2023

The Committee consisted of the following Members:

Chairs: † Rushanara Ali, Mr Philip Hollobone, Dame Maria Miller

† Carter, Andy *(Warrington South)* (Con)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Davies-Jones, Alex *(Pontypridd)* (Lab)
Dowd, Peter *(Bootle)* (Lab)
† Firth, Anna *(Southend West)* (Con)
Ford, Vicky *(Chelmsford)* (Con)
† Foy, Mary Kelly *(City of Durham)* (Lab)
Hollinrake, Kevin *(Parliamentary Under-Secretary of State for Business and Trade)*
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
Mayhew, Jerome *(Broadland)* (Con)
† Mishra, Navendu *(Stockport)* (Lab)
† Russell, Dean *(Watford)* (Con)
† Scully, Paul *(Parliamentary Under-Secretary of State for Science, Innovation and Technology)*
† Stevenson, Jane *(Wolverhampton North East)* (Con)
† Thomson, Richard *(Gordon)* (SNP)
† Watling, Giles *(Clacton)* (Con)
† Wood, Mike *(Dudley South)* (Con)

Kevin Maddison, John-Paul Flaherty, Bradley Albrow, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 27 June 2023

(Afternoon)

[Rushanara Ali *in the Chair*]

Digital Markets, Competition and Consumers Bill

Clause 136

Civil penalties etc in connection with competition matters

2.4 pm

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

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

That schedule 8 be the Eighth schedule to the Bill.

That schedule 9 be the Ninth schedule to the Bill.

That schedule 10 be the Tenth schedule to the Bill.

Clause 137 stand part.

That schedule 11 be the Eleventh schedule to the Bill.

Clause 138 stand part.

Government amendments 40 to 44.

That schedule 12 be the Twelfth schedule to the Bill.

The Parliamentary Under-Secretary of State for Science, Innovation and Technology (Paul Scully): The final clauses in part 2 concern measures that cut across the Competition and Markets Authority's competition tools. Clause 136 introduces schedules 8 to 10 to the Bill. The Competition Act 1998 and parts 3 and 4 of the Enterprise Act 2002 already allow the CMA to impose civil penalties for non-compliance with information requirements. The destruction of documents that have been required to be produced, and the provision of false or misleading information, are criminal offences, but schedule 8 introduces powers for that conduct to be subject to civil penalties. It also reforms existing civil penalties to ensure that the maximum penalties are set at an appropriate level.

Schedule 9 introduces powers enabling civil penalties to be imposed for breaches of competition remedies. Competition remedies are interim measures, commitments and directions under the Competition Act 1998 and interim measures, undertakings or orders under parts 3 and 4 of the Enterprise Act 2002. Schedules 8 and 9 also enable the Secretary of State and Ofcom to impose penalties if they are given false or misleading information in relation to their functions under the relevant regimes. They also give the Secretary of State the power to impose penalties to enforce compliance with remedies accepted or imposed in relation to mergers and markets with public interest considerations. Civil penalties will be applicable unless the party has a reasonable excuse, and that will be assessed case by case.

The maximum penalty for an undertaking or person who owns or controls an enterprise that is not complying with information requirements is 1% of the business's worldwide turnover. Daily penalties of up to 5% of worldwide daily turnover will also be available in some cases while the non-compliance continues. For breach of remedies, the maximum penalty is set at 5% of worldwide turnover and daily penalties of up to 5% of worldwide daily turnover while the breach continues. The penalties imposed on other persons, who will generally be individuals, are capped at £30,000, or up to £15,000 daily while the breach continues. The CMA is required to produce statements of policy regarding the operation of its penalty powers. In doing so, it must consult the sector regulators and receive approval from the Secretary of State. Schedule 10 amends the legislation that gives the sector regulators their concurrent competition powers, so that they need not unnecessarily duplicate the work that they need to do to prepare statements of policy.

Clause 137 introduces schedule 11, which amends the Competition Act 1998 and parts 3 and 4 of the Enterprise Act 2002 to make express provision regarding the giving of information notices outside the United Kingdom. The schedule enables the CMA to give an information notice to a person who is the subject of a Competition Act 1998 investigation, or a person who is or has been a party to a merger review. The schedule also enables the CMA to give information notices to third parties with a defined UK connection. Compliance will be enforceable through the civil penalty regime. The schedule also amends provisions on methods of serving documents to reflect modern business practices; for example, it allows service of documents via email.

Government amendments 40 to 44 are technical drafting amendments to schedule 12. The schedule, which is introduced by clause 138, applies appropriate parliamentary procedures to new regulation-making powers created by the Bill, and makes other consequential and technical amendments. I commend the amendments to the Committee and hope that the clauses will stand part of the Bill.

Alex Davies-Jones (Pontypridd) (Lab): Labour supports the intention behind the provisions in this grouping. Of course there should be provisions about the attendance of witnesses, as outlined in clause 135. The same can be said about ensuring that the Bill has sufficient legal powers on civil penalties, should the need for them arise in the regime. The provisions in clause 136 and schedules 8 to 10 are adequate, and we support them. The same can be said for clause 137 and schedule 11, which make provisions regarding the service of documents and the extraterrestrial—sorry, extraterritorial; I know we are talking about digital markets, but we have not reached that far yet—application of notices under part 1 of the Competition Act 1998 and parts 3 and 4 of the Enterprise Act 2002. Of course those laws must work in alignment with the intentions of the Bill. Clause 138, Government amendments 40 to 44 and schedule 12 are all sensible, and part of a rigorous procedure, so we do not oppose them.

Question put and agreed to.

Clause 136 accordingly ordered to stand part of the Bill.

Schedules 8 to 10 agreed to.

Clause 137 ordered to stand part of the Bill.

Schedule 11 agreed to.

Clause 138 ordered to stand part of the Bill.

Schedule 12

ORDERS AND REGULATIONS UNDER CA 1998 AND EA 2002

Amendments made: 40, in schedule 12, page 284, line 5, at end insert—

"(1A) In subsection (4) omit ', 94A(6)'."

This amendment removes a reference in section 124(4) of the Enterprise Act 2002 to section 94A(6) of that Act, which is being repealed by paragraph 11 of Schedule 9 to the Bill.

Amendment 41, in schedule 12, page 284, line 7, at end insert—

"(aa) omit ', 94A(3) or (6)';".

This amendment removes a reference in section 124(5) of the Enterprise Act 2002 to section 94A(3) and (6) of that Act, which are being repealed by paragraph 11 of Schedule 9 to the Bill.

Amendment 42, in schedule 12, page 284, line 12, after "section" insert "94AB(9) or".

This amendment corrects a drafting omission by providing that regulations under section 94AB(9) of the Enterprise Act 2002 (inserted by paragraph 11 of Schedule 9 to the Bill) are subject to annulment in pursuance of a resolution of either House of Parliament.

Amendment 43, in schedule 12, page 285, line 10, after "section" insert "167B(9) or".

This amendment corrects a drafting omission by providing that regulations under section 167B(9) of the Enterprise Act 2002 (inserted by paragraph 17 of Schedule 9 to the Bill) are subject to annulment in pursuance of a resolution of either House of Parliament.

Amendment 44, in schedule 12, page 285, line 23, at end insert—

"(8A) In subsection (10), for '174D' substitute '174A(10)'."—*(Paul Scully.)*

Paragraph 26 of Schedule 8 to the Bill inserts a new subsection (10) into section 174A of the Enterprise Act 2002 which replaces the existing provision made by section 174D(10) of that Act (which is being repealed by paragraph 28(12) of that Schedule). This amendment amends the Enterprise Act 2002 to replace a reference in section 181(10) of that Act to the latter provision with a reference to the former.

Schedule 12, as amended, agreed to.

Clause 139

OVERVIEW

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

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

Government amendment 59.

Clauses 140 to 142 stand part.

That schedule 13 be the Thirteenth schedule to the Bill.

That schedule 14 be the Fourteenth schedule to the Bill.

Clause 201 stand part.

Paul Scully: Part 3 of the Bill provides for two regimes for the civil enforcement of consumer protection law: a court-based regime and a direct enforcement regime for the CMA.

Clause 139 provides an overview of part 3. Clause 140 sets out the scope of the court-based and CMA direct enforcement regimes. First, the regimes are limited broadly to the trader's acts or omissions that amount to commercial practices—that is, interactions between traders and consumers. Secondly, to be subject to enforcement action, a commercial practice must harm the collective interests of consumers. Thirdly, the scope of the laws that can be enforced remains broadly the same as that which can be enforced under current law. Government amendment 59 ensures that the Bill reflects existing law, namely the Consumer Protection from Unfair Trading Regulations 2008.

Clause 141 provides for an infringing practice to be in scope of enforcement if the trader committing it meets at least one of the following conditions: the trader has a place of business in the UK; the trader carries on business in the UK; or where the infringing commercial practice occurs as part of activities directed to consumers in the UK by any means. Those tests mean that the jurisdictional scope of the current court-based enforcement regime for consumer law is replicated.

Clause 142 limits the application of the enforcement regimes to a commercial practice that breaches an enactment, obligation or rule of law listed in schedules 13 or 14 to the Bill.

Clause 201 gives a delegated power to the Secretary of State to amend schedules 13 and 14—that is, to add, remove or vary the enactments and enforcer authorisations listed in those schedules. The continuing effectiveness of both regimes will depend on their ability to adapt to reflect the evolution of consumer protection law over time. As new consumer protection laws are made and old ones repealed, there must be a mechanism to ensure that they fall into or out of the scope of the enforcement regimes. If the enforcement landscape and the remits of individual enforcers change, there must be a facility to reflect those changes in the statutory framework. The power is subject to the affirmative procedure, so hon. Members will have due opportunity to scrutinise any provisions made under it.

Schedule 13 lists the enactments, obligations and rules of law that may be enforced through the court-based regime, which replaces part 8 of the Enterprise Act 2002 for conduct going forward. The schedule also makes clear which enforcers may enforce each enactment.

Schedule 14 sets out which enactments the CMA may enforce through its new direct enforcement powers. Its scope comprises core consumer protection legislation and a limited number of sector-specific regulations where CMA direct enforcement is desirable. That reflects the CMA's specific remit and competence to tackle market-level issues that adversely affect consumers or affect their ability to make choices.

2.15 pm

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship, Ms Ali. I thank the Minister for his opening remarks, and it is a pleasure to follow my hon. Friend the Member for Pontypridd in speaking on this important Bill.

Clause 139 provides an overview of the structure of part 3, which sets out the court-based regime for the civil enforcement of consumer protection law to protect the collective interests of consumers. As the Minister said, that allows for two regimes of civil enforcement—a simplified courts-based regime and the CMA's direct enforcement regime.

[Seema Malhotra]

The regime provides for consumer law enforcers to apply for, and the courts to make, enforcement orders, interim enforcement orders, online interface orders, to which only the CMA may apply, and interim online interface orders to which, again, only the CMA may apply. An enforcer or the court could decide to accept an undertaking from the enforcement subject instead of issuing an order, a mechanism that there should be the option for and is in line with the participative approach of working in the Bill.

Chapter 3 would also provide for certain enforcers—defined in clause 143, which we will go on to debate—and the court to attach remedies, known as "enhanced consumer measures", to enforcement orders and undertakings. Importantly, chapter 3 would provide new powers for the courts to impose monetary penalties on enforcement subjects who have infringed the consumer protection laws within scope of part 3.

I wish to signal the Opposition's broad support for part 3 and the measures it introduces to ensure swifter enforcement of consumer protection law and more effective redress for consumers. That is a sentiment shared by consumer groups. As one example, the written evidence submitted by Consumer Scotland expressed broad support for part 3, noting how it:

"simplifies and bolsters the enforcement of penalties for relevant infringements of consumer protection law under part 8 of the Enterprise Act 2002."

I hope we will work constructively through the Committee to ensure that the consumer provisions in the Bill are as robust and fair as possible, and that we will not see the watering down of any measures currently drafted.

Clause 140 defines the scope of the enforcement regime set out by part 3. It sets out how a trader has committed an infringement of the part 3 enforcement regime if their act or omission harms the collective interests of consumers, as well as meeting the UK connection conditions set out in clauses 141, and the specified prohibition condition set out in clause 142.

The Opposition support clause 140 as a necessary element in introducing a robust enforcement regime. It is a stronger consumer protection, which acts where a continuation or repetition of an act, such as misleading information or an omission of information, could continue to harm future customers unless remedied. However, I ask the Minister for clarity on one aspect of the provision. As well as setting out the scope of enforcement, the clause in subsection (2) also defines relevant terms such as "trader" and "consumer". The explanatory note states that in relation to the definition of "consumer":

"A consumer must be an individual and so excludes body corporates. The individual must be acting wholly or mainly outside of their business."

While it is welcome that individual consumers are being protected through the enforcement regime, could the Minister clarify where that leaves small businesses or the self-employed? The notes suggest that the individual is still a consumer when acting for dual purposes. It is clear to me, as a shadow Minister for business looking at the needs of small businesses in particular, that plenty of British businesses are negatively impacted by rogue traders supplying them, whether with office equipment or digital services. There is a segment of those businesses that could be caught inside or outside the definition depending on its interpretation.

It would be helpful if the Minister clarified whether the Government plan, for example, for microbusiness customers to be included in the consumer protection regime. Who would decide if it was 60% consumer or 60% business for the purposes of this legislation? It may be a product that is being delivered, and the business may be run from home. I would be grateful for the Minister's comment and clarification on that point.

Amendment 59 replaces "trader" with "person". It ensures that the definition of commercial practice for the purposes of part 3 of the Bill includes an act or omission by a trader relating to the promotion or supply of a consumer's product to another consumer. I would welcome some clarification from the Minister. Will the amendment mean that where a consumer or private individual commits what would be an infringement by a trader when selling a product to another consumer—for instance through eBay or Facebook Marketplace—they are liable for enforcement action, as a business would be? This is an important area of protection for consumers, so I would be interested to hear more about how it would work in practice. If I understand the provision correctly, it could significantly expand the enforcement regime beyond just businesses.

Clause 141 sets out how traders meet the UK connection condition, which, as set out in clause 140, forms part of the scope of the enforcement regime. It sets out how a commercial practice meets the UK connection condition if at least one of three conditions are met. Those conditions are that the trader has a place of business in the UK, that the trader carries on business in the UK, meaning that their business operates in the UK, perhaps without an office, or that the trader carries on activities that are in any way directed to consumers in the UK. The conditions are necessarily broad but important for the protection of UK consumers. We support clause 141.

Clause 142 defines the specified prohibition condition, which is the final condition setting out the scope of the enforcement regime in part 3. In short, the clause sets out that a commercial practice meets this condition if it breaches provisions listed in schedule 13 and 14. Schedule 13 sets out the enactments, obligations and rules of law to which the court-based enforcement regime applies. The list is very comprehensive, and we support its contents. In particular, we note that chapters 1 to 4 of part 4 of the Bill are included in the schedule, which is welcome. I would welcome assurances from the Minister that the Government consulted widely among stakeholders regarding the compiling of the enactments of the schedule, so that we can be confident that there are no omissions. In addition, I invite the Minister to correct me if I am wrong in my understanding of how the schedule could be amended. There are other schedules with delegated powers, but I wanted to understand what the process would be here if there was a question of needing to amend the schedule if legislation were updated in the future. I would be grateful for clarification on that.

Similarly to schedule 13, schedule 14 lists the enactments to which the CMA's direct enforcement regime applies. Like schedule 13, this schedule appears to be comprehensively drawn and is thus supported by the Opposition. I note that it also makes reference to other measures of the Bill that will be going through. On the theme of seeking clarity from the Minister, I would welcome assurances that a wide range of stakeholders and legislation has been consulted and reviewed to

ensure that this is a comprehensive schedule. I would also ask what the process is for updating the schedule if required in the future.

Clause 143 lists public designated enforcers who would be able to use the court-based enforcement regime. We are pleased to see that this includes the CMA, trading standards, the Financial Conduct Authority, the Information Commissioner's Office and Ofcom, among others. Certain private designated enforcers would also be able to use the court-based regime, such as the Consumers' Association. We welcome the clause and the inclusion of a comprehensive list of public designated enforcers, but have the Government consulted with the groups they are planning to include in the clause? Were any groups or bodies that expressed an interest in being designated enforcers omitted from the clause?

Subsection (3) gives the Secretary of State a delegated power to add to or remove a body as a public or private designated enforcer, or to amend its entry. Regulations made under the clause would be subject to the affirmative procedure. However, the power could not be used to remove or vary the enforcement powers of the CMA, trading standards or the Department for the Economy in Northern Ireland. We welcome the protection of those bodies' powers, but I would like clarification from the Minister on private designated enforcers.

The clause names the Consumers' Association as a private designated enforcer, but no other group. While I note the criteria in clause 144 for designating a body as a private designated enforcer, it would nevertheless be helpful if the Minister spelled out how a body becomes a private designated enforcer. Would it have to apply? I would also be grateful for clarification of the basis on which the Secretary of State may remove, or seek to remove, a public or private designated enforcer—an issue that I will discuss further.

Clause 144 specifies the criteria that must be satisfied for the Secretary of State to designate a body as a private designated enforcer. This is an important clause. The criteria establish certain minimum standards of governance, transparency and competence that a person must meet to carry out enforcement action, and we welcome the clause. However, I refer the Minister to my question about how the Government expect people to become private enforcers. Would there be an application? Perhaps he would set out the process, and the basis on which he envisages withdrawing designation from an enforcer. Would that be because some conditions are no longer met? Would it be because some sort of complaint is received? It would be helpful to understand how those changes could be made.

Clause 145 identifies the categories of person an application for an enforcement order could be made against, and the types of infringements that they must have committed. An enforcer, as designated by clauses 143 or 144, would be able to apply to the court for an enforcement order or an interim enforcement order if the enforcer considers that they have engaged in, are engaging in or are likely to engage in a commercial practice that constitutes a relevant infringement, or if they are an accessory to such a practice.

We welcome the clause, but I would welcome further clarification on a few issues. First, the legislation states that

"an enforcer may make an application in respect of a relevant infringement".

Did the Government consider changing "may" to "must", or are they confident that enforcers will always apply for enforcement in cases where they have identified an infringement? I would welcome hearing the reasoning behind the choice made. Secondly, subsection (4) limits the power to apply for the imposition of a monetary penalty to public designated enforcers. Would the Minister clarify why that power has been withheld from private designated enforcers?

2.30 pm

Paul Scully: Let me try to cover some of those questions. On microbusinesses and small business, this is effectively a standard definition that, yes, does exclude microbusinesses, because it replicates provisions in the Enterprise Act. The obvious question then is, "How do microbusinesses and small businesses get any redress in these examples?" but business protection regulations would cover that, and they are not within the scope of this change. However, any of the changes that the hon. Lady requested would largely come under the affirmative procedure.[1]

The hon. Lady also asked whether the Government had consulted widely on these enactments. Although we consulted widely on the Bill when I was a Minister in the Department for Business, Energy and Industrial Strategy, these provisions just restate existing law, so we just wrote that into the Bill, instead of spreading the provisions across statutory instruments. It would therefore not necessarily have been particularly informative to have consulted on them.

The hon. Lady asked about private designated enforcers and how an enforcer might be added to the list. The Secretary of State can by regulations add applicants as private designated enforcers that are able to use the court-based enforcement regime. Again, those regulations would be subject to the affirmative procedure, to ensure appropriate parliamentary scrutiny. Any organisation applying for that status would need to provide evidence to the Secretary of State that it meets the designation criteria in clause 144(1), which would likely include evidence as to its legal status and constitution, a list of directors, examples of where it has protected the collective interests of consumers, and so on.

The Secretary of State will in due course set out more detailed guidance on the evidence and information that applicant organisations should provide when seeking designation. The Government clearly want to guarantee that those designated are able to protect the collective interests of consumers but are prevented from using that privileged position to seek any commercial gain or competitive advantage. They therefore intend that any private designated enforcer that fails to meet the criteria would have its designation altered or withdrawn by the Secretary of State.

Question put and agreed to.

Clause 139 accordingly ordered to stand part of the Bill.

Clause 140

RELEVANT INFRINGEMENTS

Amendment made: 59, in clause 140, page 88, line 18, leave out "trader" and insert "person".—*(Paul Scully.)*

This amendment ensures that the definition of "commercial practice" for the purposes of Part 3 of the Bill includes an act or omission by a trader relating to the promotion or supply of a consumer's product to another consumer.

1. *[Official Report, 10 July 2023, Vol. 736, c. 4MC.]*

Clause 140, as amended, ordered to stand part of the Bill.

Clauses 141 and 142 ordered to stand part of the Bill.

Schedules 13 and 14 agreed to.

Clause 143

ENFORCERS

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

The Chair: With this it will be convenient to discuss clause 144 stand part.

Paul Scully: Clauses 143 and 144 set out the public and private bodies that have enforcement powers under the court-based enforcement regime, which we have touched on, and restate and update part 8 of the Enterprise Act 2002.

Clause 143 sets out two categories of enforcer: public designated enforcers and private designated enforcers. The clause also gives the Secretary of State powers to add or remove a public designated enforcer or to amend its entry, and to add, remove or vary the entry of a person as private designated enforcer. These powers are subject to criteria set out in clause 144.

Neil Coyle (Bermondsey and Old Southwark) (Lab): Is there a reason why trading standards is not on this list? It would be the go-to for a consumer or business under existing law, so why is it absent from this list?

Paul Scully: As I say, we are essentially bringing across the existing law, but there is no reason why the Secretary of State cannot look at that in time. In clause 144, we are setting out the detail and criteria that must be met when a person who is not a public body is added by the Secretary of State as a private designated enforcer.

Neil Coyle: If a consumer believes that they have been sold something that is counterfeit or damaging, which might meet the "detrimental effects" test, where would they go to find out how to address that issue? If a British company has a licence and a trademark, and it sees someone selling fake goods online, thereby undermining the company's work and trademark in the UK, how does it go about addressing that? In the evidence session, a question was asked about raising awareness of changes to legislation. Could the Minister take a brief moment to explain those two routes to getting change?

Paul Scully: If I have got this right, that goes back to the hon. Gentleman's previous example. Let me correct my earlier comments. I talked about the fact that we are bringing existing legislation across into the Bill. The local trading standards enforcement regime comes under weights and measures, which is specified in the Bill. It is an old term for a modern-day service, and it is encapsulated in the regime. Clearly, businesses will go through the traditional routes to get consumer redress, which can include going through the trading standards regime.

Neil Coyle: When witnesses from trading standards sat here two weeks ago, John Herriman and David MacKenzie told us that there needed to be an awareness-raising campaign about the changes. Has the Minister done that, or is that intended to come after the enactment of the Bill? How will that come about?

Paul Scully: A lot of that will be done through our relationship with Citizens Advice and trading standards. When I covered this brief a year ago and held the position currently held by the Under-Secretary of State for Business and Trade, my hon. Friend the Member for Thirsk and Malton (Kevin Hollinrake), we continually did work for consumers, whether that was on this kind of redress, work through the CMA or work through Citizens Advice and trading standards. Clearly, given that we are changing the regime to make things faster and more effective, we will want to shout about it, because people need to be aware of it, and that will be part of a wider awareness scheme. I cannot give the hon. Gentleman chapter and verse on the campaign, because I am not running it.

Neil Coyle: Perhaps rather than chapter and verse, just one sentence would be fine. Will the Government resource Citizens Advice to provide the new information on a whole new legislative change in consumer rights?

Paul Scully: As I say, the Government do a lot of work jointly with Citizens Advice to market, campaign on, and raise awareness of these regimes.

Neil Coyle: Apologies for coming back on this, but that is not an answer. Citizens Advice came to the Work and Pensions Committee just a few weeks ago to say that its advisers, many of whom are volunteers, face the most dire circumstances of their 80-year history; the circumstances are worse than they were during the second world war. That is its assessment of the financial situation that its bureaux face in trying to help people. Is the Minister saying that Citizens Advice will be resourced to provide the additional information?

Paul Scully: I will not conflate this issue with the matter of the resources for Citizens Advice's broader work, but we already work with Citizens Advice to raise awareness of its work, and will continue to do that together. On any additional duties, clearly we want to make sure that Citizens Advice is as well resourced as it can be. A lot of its work is essentially similar to what is proposed, but we are trying to make it faster for it to offer remediation. That is the whole purpose of this work. We are simplifying and consolidating the criteria that apply under the current court-based regime. That guarantees that those designated as private enforcers will have the independence, competence and expertise required to protect consumers and their independence.

Question put and agreed to.

Clause 143 accordingly ordered to stand part of the Bill.

Clause 144 ordered to stand part of the Bill.

Clause 145

APPLICATIONS

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

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

Clauses 146 to 154 stand part.

Clause 169 stand part.

Paul Scully: Clauses 145 to 154 restate and update provisions in part 8 of the Enterprise Act 2002. They empower consumer enforcers to apply for, and the civil courts to make, court orders to prevent or stop infringing practices.

Clause 145 provides enforcers with the power to apply to court for an enforcement order or an interim enforcement order. An application may be made where a person has engaged in, is engaging in or is likely to engage in an infringing practice, or is an accessory to such a practice. The clause also gives public designated enforcers a new power to apply for the imposition of a monetary penalty for past or continuing infringing practices.

Clause 146 maintains the CMA's leadership and co-ordination role by empowering it to give directions to other enforcers regarding who can make an application to court.

To ensure applications to court are made only when necessary, clause 147 requires enforcers to engage in appropriate consultation with the suspected infringing party or accessory before making an application for an enforcement order or interim enforcement order.

Clause 148 empowers the court, in response to an application under clause 145, to make an enforcement order against a person it finds has engaged, is engaging or is likely to engage in an infringing practice or is an accessory to such. As an alternative to making an order, the court may accept an undertaking from the infringer or accessory. Orders or undertakings must direct the subject to achieve compliance with the law.

Clause 149 gives the court a discretionary power to include enhanced consumer measures that it considers to be just, reasonable and proportionate in an enforcement order or an undertaking. Enhanced consumer measures, which are defined in clause 213, are steps an infringer or accessory may be required to take to provide redress to affected consumers, ensure compliance with the law, or offer consumers more effective choice. They are vital to ensuring that consumers are compensated and that infringements are remedied.

Clause 150 gives the court a new power to impose a monetary penalty of up to £300,000 or 10% of the recipient's global turnover—whichever is higher—for past or continuing infringing practices. This provision is at the heart of the Bill's reforms to consumer protection. It is imperative that there are consequences for breaking UK consumer law to signal that illegal practices will not be tolerated. Recognising that these penalties may be significant, the clause gives the recipient the right to appeal the decision to impose the penalty, its nature or the amount on the merits, in addition to their existing appeal rights.

Clause 151 empowers the court to make an interim enforcement order or accept an undertaking against a suspected infringer or accessory. To exercise the power, the court must consider it expedient that the infringing practice is prohibited or prevented immediately, and a final order must be likely to be granted.

Clause 152 gives the CMA the power to apply to court for an online interface order, or an interim online interface order. It can do that where it considers a person has engaged in, is engaging in, or is likely to engage in, an infringing practice. The reach of online traders and the complexity of the online marketplace has increased. That makes it more critical than ever that the CMA has the power to apply to the court to address infringing content online.

Clause 153 provides for courts to make online interface orders to require changes to online content and interfaces. This could include content removal, displaying warnings, restricting access or deleting a domain name. These powers are available only when the order is necessary to avoid the risk of serious harm to the collective interests of consumers and when there are no other available means within this chapter that would be wholly effective in stopping the infringement.

Clause 154 empowers the court to make interim online interface orders where it is expedient that the infringing practice is stopped or prohibited immediately and a final online interface order would be likely to be granted.

Clause 169 sets out two conditions that must be met before enhanced consumer measures can be included: in an undertaking given to a private designated enforcer, or in an undertaking given to the court or an order made by the court following an application by a private designated enforcer. The clause provides the framework to ensure that where enhanced consumer measures are used by private designated enforcers, it is done appropriately and with the end goal of solely benefiting consumers.

2.45 pm

Seema Malhotra: I have already made some remarks on clause 145, but I will just echo my final question. I asked the Minister about the power for public designated enforcers to apply for the imposition of a monetary penalty and why that power has been withheld from private designated enforcers. Clause 146 refers to CMA directions to other enforcers. As the Minister has outlined, the clause introduces provisions such that if an enforcer other than the CMA seeks similar action on applying for an enforcement order for a particular infringement, it may direct which enforcer can make the application. That could lead to, for example, the CMA directing that an application for an order can be made only by itself.

We support the clause, but does the Minister's Department expect the CMA to engage constructively with other enforcers to ensure that the most suitable enforcer is the one that is allowed to make the application? The underlying policy argument is important; we would not want to see multiple enforcers seeking to take action against the same business for the same infringement. I would like some clarity on how that is expected to work.

Clause 147 would provide that where an enforcer thinks a relevant infringement has occurred or is likely to occur, it must consult the enforcement subject before making an application for an enforcement. Subsection (2) introduces a requirement on the enforcer to alert the enforcement subject to the possibility of a monetary penalty being sought alongside an enforcement order. The explanatory notes state that the policy intent is that prior consultation may quickly lead to the relevant infringement ending and make court action unnecessary. We welcome the clause as a necessary part of the enforcement process, and in the spirit of opportunity for co-operation that underpins the new regime.

Under clause 148, the court would be able to make an enforcement order if, on an application from an enforcer under clause 145, it finds that the enforcement subject

[Seema Malhotra]

has engaged, is engaging or is likely to engage in a commercial practice that constitutes a relevant infringement or is an accessory to the infringing practice. As an alternative to an order, the court would be able to accept an undertaking. Under subsection (3), in determining whether to make an enforcement order the court would have to take into consideration whether the enforcement subject had given an undertaking under clause 155 to a public designated enforcer, or clause 177 in respect of the infringing practice. Where the court makes an enforcement order, it would be required under this clause to indicate the nature of the infringing practice and direct the enforcement subject to comply. We strongly welcome the clause. It is a necessary step in ensuring that the courts have adequate enforcement powers over companies that are causing detriment to consumers.

I have a question for the Minister regarding clause 148(8). It states that as part of an enforcement order, an undertaking may include a further undertaking by the respondent to publish "the order" and "a corrective statement". As the explanatory notes state, the policy intent behind the subsection is to prevent the company

"further distorting consumers' purchasing decisions"

by making them aware that a company has had to change its practices. I welcome the subsection as a common-sense step to ensure full clarity for consumers in instances in which enforcement action has been taken, but will the Minister clarify whether he expects the court always to require the publication of the order and a corrective statement? Surely, it would be simpler and better for the consumer for that undertaking to be included in every enforcement order, so that there was confidence that the consumer will be as informed as possible.

Clause 149 will enable the court to include, in an enforcement order or interim order, a requirement to take, as part of enforcement orders,

"such enhanced consumer measures as the court considers just and reasonable."

The court would first have to consider whether the proposed measures were proportionate and in doing so consider

"the likely benefit of the measures to consumers…the costs likely to be incurred by"

the enforcement agent and

"the likely cost to consumers of obtaining the benefit of the measures."

We welcome the clause as a further necessary element of the consumer protection and enforcement regime that we are seeking to deliver.

Clause 150 confers a new power on courts to impose a monetary penalty on a company for infringing consumer protection regulations. The Opposition welcome the clause, but why has it taken so long to get to this point? Turning to the details of the monetary penalties, subsection (5) sets out that, where the enforcement subject has a turnover that can be determined, a fixed amount penalty must not exceed £300,000 or, if higher, 10% of the total value of the enforcement subject's turnover. We support those penalty thresholds, but could the Minister expand on why the legislation has landed on £300,000 as a maximum penalty if it is less than 10% of the company's turnover? Is that an arbitrary figure or one that has been consulted on and calculated to ensure the maximum deterrent so that companies do not infringe the legislation? Will the Minister clarify the source of the figure?

Finally, I would welcome further clarification from the Minister on clause 150(8), which provides an enforcement subject who is required to pay a monetary penalty with a right to appeal the decision to impose a penalty, its nature or amount on the merits, in addition to their existing appeal rights. I would be grateful if the Minister could clarify the appeals threshold, which appears to be different from the judicial review threshold for companies with strategic market status, as set out earlier in the Bill. Was the threshold set for an informed reason? There seems to be a lower threshold for consumer protection infringements.

In addition, has the Minister considered whether the more merits-based approach could lead to companies, particularly larger ones with significant legal capacity, drawing out the process of monetary penalties being imposed on them by pursuing lengthy court appeals? I want to ensure that we have understood the matter correctly, so I would welcome the Minister's clarifying the point and saying whether those are unfounded concerns. If they are well founded, we want to have a look at the issue more closely. In short, the Opposition welcome the clause, because we want to ensure that the measure is a robust as possible in deterring companies from engaging in practices that harm consumers.

Under clause 151, the court will be able to make an interim enforcement order on an enforcement subject. It will be able to make such an order if it considers that the subject

"has engaged…or is likely to engage in a commercial practice which constitutes a relevant infringement".

In addition, interim orders can be made if

"it appears to the court that if the application had been an application for an enforcement order it would be likely to be granted, and…the court considers it is expedient that the infringing practice is prohibited or prevented immediately."

That includes being able to make an interim enforcement order without notice.

We welcome the clause in principle, as a positive contribution to ensuring that swift action is taken where necessary to protect consumers. However, it would be helpful if the Minister could clarify the scope or give examples of how the power may be used. Examples specified in the Bill papers include preventing a misleading advert from being made public and enforcing the withdrawal of unsafe goods, but it would be helpful to understand the threshold for an order to be made without notice. Is it, for example, where there is current or imminent harm? It is important that that is clarified so that consumers and those who would be enforcement subjects can understand how the power could be used by the court, and so that there is no question about scope.

Clause 152 enables the CMA to apply to the court for an online interface order or interim online interface order in respect of a person that it considers has engaged, is engaging or is likely to engage in a practice that constitutes a relevant infringement. Subsection (3) sets out a jurisdictional test that limits the CMA's power to apply for an order in respect of a third party overseas; it may do so only if the person is a UK national, the

person is habitually resident in the UK, the firm is established in the UK, or the firm carries on business in the UK.

Is the Minister confident that those criteria cover all scenarios in which companies could be involved in misleading practices towards UK consumers, whether they are resident here or not? Why is it just the CMA that has the power to make such applications, and not other public or private enforcers, such as trading standards or local weights and measures authorities? We welcome clause 152, but it would be helpful to understand that further. There has been some discussion of the important role of local trading standards in our enforcement regimes.

Clause 153, which necessarily follows clause 152, gives the court a discretionary power to make an online interface order in response to an application from the CMA under clause 152. We welcome clause 153 and recognise the importance of including digital practices that harm consumers. However, as with clause 152, will the Minister expand on why local weights and measures authorities will not be given powers to apply for orders alongside the CMA?

The Bill represents an opportunity to update the powers of trading standards so that they can operate more effectively in the 21st century. The Chartered Trading Standards Institute notes that officers regularly have to exercise powers of physical entry in order to seize documents that they may wish to use in criminal proceedings, but it also raises the issues that officers have accessing filed documents that are not physical. My question is about how trading standards powers should be reviewed and updated in line with those of other enforcers, and the opportunity to do that in the context of the Bill.

Finally, under clause 154, following an application from the CMA, the court will be able to grant an interim online interface order, where it is considered that a final online interface order would likely be granted but that an interim order is needed to end an infringement immediately. Subsection (2) will permit the court to grant an interim order without giving notice to the enforcement target.

We welcome the provisions, but I have similar questions —they are relevant—to those I asked about the earlier clauses.

3 pm

Paul Scully: Let me try to cover as many of those questions as I can. The hon. Lady asked about the possibility of multiple enforcers in process at the same time. In effect, we are restating the existing arrangements, which have been working. They work with the CMA as the gatekeeper, so the CMA would have to be notified when action has been taken—it can filter anything going on in that regard—and it would have to co-ordinate the approach.[1]

On clause 148, and court powers to make orders and penalties, the hon. Lady talked about subsection (9) on whether an undertaking may include a trader publishing it in a corrective statement and whether I, as a Minister, would always expect that to happen. It is discretionary. The enforcer may require that as appropriate.

On the penalties, the £300,000 basically sits in the middle of the pack internationally. If we look at the regimes around the world, where penalties are imposed on individuals, New Zealand's consumer protection system has £100,000 and Canada's consumer regime has £450,000. We sit within that, looking at the international comparators.

Seema Malhotra: Is the Minister saying that the decision to go with the £300,000 was just because it was in the middle of the pack?

Paul Scully: It was a fair balance after looking at international regimes—a fair comparison with similar regimes around the world. Similarly, the 10% penalty is reflected in penalties across other regimes.

The hon. Lady also asked about the CMA being able to enforce and why private enforcers did not have the same powers. Only the CMA may impose penalties. Private enforcers may seek a penalty in court, but the CMA is the only body able to issue penalties directly.[1]

Finally—I have probably missed a couple of questions, but I will review them later just in case—on the interim notes, the hon. Lady made a fair point about stopping the immediate harm. I talked about domain names, as well as removing adverts and such things. It is about being able to act quickly. The whole point about the changes to the regime is to ensure that we make it not only as effective as possible in the modern world, but as fast as possible.

Question put and agreed to.

Clause 145 accordingly ordered to stand part of the Bill.

Clauses 146 to 154 ordered to stand part of the Bill.

Clause 155

ACCEPTANCE OF UNDERTAKINGS BY ENFORCERS

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

The Chair: With this it will be convenient to debate clauses 156 to 160 stand part of the Bill.

Paul Scully: Clauses 155 to 160 restate and enhance provisions in part 8 of the Enterprise Act 2002 that govern the acceptance and enforcement of undertakings by enforcers and the courts.

Clause 155 provides a power for enforcers to accept, vary and release an undertaking from an infringer or accessory. Undertakings may be accepted only where they include provisions that will stop or prevent the allegedly infringing practices. The clause will allow enforcers to continue using co-operative enforcement means, which can lead to faster resolution of consumer harms and reduce the volume of applications for court orders.

Clause 156 enables enforcers to include enhanced consumer measures in undertakings accepted under clause 155. Enforcers must consider those measures to be just, reasonable and proportionate. Clause 157 sets out requirements for enforcers when varying or releasing undertakings that ensure procedural fairness for enforcement subjects. Clause 158 allows for further court proceedings for breaches of undertakings and orders made by the court, giving the court a new power to impose a civil monetary penalty for the breach of an undertaking given to the court.

1. *[Official Report, 10 July 2023, Vol. 736, c. 4MC.]*

1. *[Official Report, 10 July 2023, Vol. 736, c. 5MC.]*

[Paul Scully]

Clause 159 allows a public designated enforcer to make an application to the court for a consumer protection order if it considers that an undertaking given to it has been breached. If the court is satisfied that that is the case, it may make the requested order, impose a monetary penalty or both. A penalty may be imposed only in cases where the breach was without reasonable excuse.

Clause 160 sets out the types of penalties and the maximum penalty amounts that can be imposed by the court for failure to comply with undertakings given to it or to public designated enforcers. The court has the discretion to impose a fixed amount penalty of up to £150,000 or 5% of global turnover, or a daily rate penalty of up to £15,000 or 5% of global turnover accruing over the days when non-compliance continues, or a combination of both.

Seema Malhotra: Clause 155 provides that where an enforcer could make an application to the court for an enforcement order or an interim enforcement order, it may accept an undertaking from the enforcement subject. Subsection (2) sets out the scope of such an undertaking, which is the infringer or the accessory agreeing not to continue or repeat the infringing practice. The Opposition strongly support the clause as it provides necessary flexibility in the consumer protection regime.

We heard during evidence, particularly from the CMA, that the ability for companies to work co-operatively with enforcers to comply with the new regime is an important part of having the fairest and best possible enforcement regime. Where possible, we should ensure that enforcement is done through co-operation. In evidence to the Committee, the CMA said:

"This is not a regime where we want to operate behind closed doors. The whole design of the regime is a participative approach where we will engage with a broad range of stakeholders, businesses and consumers as we consult on designation, design the conduct requirements, and then enforce against them."—[*Official Report, Digital Markets, Competition and Consumers Public Bill Committee,* 13 June 2023; c. 6, Q2.]

As a result, we welcome the clause.

Clause 156 enables an enforcer to include enhanced consumer measures as part of an undertaking from a company, if the enforcer considers them just and reasonable. The enforcer will be obliged to consider the likely benefits and costs of the measures as part of its assessment of their proportionality. In particular, it will consider the costs of the measures themselves to the enforcement subject, as well as the administrative costs. As with clause 149, we welcome clause 156 as a further necessary element of the new consumer protection regime.

Clause 157 sets out the process to be followed when an enforcer proposes to materially vary or release an undertaking that it has previously accepted. Specifically, the process requires the enforcer to give notice to the respondent of its intention to vary or release an undertaking, and to consider any representations made in accordance with the notice. The notice must include the time by which representations may be made to the enforcer. We welcome this clause, which provides clarity for the enforcement regime, the enforcement subject and the consumer in the event of a necessary change. What timescale does the Minister expect the process to work to in most cases, or will it be entirely up to the enforcer? It would help both Parliament and the enforcement bodies to understand the timings envisaged in this process, to be sure that they strike the right balance between being flexible and proportionate and are fair to both the enforcement subject and consumers.

Clause 158 would apply in circumstances where the court makes a consumer protection order against an enforcement subject or a member of its corporate group, or where it has accepted an undertaking. In the event of a failure to comply with the order or undertaking, the clause enables the enforcer that made the original application or any other enforcer to make a further application to the same court. In effect, the court will be able to act in respect of not only non-compliance with an undertaking, but the infringing practice and any related consent or connivance with it by an accessory. The court will be empowered to impose a monetary penalty, regardless of whether the enforcement subject has a reasonable excuse for non-compliance, reflecting the serious nature of breaching an undertaking given to the court. We welcome the clause as a way of providing robust enforcement and punishment mechanisms for failure to comply with the regime, but I would welcome clarification from the Minister on subsection (8). Like clause 150, that subsection provides an enforcement subject who is required to pay a monetary penalty the right to appeal the decision to impose a penalty, its nature or amount on the merits, in relation to their existing appeal rights. I am not sure I completely grasped his previous argument on whether there is a lower appeals standard for those elements of the Bill?

Clause 159, similar to clause 158, sets out the process for when a company fails to comply with an undertaking accepted by the enforcer or the courts. The powers granted to the courts and the process by which the enforcer must apply reflect the provisions in clause 158 and, in the same way, we welcome them. However, the same question is raised about what looks like a lower threshold for appeals than in other parts of the Bill.

Finally, clause 160 sets out further details around the monetary penalties the courts may impose for failures to comply under clauses 158 and 159. We welcome any steps to improve enforcement action through the imposition of monetary penalties and therefore support the clause in principle. Despite that welcome, I must ask the Minister why, when it comes to failure to comply with undertakings, the monetary penalty in the clause, which is £150,000, is less than that in clause 150, where the court can issue penalties of up to £300,000? Similarly, clause 160 refers to 5% of the company's turnover versus 10% in clause 150. I may not understand some of the Government's rationale behind those different amounts. What are the reasons for the differences in the thresholds and those lower amounts?

Paul Scully: I picked up three questions. The reason the hon. Lady could not follow my argument about appeals from the first bit was because that was the bit I forgot to answer. I will cover that because they relate to the same thing.

Timescales will be up to the enforcer. None is set, but there is a general duty of expedition on the CMA set by the Bill overall. On appeals as they relate to both sections—

3.15 pm

Seema Malhotra: Is the timescale deliberate, or has the question simply not been fully addressed? It is important to ensure clear expectations of the timing of some of these processes.

Paul Scully: I think the reason is the wide range of remediation events that may come before the enforcer to tackle, so they are being given that flexibility, but with an understanding that there is a general rule of expedition on the CMA. That is why we have approached this as we have.

The appeals regime is very different from the bits of the digital markets regime that we talked about earlier. In that case we were talking about a small number of firms with strategic market status, whereas any trader can be subject to this regime. The new monetary penalties that we are introducing are significant. A merits-based appeal is therefore important, because of the range of different-sized companies involved, to ensure fairness and bacause the issues involved relate to settled law rather than novel regulations covering digital conduct. Appeals are less likely to be disproportionately lengthy, because the digital market involves a more novel approach, which is why we were worried about extended appeal processes.

As for why thresholds are lower in this part of the Bill than for infringements, infringements, at £300,000, are clearly more serious. What we are talking about here—a breach of undertaking to a court—is still serious, but if someone is stepping down, we believe it is more proportionate to set the threshold at the slightly lower amount of £150,000.

Question put and agreed to.

Clause 155 accordingly ordered to stand part of the Bill.

Clauses 156 to 160 ordered to stand part of the Bill.

Clause 161

NOTIFICATION REQUIREMENTS: APPLICATIONS

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

The Chair: With this it will be convenient to consider clauses 162 to 164 stand part.

Paul Scully: Clauses 161 to 164 restate and update provisions in part 8 of the Enterprise Act 2002 that enable the CMA to perform co-ordination functions across the consumer enforcement landscape. This will help to prevent duplication of enforcement, which imposes an unnecessary burden on traders and wastes public money.

Clause 161 requires enforcers to notify the CMA of their intention to apply for certain court orders. Clause 162 imposes a requirement on enforcers to inform the CMA of any undertakings given to them. Clause 163 imposes a requirement on trading standards departments in England and Wales to notify the CMA if they intend to start proceedings for an offence under an enactment listed in part 1 of schedule 13 to the Bill. Clause 164 empowers UK courts to notify the CMA of relevant convictions and judgments. Bringing convictions and judgments to the attention of the CMA that it might not otherwise be aware of will allow the CMA to consider exercising its enforcement power under this part of the Bill.

Seema Malhotra: It is a pleasure to speak to clause 161 and the other clauses in this group. Under clause 161, as the Minister outlined, enforcers would be able to notify the CMA before applying for an enforcement order, and could only apply for an order 14 days later, or seven days later when applying for an interim order. The powers also allow the CMA to agree to shorten these wait times. The Bill's explanatory notes explain:

"The policy intent underlying the notification requirement in this clause is for the CMA to be able to perform a coordinating role in relation to enforcement under this Part. The notification requirement will enable the CMA to facilitate the sharing of information between enforcers",

and that is outlined as mitigating

"the risk of traders facing multiple actions in relation to the same infringing practice"

—a point that we have raised before. We are supportive of the clause and the principle of enabling the enforcement regime and ensuring that it is joined up and efficient in practice. I seek the Minister's clarification on whether the Government have had discussions with other public enforcers on the provisions in the clause. Is it the case, as he has said before, that the CMA broadly has a co-ordinating role and other powers, and is that carrying on an existing practice and pattern of engagement between those enforcing bodies?

Clause 162 requires enforcers to notify the CMA of the terms of any undertaking given to it under clause 155 and of the identity of the persons giving it. Again, that is important to enable the CMA to fulfil its co-ordination role. As with clause 161, we support the provisions in the clause. Clause 163 introduces provisions requiring local weights and measures authorities, such as local trading standards bodies, to give the CMA notice of its intention to start proceedings for an offence under schedule 13, which we have debated. The authority must also notify the CMA of the outcome of those proceedings.

The policy intent, as explained by the explanatory notes, is to enable the CMA to play its co-ordinated role granted to it in previous clauses. The notes provide a potential example whereby the CMA could inform one authority that another is prosecuting, or that an enforcement order has been granted in respect of the same infringing practice. That is an important part of the co-ordinating role because it demonstrates that it is not just about the CMA being informed, but the CMA ensuring that other relevant enforcers are informed of what other enforcers are doing. That is then a streamlined and efficient process that does not hit the enforcement subject more than once on the same matter.

Clause 164 confers a power on the courts to notify the CMA of convictions and judgments it makes that may not have been bought to its attention. That is a common-sense provision. However, I would welcome further clarification from the Minister specifically on subsection (2). It states that the court

"may make arrangements to bring the… judgment to the attention of the CMA".

We know the strain and pressures that our court system is under. I ask the Minister why the provision introduces a power as opposed to a duty. If the CMA is to have, as

[Seema Malhotra]

is intended, a co-ordinating role where it is in the picture on all the relevant information related to those enforcement subjects, are there any circumstances in which the Government believe the courts may not need to inform the CMA? In that case, could the Government clarify what those circumstances might be, or where they might consider it not necessary for the CMA to have this information if it considers it to not be relevant to the function it carries out?

We need to remember that this is not just a function being carried out for today; this is where the CMA will be able to have a record of enforcement measures, any breaches and any other information that would be relevant to any considerations in the future. I would be grateful to understand from the Minister why that important and common-sense provision is a power as opposed to a duty.

Paul Scully: The CMA being able to issue permission to bring enforcement procedures is consistent with the position under part 8 of the Enterprise Act 2002. We respect and understand the expertise of all enforcers, including sector regulators, so the CMA is playing a co-ordination role to effectively share information between enforcers, and guarantee that enforcement actions are not duplicated. That will mitigate the risk of a trader facing multiple actions for the same infringement practices. The Government have discussed the provisions with other enforcers, and the CMA already has memorandums of understanding with other enforcers.

On the question of why there is a new reporting requirement in clause 164, actually it is not new. It was already established under part 8 of the Enterprise Act. Again, it ensures that the CMA can consider exercising its enforcement powers where appropriate. It only gives the court the power to notify judgments and convictions to the CMA. It is already there under the Enterprise Act, and that is why we have brought it in here.

Seema Malhotra: Perhaps I could put the point about power versus duty to the Minister again? I understand that many aspects of the Bill have been brought together from other areas of legislation. We have to ask the question within the context of the new regime, which is different to how the situation was prior to the legislation coming in, whether that is worth reviewing. We are talking about a regime in which the CMA is now a co-ordinating body, in which there may be different ways action can be taken and where information from the court could be material. There is not as much of a duty to pass that information on under clause 164, but that could be relevant information that is not there for a matter in the future.

I again draw the Minister's attention to the massive backlog we have in the courts, and the administrative challenges with some of those procedures. The best intentions may not be a reality, and that may then have consequences for the regime we are trying to set up to be as robust, predictable and efficient as possible.

Paul Scully: I take the hon. Lady's point, but I would say that it has been directly transposed. It is a power not a duty in the Enterprise Act, and that is where we have worked from.

Neil Coyle: There is an alternative. There was a suggestion from trading standards representatives of a take-down power, which would bypass the longer route that adds an administrative burden and places the onus on businesses and individuals. Can the Minister explain or furnish us in writing as to the rationale for not seeking the take-down power and a more immediate means of addressing a problem?

Paul Scully: I or the relevant Minister will certainly write to the hon. Gentleman on that basis.

Question put and agreed to.

Clause 161 accordingly ordered to stand part of the Bill.

Clauses 162 to 164 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —(*Mike Wood.*)

3.29 pm

Adjourned till Thursday 29 June at half-past Eleven o'clock.

Written evidence to be reported to the House

DMCCB36 Santander UK plc

DMCCB37 Information Commissioner

DMCCB38 techUK (supplementary submission)

DMCCB39 The Startup Coalition

DMCCB40 Sky

DMCCB41 Paramount