HOUSE OF LORDS

HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

JOINT COMMITTEE ON THE DRAFT DEREGULATION BILL

MONDAY 21 OCTOBER 2013

WENDY HEWITT, IAN ACHESON, SARAH VEALE, MIKE SPICER, JENNY WILLIAMS and MATTHEW HILL

GRAEME FISHER, RICHARD JONES, GAY MOON and MICHAEL HARLOW

Evidence heard in Public Questions 105 - 163

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Oral Evidence

Taken before the Joint Committee

on Monday 21 October 2013

Members present:

Lord Rooker (Chair)
Baroness Andrews
Lord Mawson
Lord Naseby
Lord Sharkey
James Duddridge
John Hemming
Kelvin Hopkins

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Examination of Witnesses

Witnesses: **Wendy Hewitt**, Acting Legal Director, and **Ian Acheson**, Chief Operating Officer, Equality and Human Rights Commission, **Sarah Veale**, Head of Equality and Employment Rights Department, TUC, **Mike Spicer**, Head of Research, British Chambers of Commerce, and **Jenny Williams**, Chief Executive, and **Matthew Hill**, Director of Strategy, Research and Analysis, Gambling Commission, examined.

Q105 Chairman: Good afternoon and welcome. Thank you for coming at what I realise is short notice for the sessions that we are conducting on the draft Deregulation Bill. We might be interfered with by votes in the Lords—there are none due in the Commons—and, if so, we will adjourn for the 10 minutes or so that that takes. There will be one quite early.

I would ask you introduce yourselves. I understand one or two of you wish to make a short opening statement. Let us have introductions first.

Ian Acheson: I am Ian Acheson. I am the chief operating officer of the Equality and Human Rights Commission.

Wendy Hewitt: I am Wendy Hewitt. I am the acting legal director of the Equality and Human Rights Commission.

Jenny Williams: I am Jenny Williams, chief executive of the Gambling Commission.

Matthew Hill: I am Matthew Hill, director of regulatory risk at the Gambling Commission.

Sarah Veale: I am Sarah Veale, head of equality and employment rights at the Trades Union Congress.

Mike Spicer: I am Mike Spicer, head of research at the British Chambers of Commerce.

Chairman: I will put on the record my own interests. There is at least one of you that I have worked with in Government, although it was a long time ago. The same thing happened last week. That is a result of being around a long time.

Kelvin Hopkins: I have a declaration of interest. I spent five years at the TUC where I used to service the TUC construction industry committee, among other things. I had 18 years working for NALGO Unison, again representing some of the people who might be concerned.

Q106 Chairman: Does anyone wish to make an opening statement?

Jenny Williams: Thank you very much for inviting us today and for giving us the chance to supplement our written evidence. We thought it might help the Committee if I set the context for our cautious welcome for the growth duty in the Bill as set out in front of you, explain why we see it as entirely consistent with the way we aspire to regulate the gambling industry and potentially provide greater clarity about our role in the wider growth agenda, particularly to those we regulate, but also carrying some risks of unintended consequences, which could undermine the growth agenda.

As you probably know, our statutory duty is to permit gambling while keeping it, as we say, fair and safe for all. Our basic duty, therefore, is pro-growth anyway. Our Hampton-based regulatory model already enshrines the clause 58 requirement to minimise regulatory action and to act proportionately. We aim to assess the risks of harm from gambling and mitigate them proportionately—that is in the least intrusive and costly way that still achieves the public protection objectives. In that way we minimise the cost of regulation, which allows competition and innovation to flourish, while—and this is the critical point—providing assurance to the consumer and the wider public that such growth can be permitted safely.

Enshrining the growth duty as drafted gives our current approach statutory backing and should promote a wider understanding of just how risk-based proportionate regulators can support the growth agenda by giving the public confidence in the industry that they regulate.

We did sound a note of caution at the same time. Our caution stems from concern about the risk of unintended consequences in terms of diminished public confidence and increased costs of regulation adversely affecting growth. That risk depends very much on how the duty is implemented and whether it is misunderstood or misused to promote vested interests.

Britain recognises gambling as a mainstream leisure activity. Its regulation is much more principle-based and outcome-focused than most overseas gambling regimes. The detailed regulations—particularly, for example, on types of gaming machines—reflect the public's strongly held concerns about the dangers of gambling and long-established views about how to protect the public from them.

We see our role as providing a fair regulatory framework within which existing operators from the different competing sectors—such as betting arcades—and new entrants can compete and grow with the minimum of regulatory burden compatible with public protection. But there is a real risk that having regard to the desirability of promoting overall economic growth becomes confused with and undermined by the demands that the Commission promote the growth of gambling per se and of individual sectors within it.

The public will only accept changes to regulation and allow innovation and expansion if they have the confidence that the regulator will indeed ensure that the growth is not disproportionately at the expense of public protection. Any misunderstanding of the new growth duty as requiring the Commission to promote the growth of the gambling industry or to become more pro-gambling risks being counter-productive if the public lose confidence that we will protect them, if necessary, against the industry's commercial interests.

There is also the risk of adding to the regulatory costs that we have to recover from the industry if the way in which the duty is implemented and the accompanying guidance is too prescriptive and/or fosters litigation instead of collaboration. This would increase the risk of the duty being used as a tool to delay or frustrate any regulatory measures needed to protect the public and maintain confidence in the industry.

In summary, we see synergy in the growth duty as drafted for regulation, but care is needed in implementing and explaining the duty to avoid the unintended consequences such as reduced rather than enhanced public confidence, additional regulatory costs or misuse by vested interests.

Q107 Chairman: Thank you very much; that is very helpful. As you will appreciate, for the two sessions today we are covering two groups but there is an overlap in both sessions. There are clauses 1 and 2 and then clauses 58 to 61. I would like to kick off with a couple of questions relating to the growth duty and home in on the Commission and the Chambers in terms of your evidence to us.

From the Commission's point of view, in your note at paragraph 419 the implication is that having regard to economic growth will be paramount. Perhaps you would like to expand on that. As far as the Chambers of Commerce is concerned, I got the message from the note that what many of your businesses—members, that is—want are lower compliance burdens. Can you explain that? Is it that members want to be able to undercut competitors by not fulfilling the regulatory requirements because they don't have to comply? Would that apply, say, to food hygiene establishments? Would they decide, "We want lower compliance so we won't comply," but the next door person does?

On the one hand, your evidence to us in written form does not fit the pattern of a lot of the others. I would like you to expand on that, and then my colleagues will ask questions on this, plus clauses 1 and 2.

Jenny Williams: I do not think we meant to imply that we saw the—

Q108 Chairman: I am sorry; when I said "the Commission," I was referring to paragraph 419 of the Equality and Human Rights Commission paper. I do beg your pardon.

Ian Acheson: You have the advantage of us. We thought you were talking to the Gambling Commission.

Chairman: I am sorry; I do apologise. It is paragraph 419 of the Equality and Human Rights Commission.

Wendy Hewitt: Currently, we do support the aims and intent of the growth duty. We do consult with and support business in the way we work already, and propose to do more. In terms of what the growth duty intends, in common with other regulators, there is a question mark about what is a level playing field. In the work that we have previously done—for example, in the meat processing inquiry into the labour in that sector—talking to people themselves, we were met with some concern that there was not sufficient enforcement.

Chairman: I am sorry about that. It is best that we go as quickly as we can and then we will return quickly.

Sitting suspended for a Division in the House of Lords.

On resuming—

Q109 Chairman: Thank you very much. Please continue or start again. We should not be interrupted for quite a while now, I understand.

Wendy Hewitt: The paragraph in question—419—is referring to our human rights role. As you know, we have a unique role as Great Britain's national human rights institution. Unlike most of the other similar bodies across Europe, we are a combined national equality body responsible for the Equality Act and anti-discrimination, as well as being the national human rights institution responsible for promoting and protecting human rights in this

country. This paragraph is talking about the intrinsic incompatibility between the growth duty and the duty to promote and protect human rights, which is regardless of economic factors.

We are subject to the Paris Principles. The second of these is that the human rights institution must be independent of the Executive in this country. We are concerned, as we have set out here, that if we are not compatible with the Paris Principles we will lose the "A" status of the Commission, which is important in a number of respects in relation to the international reputation of Britain in the human rights field and the candidacy that we are currently applying for on the UN Human Rights Council.

We have been discussing this with BIS in fact this morning. We are agreed that the human rights aspects of the Commission's work would be outside the regulatory functions of the type envisaged by the growth duty, which leads to the question of whether part of our role can be disaggregated from another part of our role. We do have other objections. We believe we are not analogous to other regulators. We can go on to that, but that is specifically what paragraph 419 is referring to.

Ian Acheson: Chairman, you invited statements at the start. It might be helpful if we took it back a stage and said from our point of view—just to underline the fact—that the Commission is fully in support of the intent of the Act and the growth duty in particular. We are a pro-growth organisation because fair access to, and participation in, a strong economy is central to our aims and objectives. We want to place on record that we have no problem with the intent of the Act. Simply, we do have some fundamental problems with how it applies to us in relation to us being on the list of non-economic regulators for some of the reasons that my colleague has outlined. We are happy to go into more detail.

We already consult widely with business in our work. We propose to do more to help businesses navigate the law and meet their responsibilities in as practical a way as possible. As my colleague has said, we do have other specific problems with our inclusion on the list of non-economic regulators, including the fact that we don't believe we are analogous with virtually any other regulator that is listed there. We are happy to go into the detail on those if you wish to explore those further.

Q110 Chairman: As I asked the question of the Chambers, perhaps Mr Spicer would like to answer and then my colleagues can start questioning.

Mike Spicer: To address your question earlier, first of all I would say that businesses want and clearly would expect compliance costs to be proportionate. There is no question about that. The growth duty itself, as it is proposed at the moment, is not only about regulatory enforcement but the way that regulators interact with the regulated, and in particular the way that guidance is put together for regulatory compliance. That is behaviour such as booking inspections in advance and things like that. It is not just about compliance per se but the nature of the interaction.

I would also say that there are some really good examples of best practice from around the UK that we can draw on here. If you look at the Better Business for All pilots that are currently taking place in Leicestershire and Birmingham, where it applies to local enforcement, if there were not room for improvement it is hard to see how those pilots would have been viewed so positively. Of course, in those cases it is about local regulators and not the national non-economic ones. There is an opportunity to improve the work that has already been done in those areas through extending it to national non-economic regulators and having that cascade down to a local level as well.

Chairman: I am sorry, I have to interrupt you. We have just lost our quorum. I do apologise for this but we have to follow the rules.

4.30 pm

The Chairman's attention having been called to the fact that fewer than three Members of each House were present, he accordingly suspended the proceedings.

4.33 pm

A Member having come into the room, and three Members of each House being present, the proceedings resumed.

Q111 Chairman: Mike, please conclude or continue.

Mike Spicer: I will briefly summarise the final point about the role of the proposed growth duty and potentially improving working relationships between businesses and regulators. One of the outcomes that businesses are seeking from this is to help establish more constructive relationships. We think the growth duty can help there. The potential for that has been demonstrated by the Better Business for All pilots that operate at a local level. We hope that this can reinforce some of the work in those pilots. It demonstrates at least that there is scope for an improvement in those relationships.

Q112 Baroness Andrews: I have two questions. One arises out of the evidence from the EHRC and one is a general question that seems to have surfaced in some of the evidence from the panel as a whole.

When you were explaining in your conversations this morning about the position vis-à-vis European rights, you reinforced the argument that the growth duty as it will operate is incompatible with your higher order duties in terms of human rights. Have you gone further than your paragraph 413, which was saying there is a critical omission because the legislation does not explain, as I understand it, how the legal requirements interact with the other legal requirements to which you are subject? Is that a further clarification and enforcement of your opposition?

I would quite like to have the opinion of the panel as a whole on this confusion about where the growth duty sits in terms of your other legal responsibilities and other functions, because I presume we are talking about a duty on functions.

The second issue is about compliance. There is an issue running through all your evidence about the difficulties of compliance and the lack of clarity in the Bill itself about what it will mean to have complied with this duty.

Sarah Veale: As the TUC submission said, there is a huge amount of confusion about what would be the prime responsibility of a regulator. I would not like to be the judge who, given what we have at the moment in the Bill, had to make a decision about whether the growth duty did or did not supersede the intervention being made under the regulator's statutory duties. I suspect that this is going to end up going to the courts and being reinterpreted if there is not a lot more clarification of exactly how this Bill is intended to operate.

We can all say, and I think we would say, that we appreciate the need for growth. What we are certainly confused about—and we do operate with a number of regulators—is to what extent their prime purpose is going to be superseded in some points by the growth duty. A particular point we would add into that is that this has already happened to the Pensions Regulator. They are already having quite significant difficulties, as we understand it, with deciding whether the growth duty impedes their primary function of protecting pension scheme membership benefits. That is pretty core. It might be instructive to have a look at how the Pensions Regulator is dealing with the growth duty to see whether or not these conflicts arise in practice. If you looked at that, you would find that they do arise in practice and that quite a lot will need to be done to this Bill to ensure that that is not an unintended consequence of this particular growth duty.

Matthew Hill: We take a slightly different view. As Jenny explained in her opening remarks, we already have a statutory aim to permit gambling, which is not really a million miles away from a growth duty anyway. We are quite used to taking an interpretation that builds the desirability of growth into our action.

I would observe that, if the Committee was looking for a very neat statement of what compliance looks like, it is contained in the wording of the Bill as it currently stands. In section 58(2) it says that in performing the duty regulatory action is taken only when it is needed, and any action taken is proportionate. We would submit that it should be obvious to any reasonable observer that that is how any regulator "complying" with the growth duty was behaving. We think it is already there, and that possibly explains why we are more relaxed about this than some of the regulators.

Sarah Veale: With respect, the word "proportionate" is often itself the subject of interpretation in the courts. The first court ruling you will get will interpret what "proportionate" means and that would then affect other regulators, possibly in a disproportionate way.

Matthew Hill: That is a very good point, but we would say again that it would be down to the regulator to make sure that what the regulator had done was reasonable and arguable under the terms of this legislation. We are subject to tests of our interpretation all the time. We were involved in a big judicial review last year about the Health Lottery, for example. We had interpreted our remit according to the statute that had been handed down to us. In the event, the courts decided that what we had done was reasonable and arguable, and that was fine, but we are subject to that kind of test all the time.

This is an argument against, I suppose, an external compliance enforcement function because it ought to be visible and apparent anyway in the actions of the regulator that the regulator had been complying with the duty. It is as neat a statement here as we can imagine.

Jenny Williams: Our caution is almost exactly because of this—we would say—misinterpretation of what this means. People do tend to read or use it as a duty to make the growth paramount, as opposed to, in a very precise way, regulating as little as possible as is compatible with your protection objectives.

Wendy Hewitt: From our point of view, in terms of enforcement we do always attempt to be proportionate. In fact, it is incredibly rare for us to take any formal action because we seek an agreement. In terms of what growth is, though, that is very difficult for us to know. It is generally recognised that equality is good for business. The British Chambers of Commerce recently agreed that in a statement with the Government Equalities Office. When we are talking about an individual business, they may not see that in the same way. Similarly, they may not see that in the same way as the sector, which goes back to the point I originally made. Often we find that the sector does not want individual employers who are not complying with the Equality Acts because they can undercut them and there is no longer a competitive playing field. There is a difficulty and a tension between us in enforcing the equality enactments and the growth duty.

Q113 Lord Naseby: I want to pick on something that Ms Hewitt said earlier. I have spent the morning listening to the Commonwealth Secretariat. One of the key dimensions of the meeting of CHOGM is growth. You know as well as I do that round the world, when the Commonwealth goes round, one of the key issues is always human rights. There must at the margin, particularly in the poorer countries, be situations where you have a conflict between human rights and growth.

Perhaps it is not quite so sustainable here, but my question to you is that there must be times when you are looking at the human rights of a group or an individual and you think to

yourselves, "My goodness, this is at the margin." Therefore, I submit that, when you are weighing up at the margin, growth is one of the dimensions you should think about, is it not?

Wendy Hewitt: It is certainly the case that societies who are more affluent are in a better position to promote and protect the human rights of their citizens. We have seen that, but because of the fundamental nature of human rights they cannot be dictated by the economic circumstances, such as the right to life, forced labour and all the others. Yes, it can be a factor but we are saying that it should not be imposed on us in that sense. Our main concern, as I have said, is that the accreditation body for the ICC will remove us from our "A" status. It has been the case that, twice, we have been reviewed or close to review by them when they have felt that we were getting too much under the control of Government. We are extremely concerned that this would be a situation where they would call us in and that would be the effect of it.

Q114 Kelvin Hopkins: Would you agree that we talk about growth but we might just be talking about profit? We have seen dreadful events in Bangladesh, and that was about profiteering; it was not about growth, I would suggest.

Is it not the case that, with some regulators, there are inherent conflicts between what you might say is growth and something that is fundamental like human rights, but in other regulators there are health and safety concerns where enforcing health and safety makes the thing work better? I would suggest the railways, for example, with the ORR. If the railways are made to be safe and we don't have broken rails or crashes, the economy works better and we promote growth in that way. We have just had a situation now with chaos on the railways in the north-east and some members cannot be here. That is reducing growth and not increasing it. Do you have any thoughts on that?

Sarah Veale: I have a thought on that again, which relates to "proportionate". Each case would have to be looked at in terms of what the objective was of the regulator. There will be cases where what the regulator is doing will per se improve growth in the longer term. The trouble is that, if a complaint were made that they were in dereliction of their duty under the growth duty because they were enforcing some other part of their statutory duty, in the short term they might be impeding either growth or profitability—that is a very good point—but in the longer term their intervention under what is currently their prime duty would be beneficial. At the TUC, we find it really worrying that this could all end up in the courts and, with the greatest respect to the judiciary, with the wrong sort of people trying to work out what business versus health and safety or other functions are.

There was a lot of fuss about the previous Government's decision to try and introduce a socio-economic duty. That was got rid of by the present Government because it was felt that it was inappropriate to try and cram a concept like that into a regulatory framework. I can see the logic of that argument. It seems strange that that seems to have completely reversed itself and that this Government seem to think it is possible to regulate for growth. It seems to me a very odd concept and it is going to be difficult in practice to see how this is going to work.

Q115 Kelvin Hopkins: As a result of the Heath and Safety at Work Act, in the last 20 years we have seen the fatal injury rate to workers halve. That has surely been economically beneficial in so many ways.

Sarah Veale: Yes.

Q116 Lord Sharkey: The actual wording of the Bill is to "have regard" to the desirability of promoting economic growth. We have debated the "have regard" issue extensively in both Chambers, particularly when it came to the first Financial Services Bill that went through. The Government were quite clear that the "have regard" type of clauses

that exist in that Bill—some of which we inserted into the Bill—did not cause priority problems for the overriding objectives for the organisations that were written into the Bill. I wanted to be clear about your view about whether or not, despite the fact this is written as a "have regard", it does have problems in potentially reordering the priorities and the objectives that are statutorily written into the organisations that you work for.

Jenny Williams: As we indicated, it does not for us, particularly because of the second part of clause 58, which makes clear what is meant by that and not just to "have regard" to it. That seems to us a very clear framework as to the process through which you have to go, which, as we said, we would be going through anyway. We do have worries that it could get embroidered in the guidance or misunderstood by people outside to mean more than that. As drafted it is helpful and clear, it seems to us, to put in its place the duty, leading one to come to a proper view or balance up the economic impact of what you do by way of regulation, but to protect the public. As we say, we think the confidence that the industry is properly regulated is a very important component to set the framework for growth. There is obviously a risk of that being damaged.

Ian Acheson: We had an interesting conversation with colleagues from BIS this morning about that very point and whether "having regard" was in fact a constraint. We do see it as a constraint. As my colleague Wendy has said, we are very concerned that, because of the conflation of our two roles and our unique national human rights institution role within the Commission, the perception is quite dangerous for us, certainly by the sub-committee and accreditation of the International Co-ordinating Committee in the UN that we are in some way being fettered by the Executive by being part of this duty. We do see it as a real danger in terms of our independence being called into question and our "A" status as a national human rights institution being subject to review. We certainly know from an FCO perspective that having an "A" status as a national human rights institution is quite important for the projection of soft British power abroad.

Q117 James Duddridge: If equalities and human rights together pose a problem, is there therefore a case for splitting the two—splitting the Commission?

Wendy Hewitt: Our view is that we are much more effective than the bodies that are split. Much of the work that we undertake encompasses both equality and human rights. For example, if we take stop and search and the concerns about the disproportionate number of black people stopped and searched when compared with white people, then the focus and the way we have developed that work with the police and the Home Office is through looking at it both from the point of view of equality—is there a need for more equality?—and also human rights. In most of the work we do both of them are integral. Our home care and the meat processing inquiries also involved race discrimination of the migrant workers and forced labour under human rights.

We are saying that, through integrating them, we are effectively able to take both strands of work forward. If they were separated, then you would have bodies duplicating the same work via different routes.

Q118 James Duddridge: If the organisation remains on the list, is there any way to mitigate it? It strikes me that this has been typified as regulating growth. It is having regard to growth as part of a broader regulation. It is not that having regard to regulation is introducing tensions. There are already tensions; they are just sometimes not legislated for. There are tensions between the regulator and business and the growth imperative. We have also heard that the growth imperative may be very positive for equality, union rights and so forth, because over the longer term those things are good for growth. There is a bit of a confused picture. Is there any suggestion as to wordings that could improve the "have regard for

growth," rather than just simply saying, "No, we are uncomfortable with it and don't want it included explicitly," although supporting the general idea of growth, which is a bit motherhood and apple pie because very few people are going to argue against growth?

Ian Acheson: With respect to your argument, we have quite a good track record of demonstrating in a voluntary capacity how we do pay attention to the impact of any guidance or information we produce on the economy, on small businesses in particular. We take a lot of care to make sure that our guidance is proportionate, practical and straightforward. For example, we have recently been working with Visit England in order to clarify the rules for guest house owners on guide dogs. That is just one example of how we work very closely with business to make sure that we are not placing an unnecessary burden on them. We would obviously much prefer to continue to carry on that work voluntarily without the appearance of being subject to the Executive constraining our rights or our behaviour in any way. That again is the concern we have.

We have other concerns that I would not want to lose sight of. Fundamentally, we do not believe that we are analogous to the other regulators, in the sense that as a Commission we do not license activity. We do not create legislation and we do not inspect or require periodic data returns. We feel very different. We would still contest being on the list of non-economic regulators in the first place. Were that to be the case, we would still argue for working with colleagues in BIS. Chairman, you have heard that we met with BIS this morning. We are very keen indeed to continue that dialogue to make sure that we are demonstrating, as proportionately and as explicitly as we can, how we pay regard to economic growth in everything that we continue to do. The answer is still that we would have serious difficulty in being included in the purview of the growth duty. We would find it virtually impossible, as my colleague has said, to disaggregate the human rights business from the Equality Act business.

Q119 John Hemming: I should start by declaring some interests. I chair a company with over 300 staff, which I founded years ago. That is JHC in the Register of Members' Interests. I am also a small businessman in a separate business and a member of the FSB. As a musician, I am a member of the Musicians' Union, which is affiliated to the TUC. I have a strange cross-relationship between different sides of the fence on this.

When you look at things like the growth duty, I always like to think, "What is it that we got wrong in the past that we should get right in the future?" If anyone thinks we should have a growth duty, could they explain what it is that has been got wrong in the past that we should get right in the future? Does anyone have any comments as to whether it would be any better or any worse to change it to a sustainable growth duty?

Jenny Williams: Perhaps I can just add that one of the reasons why we have taken a slightly different view from some of the other regulators is because our industry has spent the last five or so years since we were set up telling us that we ought to be out there promoting them. We saw the rather clear, more limited role here as a very clear and helpful statement consistent with what we saw as our role, which was more setting the framework, holding the balance, providing public confidence and doing the minimum necessary to do that. That might explain why we saw some cautious attractions in it. As I say, the industry we regulate is constantly pointing to various Government statements and calling on us to do much more to support them.

Q120 John Hemming: Is there anything that was specifically got wrong in the past that this would make get right?

Jenny Williams: As I say, just by making it clearer, having regard to economic growth, that what was expected of regulators is more limited than our industry is expecting of us.

Q121 John Hemming: And you are not concerned whether it is sustainable or not?

Matthew Hill: It raises a very interesting point about the nature of growth, does it not? Some things that a regulator might do to free up space for business to move into may generate short-term growth but at the price of public confidence that might limit longer-term sustainable growth.

Q122 John Hemming: So you might prefer sustainable?

Matthew Hill: If we had a view, if we were forced to choose, then possibly, yes. That would help us to be clearer that what you were looking for were not quick fixes but long-term structural underpinnings for growth.

Q123 John Hemming: Presumably EHRC do not like it either way.

Wendy Hewitt: It would not make a great deal of difference to our position vis-à-vis the growth duty, although I think it would be at least clearer in a situation where you have the level-playing-field argument that what you were looking at was the overall future sustainable economic growth rather than a short-term fix, as has been said.

Q124 John Hemming: What does the TUC think?

Sarah Veale: I agree with that. I think it would improve it. I have to say that I am still baffled as to why Government feel that regulating to stop regulators regulating is a sensible thing to do. I would have thought there were non-legislative ways you could have got this working far more effectively. But, if we are going to have it, then I agree that "sustainable" would begin to address the problem of looking at the longer-term impacts and what growth means going forward.

Q125 John Hemming: What about the Chambers of Commerce?

Mike Spicer: What we want ultimately is for common sense to prevail in the regulation of industry. I can give you a couple of concrete examples of the kinds of things we would hope would be less prevalent in the presence of a growth duty, if that makes it easier to picture exactly what we mean. For example, there is the phenomenon of some agencies or regulators charging fees for intervention or setting standards or targets around the number of inspections that need to happen, which potentially ultimately leads to the perception of rent-seeking behaviour on the part of regulators.

As I said earlier, we know that there are great examples of working relationships between businesses and regulators, especially at the local level. We have the pilot programmes to support that. The growth duty would give a statutory basis for national regulators to be able to cascade that down to local level too.

Q126 John Hemming: Wouldn't there be an argument that rent-seeking adds to economic activity and is therefore growth, so having a growth duty would not necessarily mean that you should not have rent-seeking?

Mike Spicer: What I meant by rent-seeking is on the part of the regulators.

Q127 John Hemming: But that is economic activity.

Mike Spicer: I would argue that those would be unnecessary burdens of compliance, if that is what rent-seeking is and that is what it leads to.

Q128 John Hemming: In the end it can only be resolved in court.

Mike Spicer: Hopefully, the growth duty will lead to less of that kind of behaviour. If you have a situation occurring where you have regulators, through their rent-seeking behaviour, piling compliance costs on to businesses that otherwise would not be there, or inspections are happening that are perhaps not proportionate to the risk, I would argue that is not something that anybody would necessarily want to happen. We want it to be a risk-based approach—not anything else.

Q129 John Hemming: But you do not care whether it is sustainable or not?

Mike Spicer: We are getting into semantics with the word "sustainable". It is not something that we have necessarily tested in that sense with our members. I would be happy to get back to you on that.

Q130 Lord Mawson: Do you think there is a difference between large and small businesses with regard to this duty? What would you class as "small" and "large"?

Mike Spicer: In terms of the hard evidence we have around the regulatory burdens and how they relate to different sizes of business, we conducted a work force survey in 2011, which is a couple of years ago now. That related specifically to employment-related regulations. If you look across different business sizes, there is less difference than you might think in terms of a perception of regulatory burden. The common perception is that it is a perfectly sliding scale from small businesses up to big ones. It is not actually like that in practice. In fact, it is a much flatter profile.

Having said that, in terms of the way that businesses feel regulatory compliance, small companies are less likely to have compliance departments; they are less likely to have those as corporate functions. That means it is more likely that those compliance activities will interfere with the everyday business of running their business.

Chairman: We have time constraints. I know that Baroness Andrews wants to come back and Mr Hemming wants to raise some issues relating to health and safety, which we are also looking at. We have another group of witnesses. Nevertheless, there could be factors relating to clauses 1 and 2 that may have been covered in some of your evidence. We will be interrupted by another vote, I regret to say.

Q131 Baroness Andrews: I want to ask one general question of all of you. You have each described in different ways how you are doing things to promote growth. You have also indicated in different ways that the growth duty imposes degrees of confusion on the operation of your work in terms of some unintended consequences or some clearer consequences. Do you think that the growth duty is necessary? Do you think that, because it is a different sort of duty, it threatens the independence of your organisations? The first question is actually more important than the second.

Jenny Williams: Our view is that it is not necessary but it is marginally helpful in our situation, for the reasons I have set out.

Wendy Hewitt: From our point of view, we do not think it would make a great deal of difference to the way that we operate. We already involve business in the steps we take to promote compliance. We develop partnerships as much as we can. We know that the best way to tackle the problems that we find is through involving the business representatives. We then develop recommendations with them because we know that they have the practical understanding of what happens on the ground. Also, if they do not agree with them—for example, the supermarkets with meat processing workers—they work with us to set the

standards, along with the business representatives. From our point of view, we do not think it would make any difference.

In respect of small businesses, when we are enforcing, we have a particular provision within our compliance and enforcement policy to make sure that we are proportionate towards them, taking into account their resources and our understanding that they do not have human resources departments and so on. I do not think it would make any difference to us.

Sarah Veale: We think it is unnecessary. Furthermore, you have to bear in mind that regulators are there to regulate on behalf of a community that is in need of protection. To that extent, this is potentially quite dangerous if it takes them away from that prime, important function. So, no, I do not think it is necessary.

Mike Spicer: We do think it is necessary. To come back on Wendy's point specifically, what she has described is best practice and examples of best practice. We have to be aware that that is not by any means something that applies to every regulator out there. We would like to see more of the kind of activities that Wendy has just described. We know it is not uniform and we think this will help that along.

Chairman: We have a short period, but there is clearly going to be a Division. You want to raise issues relating to clauses 1 and 2.

Q132 John Hemming: It is the health and safety matters. The Government have said that this is a deregulatory proposal, which would affect 800,000 people and save them on average 37.5p each. From a common-sense point of view—and I am talking to the Chambers of Commerce—is it worth changing the law to benefit everyone to the tune of 37.5p?

Mike Spicer: I would like to make a broad point. If you look at the Löfstedt and Davidson reports, which looked specifically at this issue, it was highlighted as a clear example of gold-plating of EU directives. What is being proposed here is bringing the UK's approach in line with countries such as Germany and Sweden. I do not think anyone would suggest that those countries are the villains of the piece when it comes to health and safety. We see this as bringing it into line with best practice internationally.

Q133 John Hemming: I am always interested in specific examples of things that would change. Obviously any change you introduce in law creates confusion. This is one that does not seem to have a big financial benefit and will create some confusion. What is the specific improvement? I am obviously interested in the TUC's point of view as well.

Mike Spicer: I noted the TUC's evidence that this would not have an impact on whether or not a home worker, for example, would have to undertake a risk assessment. That is not what we understand by the way that this would operate. One of the benefits of this is that, once we have our prescribed list of activities, sectors and so on, if you are a self-employed person you are able to look at that list of activities and sectors and come to a judgment about whether you then need to go on and undertake a risk assessment. There is one example of it.

In terms of whether or not we should be pursuing this, if there is international best practice out there from countries such as Germany and Sweden that involves a lower compliance cost overall, then that is something that we should seek to emulate.

Sarah Veale: One thing needs to be very clear about Löfstedt. Although there is clearly some discussion about this, Löfstedt did not actually recommend removing health and safety protection from large numbers of self-employed people. It was the Government that decided to do that as a result of some issues that were raised by the Löfstedt panel.

The problem is that employment status in the UK is very complicated. When the Business Department does its surveys of the labour force to find out how people are

employed, people quite often wrongly categorise themselves as self-employed agency workers when they are nothing of the sort. Our real worry about this is that the Government's own statements about it say that they are doing this because of the perception among some self-employed people and businesses that there is an onerous burden on them. The trouble is that you cannot regulate to deal with people's perceptions. You can do an awful lot to clarify the existing law so that people do know whether or not they are covered, but there is a massive problem in areas like construction where people are put on to what we call bogus self-employed contracts. They are in positions where they are not only capable of damaging themselves and fellow workers but also members of the public.

The problem with all this is the messaging that is going to go out, which is that if you think you are self-employed you don't have to worry about health and safety any more. This is absolutely catastrophic if people start to wrongly think that what they are doing is not going to pose a threat to other people, even if that is not specifically what the legislation says. There is something Kafkaesque about the whole thing. You are not going to know whether you are covered by the Act or not until you find out. In a sense, the best instinct would be to do a risk assessment to see whether or not you are covered, in which case there is no point in changing the legislation. If people are still going to have to do all that to work out whether they are covered or not, you might as well leave it as it is and just make sure that there is proper guidance given to people who need it to help them ensure that, where they are covered by the Health and Safety at Work Act, they know that and can get help with the risk assessment. This is very dangerous stuff. It is politically tempting for a deregulatory Government but it is bogus. It is really worrying, and I think there are going to be some consequences at the end of this, which could, without being melodramatic, result in loss of life and serious damage to individuals.

Q134 John Hemming: Do you want to come back on that?

Mike Spicer: You will not be surprised to hear that I think that is hyperbole, to put it very mildly. As I say, there are international precedents for this. I do not think anyone would claim that Germany and Sweden are somehow lax when it comes to health and safety legislation, and yet what we are proposing here is to move our practice in line with theirs. That should not be a cause for the kind of hyperbole we have heard here.

There is a genuine issue that we can all accept here around the need for information and guidance to be clear. We would certainly agree with that and we have always maintained, as in our evidence, that the information function of HSE is absolutely critical—and we would like to see that maintained in the future.

Sarah Veale: On German labour law, it is a completely different legal system. Your employment status there is much easier to categorise. Where they exempt self-employed people, it is genuinely self-employed people who are not going to hurt anyone else. If you do it in this country, you are going to get all these people who are not self-employed thinking that they are not covered by health and safety legislation. It is not hyperbolic; it is the case. That is a fact.

Q135 James Duddridge: Who are these people who would define as self-employed that are not legally self-employed? I am unsure of the category of people.

Sarah Veale: This is particularly common at the moment in construction. People are taken on and told to sign these self-employed contracts so that they take care of their own tax liabilities. Actually they are working out there on building sites and are completely under the control of the employer. It is only a paper exercise that stops them from being an employee, which is a legal term, of the employer. It does not mean that they should be exempted from health and safety regulations simply because, by some trick on paper, they look as though

they are self-employed. They are not self-employed. This whole area needs to be very carefully looked at.

Q136 James Duddridge: They would not be, though, on site, would they?
Sarah Veale: Yes; they are on site.

Q137 James Duddridge: They would be on site, but they would not be exempted. They would fall within the regulations because they are on the site. If the same construction worker was sat at home completing their paperwork, for argument's sake, they would be exempt while sat at home but they would not be exempt when they are at a place of work with other people.

Sarah Veale: Except that all the stuff that is going out about this says that self-employed people are going to be deemed to be out of scope with health and safety regulation. A lot of people will think that it does not apply to them any more. I suspect some small businesses will wrongly think that this means that people they have on self-employed contracts in their small business do not have to be covered.

Q138 James Duddridge: To be honest, the idea that a large construction firm is going to think that they can throw health and safety out of the window simply because someone self-employs, because that works for both parties in an employment situation, is for the birds.

Sarah Veale: But right down the supply chain? They often use very small businesses three times down the supply chain. They have no idea what employment status those people have but they are on the site. You can go and ask the Health and Safety Executive. They would be able to show you examples of groups of people who are working in difficult circumstances.

Q139 James Duddridge: Can you evidence it? Reality-checking it, I do not believe what you are saying, so if you could provide additional evidence to the Committee that would be helpful.

Sarah Veale: We can do that.

Q140 Chairman: Do you think it will affect the insurance premiums of self-employed people if it is known that they do not have to do risk assessments? The insurance companies going to say, "Hang on a minute, we are going to pay out if there are any accidents here." Is that likely to put the premiums up, do you think? They have to carry insurance, do they not?

Sarah Veale: Intuitively I would say, yes, it will. If I was an insurance company I would insist on them doing a risk assessment, notwithstanding the law.

Kelvin Hopkins: Yes; 43 years ago I was dealing with bogus self-employment in the construction industry at the TUC. It is still there and it is a major problem. One of the factors in all this is that the death rate among self-employed people is substantially higher than among employed people. I have been told by BECTU that the recent figures suggest you are 3.4 times more likely to die if you are a self-employed person than you are as an employed person. That is because of the substantial number of people working in dangerous sectors such as the construction sector in particular. I would just make that point. Professor Löfstedt was really only concerned about those people who work online at home or in a cosy office where there aren't any dangers, apart from getting a shock when they put a plug in a socket. By and large, the Bill does not make that distinction. The Bill covers self-employed people.

Chairman: Are there any other points? I am watching the clock because the Minister is replying and any minute now he is going to sit down, and we can conclude this session with your good selves.

Q141 Lord Sharkey: I would like to talk about the deregulation of the tribunal's powers to make wider recommendations. I notice that in the TUC's submission you say that the net total benefits for repealing the provisions for the involvement of private sector employers are estimated to be between zero and £10,000. I would like to ask the wider panel whether, in view of that, this strikes you as a proportionate measure.

Sarah Veale: No; it strikes us as being completely disproportionate.

Lord Sharkey: I thought you might say that.

Sarah Veale: The number of claims now in 2012, when the last set of statistics that covered employment tribunal findings came out, suggested there had been 30 cases under this legislation, three of which involved very large companies. Our argument is that, even if only a relatively small number of people out of the total population whose employers had been found to have broken the law were captured by this, it is still sufficient to justify having some protection in place that this particular legislation gives them. It means that the tribunals, having looked behind the individual case, can see the systemic problem. Usually, a tribunal in a discrimination case will deal with the individual, compensate them and all that sort of thing—which is quite right and proper—but they are not able to continue down the chain, as it were, and say to the employer, "Your whole HR system is not working properly with respect to employing people from a BME background."

It just seems ridiculous to get rid of a piece of legislation that only affects employers who have broken the law. This is not sweeping through a whole swathe of businesses that are doing the right thing. Where businesses have broken the law, they quite often find it useful to have the tribunal help them to get things right. They don't want to end up back in the tribunal again; nobody does. Tribunals have been very good about not telling them what to do, but giving them some guidance on how they broke the law and what would need to be done in future to make sure that they did not accidentally make the same or a similar mistake.

Q142 Lord Sharkey: Mr Spicer, you may want to disagree with that.

Mike Spicer: I have two points. First, I totally understand Sarah's point about the small handful of cases there have been over the last year and the issue of proportionality in some. We would just make one point counter to that, in a sense. Often employers are advised by their lawyers to settle outside the tribunal because of the uncertainty, and the reputational and financial risks associated with a tribunal. This power for putting wider recommendations, though it has not been used that often, is something that employers have to take into account when they are making the decision whether to settle out of court. For that reason it is not used very often anyway and there may potentially be an impact on the way that employers approach a tribunal and whether they decide to settle or not. We just do not think it is something that should remain. That is what we said before in our evidence.

Q143 Kelvin Hopkins: If it is not used very often and it is not very onerous, why change it?

Mike Spicer: It is that second point. We are looking at how it shows up in the statistics. It is not just about the number of cases in which tribunals have made those recommendations. It is also the cases that we don't see, where there has been a settlement outside before it has got to a tribunal. The employers have taken into account the power a tribunal has to make those recommendations. Even though they are not binding, there are still reputational consequences from that.

Q144 Chairman: So it is irrelevant and excessive at the same time. That is the dilemma we are faced with. Those employers who don't go to the tribunal are also losing the opportunity of what amounts to a free management consultancy by the tribunal to tell them how to run their business. That seems to me to be a plus for the tribunal.

Mike Spicer: I am not sure many businesses would see going to a tribunal as free management advice.

Q145 Chairman: They sponge on regulators. They like the regulators to tell them how to run their business. It is a free management consultancy in many ways for some of them.

Mike Spicer: I am not sure that our members would agree with that.

James Duddridge: I have never heard anyone else make that suggestion.

Chairman: I can assure you that in the food industry, having spent four years at the Food Standards Agency, the meat industry loves the regulator to tell them how to run the meat plants. That is the reality. I know they will be annoyed about that, but that is the reality, day to day. Any minute now that gong is going to go, so we will try and stick to our time as much as we can. Can I thank you all very much for coming today? Lord Sharkey, I do apologise.

Q146 Lord Sharkey: I was going to ask the Commission for their views on the tribunals. I think you have a clear and concrete position.

Wendy Hewitt: Yes. Our view is that the wider recommendation power is useful. We do not think that the evidence has yet come forward sufficient to decide whether it should be abolished. We think there should be a review. When we receive the employment tribunal decisions relating to discrimination under the Equality Act, we follow them up. It is incredibly useful for us, when the tribunal have taken the time to work out what needs to change in a company to prevent any further discrimination and make that recommendation. In our view, they are proportionate and they are things that a company, in most cases, would want to do to prevent any possibility of ending up in the employment tribunal again. As you know, there is a defence to a harassment claim or discrimination where a company has taken reasonable steps. Our view is that it is a useful power.

Chairman: That is very helpful. Thank you very much for your attendance and your contribution to our deliberations.

Examination of Witnesses

Witnesses: **Graeme Fisher**, Head of Policy, Federation of Small Businesses, **Richard Jones**, Head of Policy and Public Affairs, Institution of Occupational Safety and Health, **Gay Moon**, Special Legal Adviser, Equality and Diversity Forum, and **Michael Harlow**, Governance and Legal Director, English Heritage, examined.

Q147 Chairman: Thank you very much. We are back in quorum. We understand we will not be interrupted for another half an hour, but nevertheless the quorum will disappear; so this is a fairly short session, I regret to say. Would you like to introduce yourselves first? Again, as I said to your colleagues earlier on, we really do appreciate the fact that you have

come to the Committee. We realise it is at very short notice because of the time constraints under which we are working.

Richard Jones: I am Richard Jones, head of policy and public affairs from the Institution of Occupational Safety and Health. I lead on all policy developments and public affairs issues.

Michael Harlow: I am Michael Harlow, the governance and legal director at English Heritage.

Graeme Fisher: I am Graeme Fisher, head of policy at the Federation of Small Businesses.

Gay Moon: I am Gay Moon, the special legal adviser to the Equality and Diversity Forum, which is a network of national equality NGOs.

Q148 Chairman: Would any of you like to make a brief opening statement? There is no obligation.

Gay Moon: I will start on the power to make recommendations. We are very concerned that so soon after it has been enacted this provision should be removed. At the moment the provision allows the employment tribunal—which, I should remind you, is an employment judge, a representative from business and a representative of the workers—having heard a case and having considered an employment situation, if they think that it is appropriate to make a recommendation and it is reasonably practical for that particular employer to comply with the recommendation, to make one. I should say that both the High Court and the county court have a much wider common-law power to make declarations, so this is quite a small power by comparison with the powers that the High Court or county court would have. We feel that it is a provision that will lead to less litigation rather than more because it recommends to an employer who has already breached the law things that they might do in order to prevent it happening again.

There is no evidence that the Government have produced to suggest that wider recommendations are ineffective or disproportionate. Indeed, we have heard Sarah Veale from the TUC say that in the year 2012 there were less than 30 recommendations made, so they can hardly be said to be onerous. We think they can reduce red tape for employers. If they are implemented properly, it will save employers possible future costs on further cases.

The other thing we would say is that we feel it is irrational for the powers of the independent judicial body to be too constrained. Having heard how a workplace operates and then making recommendations as to how it should improve the way it operates seems to be a thoroughly beneficial situation. In fact, I would say it is a win-win situation. I can certainly give you examples of specific cases if you want, but I will leave it at that for the moment.

Q149 Baroness Andrews: I should declare an interest as having recently stood down as the chair of English Heritage. My questions are the sort of questions I was asking the previous panel. I am trying to get absolute clarification from witnesses about the interaction between the growth duty and the existing responsibilities of regulators for promoting growth under their statutory responsibilities, whatever their prime statutory responsibility may be.

What are the sorts of functions that you think might be affected? How do you think these two sets of responsibilities will sit in relation to each other? Will there be greater clarity or confusion about your role?

Richard Jones: I should point out that, although this duty is for all non-economic regulators, IOSH's concerns are only with those of the Health and Safety Executive. We do not believe it is necessary to have this duty applied to the Health and Safety Executive. The HSE is a highly respected regulator. It already operates in a risk-based, proportionate and transparent way. It provides enormous amounts of free guidance on its websites to help

businesses. In fact, some of that guidance was cited in the consultation document as good practice. It has no fewer than four appeals and complaints processes. It should be said that good health and safety regulation creates a level playing field. It provides market confidence and it also provides an environment for growth. Our message is that good health and safety is good for business. Many studies have shown that those regulated by the Health and Safety Executive find that it is fair and proportionate.

Michael Harlow: We are concerned about outcomes—about historic buildings and sites being around for this generation and future generations to enjoy. That outcome is only going to transpire if people invest in properties. Some of the investment comes from public and charitable funds. Some of it comes from people simply wanting to look after their own homes of course. A lot of it comes from business, which may be motivated by a heritage dimension to what they want to achieve, but we appreciate, and have appreciated throughout our existence, that economically there has to be a motivation to maintain the building. The building does not look after itself. If we are talking about a listed building or an historic site, there has to be an understanding of the economics of the place in order to understand how conservation will be achieved.

It has been part of our philosophy—we call it constructive conservation—and process to consult with business, developers, business owners and owners of historic properties generally. It is part of our governance to take on board developer and owner interests. There are developers and owners on our Commission, our advisory committees and on our advisory boards.

Our advice to Government has recently focused very much on the efficiency of the regulatory system. We had a draft Heritage Protection Bill, which went through pre-legislative scrutiny. That was aimed at simplifying the system, making its purpose sharper and its effect the minimum it needed to be in order to achieve that. Unfortunately, that did not have enough parliamentary time. Recently, we enacted some changes recommended by Adrian Penfold in the Penfold review of non-planning consents, which again was aimed at reducing the burden on bringing forward developments, with particular focus on the very large number of non-planning consents. Terminal 5 was used as an example that had an enormous amount of non-planning consents. Those reforms came forward in the Enterprise and Regulatory Reform Act and are being enacted this year.

There are various compliance regimes that we abide by. There is the "Regulators' Code" and "Accountability for Regulator Impact", and we have a BIS improvement plan because we are a statutory consultee in the planning system. Within our funding agreement with DCMS we have a duty to promote sustainable development. There are very many ways—if not the pure logic of what we are trying to achieve—that people have to hold us to account as to how we behave in relation to achieving our objective of heritage conservation to ensure that the perspective of business, the impact on business and what it is they are trying to achieve is brought to bear on our advice and influence, particularly on the planning system. If it is not innate in the logic and in what we are trying to achieve, there is a lot there already that drives us towards the behaviour that this duty is driving us towards as well.

In terms of the relationship of the duty with what I would call our primary statutory functions—those in our founding National Heritage Act 1983—obviously when we first learned of this duty we were concerned about how we would resolve those two potentially competing duties. Whilst I would not wish to demur from what I was saying earlier about the importance of economic vitality in delivering conservation, of course there are sometimes conflicts in the planning system between economic growth and heritage conservation. If there were not, then we would not need a planning system.

How is it that we look on those two objectives when we have either a piece of systematic advice, a piece of guidance generic to how one treats heritage conservation in this

country, or a particular piece of casework? We very much rely on what Government have said in paragraph 3.7 of their consultation response about how one should view those two issues. It says: "The duty will not override existing duties to protect but will affect how those duties are met."

Perhaps it is a little bit simplistic, but what we take from that, and what we hope the guidance that will flow from clauses 59 and 60 will say, is that, if you were to take an example of where we were offering guidance on how to do something systematically, if there were two or more ways of doing it and all of them were equally as commodious so far as heritage conservation is concerned, it would be an obligation on us to think about which of those ways actually produced the least burden for everyone. That is not just for business but for owners as well. It is something we hope we would do anyway, obviously. We would need to understand the impact and then build that understanding into the way in which we approached it and the way we were advising local authorities to approach it.

In other words, it should not compete with our primary objective of being an expert in, and advising on, heritage conservation, but it may direct the way in which we achieve that objective.

Chairman: I want to stop you at that point because I am conscious that other members wish to ask questions. The point you have just made seemed ideal.

Q150 John Hemming: If growth was sustainable, would that be better, worse or make no difference?

Graeme Fisher: In our submission, we said we would favour sustainable growth because it is more of a long-term perspective.

Richard Jones: We are against the duty being applied to HSE, but, if there was a duty, sustainable growth is a better option. The IOSH vision is "A world of work which is safe, healthy and sustainable." So we are very much in favour of that.

Gay Moon: We were unhappy about the duty because we felt that there are already the Hampton principles that people have to operate to and will consider. By putting in an extra duty, you may divert people from the central task that they have been designated to produce.

Michael Harlow: The problem is the word "sustainable." You immediately reach for the definition within the planning system, which of course is quite a sophisticated and long fought-over definition of what "sustainable development" is at least. I am hopeful that the way this would work in practice is that it looks relatively straightforward to understand what the economic impact is. In other words, will it cost business more to do it this way versus that way? I am not sure, if that is what it comes down to in practical terms, that "sustainable" in that sense will make a great deal of difference, because we are not necessarily in a position to understand whether it is sustainable or not.

Q151 John Hemming: Can I ask the health and safety question of the FSB and the Institution of Occupational Safety and Health? What specific improvements would you expect from exempting, at an average cost of 37.5p, 800,000 people from health and safety? Do you have specific examples of where you think that would improve?

Graeme Fisher: I do not have specific examples. I think it is the perception issue that the Chambers were talking about earlier. By removing people from that regime where they will not harm other people will help for the perception of health and safety. There is a risk in some quarters that it becomes trivialised because it is applied in what people see as inappropriate circumstances. By focusing on the higher risk areas, it should improve the perception of health and safety.

Richard Jones: We are not so clear that this would improve the perceptions. It could even make it worse. It could reinforce the current regulatory myths and the negative

stereotypes that abound about health and safety. I would say in relation to the 37.5p per self-employed that that is probably an overestimate. In the foreword to the draft Deregulation Bill it talks about a saving of £300,000, but that is a figure that has come out of a 10-year amount; so £300,000 a year—

Q152 John Hemming: It is almost 4p a year.

Richard Jones: What it actually hides is that the impact assessment reckons that there will be a £1.7 million up-front familiarisation cost, which will have to be met in the first year. That wipes out all of that potential saving, as far as we are concerned.

Q153 John Hemming: So, from the point of view of having regard to sustainable growth, we should leave this for a bit?

Richard Jones: The other thing I would like to say is that we do not see any positive effect from this. Some of the employer bodies have said that there will be a negligible improvement here. I would like to point out that there is very little burden on that group that is intended to be exempted. They are not required to notify their premises to the health and safety enforcer. They are not required to have written policies or written risk assessments. They are completely exempt from the requirements of the Display Screen Equipment Regulations. It is hard to see what burden is being relieved here.

There is a lot made of risk assessment but it is an almost instinctive thing. For a self-employed person, wherever they are working and for the archetypal one working in their back bedroom doing computer programming, they will automatically carry out a risk assessment. It is such a quick and easy thing when you do not have to write it down. It is just in your head. Everybody carries out a risk assessment before they cross the road. Children can do it; it is such an easy thing. We do not believe there is a big burden here, so there will be no benefit in removing this from the health and safety law.

Q154 Lord Mawson: I am interested in a factual question. What experience have any of you had of actually running a business and paying the wages on a Friday or making sure you have enough money to pay the wages? I am very conscious that there is a heck of a lot of process coming down at people. The view down the telescope and the view up, whilst we use the same language, can be quite different and can feel quite different. I am wondering what practical experience you have of the view up the telescope.

Graeme Fisher: Before coming to the FSB, I ran a small business for five years in the food sector. You have alluded to risk assessments and the need to be very compliant—and rightly so. There is a suite of regulations that you need to adhere to. Going back to the point about the growth duty, quite a lot of those compliance issues are very helpful for business. In terms of stock rotation it will reduce wastage and should increase the efficiency of your business. Being compliant is a helpful means of improving the business. I have five years' experience of these things.

Q155 Lord Mawson: I am asking each of the panel on this matter. We are listening to lots of stuff today but I am interested in what practical hands-on experience there is of the world up the telescope.

Richard Jones: I do not have any experience of running a business, but many of our members do and they do not have a problem with this. I would point out the Health and Safety Executive's consultation on this and their revised impact assessments after they carried out the consultation. They did research; it was a small study. They had telephone interviews with 60 businesses that would fall within this exempt group.

Q156 Lord Mawson: Were these small or large businesses?

Richard Jones: These were self-employed people who would be the exempt group. They are effectively one-man bands who don't employ anybody. The general conclusion from the research was that there was little or no awareness and understanding of health and safety regulations or the requirements among those interviewed, but none of them thought that being exempted from the requirements would make any difference to them. They went on to say that interviewees were asked directly whether they thought the removal of health and safety obligations would make any difference to them. The response was unanimous, with all 60 stating that it would not. Many respondents indicated that they would just continue to work as they always did. Several said that they thought it would not change their behaviour because they thought they did not have any obligations in the first place and that the precautions they took were just common-sense practice.

Q157 Kelvin Hopkins: This international comparison is interesting. The Government argue that there is a perception that health and safety law is applied disproportionately in Britain compared with other countries. I would be interested to know of any facts that might sustain that.

Richard Jones: I thought it was interesting that the Davidson review a few years ago looked at gold-plating. He said—and I do not have the exact quote from him at the moment—something to the effect that some overinterpretation was acceptable. One of the things he pulled out as an example was including the self-employed in health and safety law, which was quite telling.

The other thing I would say about the Löfstedt report is that, although they were referring to other systems in Europe, I saw no evidence in that report that these systems were working well or that there were no downsides to it. It was just the fact that they exempt self-employed. As Sarah Veale said earlier, they have a completely different legislative system, so I don't think we are comparing apples with apples.

Q158 Kelvin Hopkins: Do they have bogus self-employment on the massive scale you find in the British construction industry, for example? Obviously you heard me saying in an earlier session that deaths in employment have halved in the last 20 years as a direct result of the Health and Safety at Work Act. That is very significant, but that in itself must surely help growth. If you avoid deaths, and injuries are commensurate as well, there is less cost to the health service. Companies are then possibly sued for compensation by grieving relatives. Sites have to stop when deaths take place and are being dealt with and there are all sorts of other reasons. Health and safety can actually promote growth and good economic performance.

Richard Jones: Absolutely. Our view is that mismanaging health and safety is a great drain on growth. The latest health and safety figures show that health and safety failures in the UK are costing us £13.4 billion a year. That does not include the cost of occupational cancers or property damage, which is estimated to double that figure.

Q159 Chairman: Mr Jones, on item (g) of your executive summary, you mention Europe and that an employer body representing small firms opposes the exemptions because of the creation of a two-tier market. Whereabouts is that? I could not find a reference to the country.

Richard Jones: In the reference section to our evidence—I am not quite sure which number it is—it is reference 11. It is the European Association of Craft, Small and Medium-Sized Enterprises. It is a position paper on an EC report. There is a section in there where they are extremely concerned about exempting small businesses from health and safety legislation

across Europe because they fear it will create a two-tier internal market where those who are exempted from law will find it difficult to get business with those who expect those they are dealing with to manage health and safety.

Q160 Chairman: Does the Federation have a view on that, Mr Fisher?

Graeme Fisher: We have taken a wider view on employment law when compensation no-fault dismissal was mooted some time ago. In that steer we took the same view—that exemptions were probably going to be unhelpful because of the risk of creating a two-tier labour market. There is some quite good evidence from France where the ceiling is at 50 employees—so some quite large firms. There are some very notable boundary effects where firms will grow up to the boundary and not want to go beyond 50 employees because a series of employment laws would then kick in.

Richard Jones: I would add another point there. One of our big concerns about exempting the self-employed is that there will be confusion. Our concern is that those who should not be exempt may think that they are. Sarah Veale touched on this earlier. If those in the hazardous environments take that approach, then it could have disastrous effects.

Q161 Baroness Andrews: I want to go back to the question of the duty. There is one area on which I am looking for clarification and it is the area of compliance. We heard various views from the previous panel on how compliance could be guaranteed. In your evidence, Mr Harlow, you actually say, "…we are concerned by the potential for confusion as to how compliance with…" the two regimes—that is the internal regime of the planning requirements and the new growth duty—"should be achieved and of overlapping reporting requirements." Could you tell us what you think might happen if there was not sufficient clarity or consolidation of the guidance that you are seeking? That seems to me to be a minimal requirement from what you say.

Michael Harlow: The danger is that people are probably looking for some way to challenge us. We do get challenged, and, as we all know from people who are contemplating a challenge and particularly if they are contemplating judicial review, they look for any chink in the armour even if it does not relate to the nature of their complaint. If there is a sense, even a wrong sense, among those seeking to challenge what we have done that somehow we have actively compromised our advice because we have not fully understood the economic benefits of what is being proposed—if somehow we have not taken on the full economic argument and therefore moderated what we would say about conservation of the historic environment—that would be an erroneous understanding, in my view, of how the duty would play out, but if that is how they understand, subject to what the guidance says, that the duty does play out—in other words, before we give guidance we should set the economic impact against the heritage objective and somehow resolve it ourselves—in many cases they will think that we have got it wrong. However, that is not what I understand the objective of the legislation to be and how it will play out in practice.

Q162 Baroness Andrews: Essentially, you seem to be saying that, if you have a situation where a developer is dissatisfied with the judgment, say, in a planning appeal case because you have not followed the growth duty as the developer might think you should have, they would attempt to take you to court on that. Are you saying that you can see a much more active role for the courts in the definition of what constitutes observance of the economic growth duty?

Michael Harlow: The legislation does provide for guidance. If the guidance is really good, then the courts will hopefully not be particularly engaged on that. I do think that we need a very clear understanding of the primacy of the objective of the regulator. The

secondary consideration of how they achieve that objective of what is best for the economy is my interpretation of how it reads.

Q163 Kelvin Hopkins: I am a strong believer in supporting heritage and buildings. In my view, too many buildings are knocked down, not enough are listed and so on. Preserving our heritage may be seen as a cost by some people, but it also generates growth, surely. It involves a lot of highly skilled, labour-intensive work in repairing and looking after buildings, for example. Investing in heritage could be seen as a promoter of growth generating demand in the economy and creating lots of employment.

Michael Harlow: You are preaching to the converted on that, of course. Heritage conservation makes a contribution to the economy. The developers that we talk to on a regular basis see the added value. If you look at the developments around King's Cross, you will see the quality of the offer in historic centres like Bath and York and you immediately understand just by walking around those places how heritage conservation contributes to investment and economic vitality.

Chairman: Thank you very much. I apologise for this session being truncated but we wanted to cover as much as we could. Bearing in mind that colleagues have to leave at 6 o'clock and there will be another vote, I hope you feel as though you have been able to put your main points across. You certainly have as far as I am concerned. Again, thank you very much for coming at such short notice, simply because of the time constraints under which we are working to report back to Parliament before Christmas.