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Debt Relief (Developing Countries) Bill: Committee Stage Report

Bill 83 of 2009-10 (as amended; Bill 17 as introduced)

RESEARCH PAPER 10/26 11 March 2010

This is a Private Member's Bill, introduced by Andrew Gwynne MP on 16 December 2009, and published on 19 February 2010. The Bill had its Second Reading on 26 February, and had its Committee Stage on 9 March; with Report Stage scheduled for 12 March.

This is a report on the Committee Stage of the Bill. It complements Research Paper 10/17 on the Bill as presented and considered at Second Reading.

The Bill seeks to limit the amount that can be recovered by any commercial creditor of a set of countries designated as having unsustainable external debts. It would apply to those countries eligible for the IMF/World Bank Heavily Indebted Poor Countries (HIPC) initiative. The legislation would restrict the activities of so-called 'vulture funds', which buy developing countries' sovereign debt at discounted prices, then seek to recover its value in full through the courts. Successful claims would be limited to an internationally agreed level, and apply equally to all commercial creditors. Debts incurred after the Bill's entry into force would be excluded.

In Committee, a new 'sunset clause' was added. The proposed legislation would now expire after one year unless renewed for a further year or made permanent by order.

Ian Townsend

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Summary

The *Debt Relief (Developing Countries) Bill* is a Private Member's Bill introduced by Andrew Gwynne in the House of Commons on 16 December 2009. It was published on 19 February 2010 [Bill 17 of 2009-10], with explanatory notes prepared by the Treasury. The Bill successfully cleared its Second Reading on 26 February, and was considered in a single Public Bill Committee sitting on 9 March.

The Bill seeks to limit the amount that can be recovered by commercial creditors from Highly Indebted Poor Countries, which have been designated as having unsustainable external debts, to the level thought necessary to return the debtor country's debt to sustainability. In doing so, it would regulate the activities of hedge funds and investment funds that buy developing countries' sovereign debt at discounted prices, then seek to recover its value in full through the courts. Critics refer to these as 'vulture funds'. New debts would not be covered by the Bill.

The Bill is supported by the Government and its provisions closely follow proposals outlined in a Treasury consultation response in February 2010. The consultation process raised several issues. Financial services sector responses were generally opposed to legislation, whereas NGOs were in favour. Library Research Paper 10/17, prepared for the Second Reading debate, gives more background, definition of terms and information on the Bill.

The Bill had broad cross-party support on Second Reading. Issues raised on Second Reading and in Committee included: interference with contractual rights; human rights issues; the retrospective impact of applying the legislation to judgements already made; uncertainty about the scale of benefits to developing countries; potential 'spillover' effects, including developing countries' ability to borrow; whether other countries would take similar action; and the possible impact on the UK as a financial services centre.

In Committee, two new clauses with similar aims were debated. The first would require a report to Parliament on the legislation's effects within a year. Under the second, a 'sunset clause', the legislation would expire after a year unless renewed by the House by an order approved by both Houses of Parliament (under the affirmative procedure). The 'sunset clause' was added to the Bill.

Concerns were further debated in Committee. Clarification was sought on country eligibility; the Bill's compatibility with human rights commitments (in relation to property), and concerns that legislation could increase commercial lenders' perception of developing country risk and thus increase their costs of borrowing.

The issue of whether the Bill should apply retrospectively to existing court judgments and its compatibility with article 6 of the European Convention on Human Rights was debated. Excluding them was thought to reduce the potential benefits under the Bill by a third. There is an amendment down on this issue for the Report stage. Members also debated the likelihood of other jurisdictions (particularly the US) implementing legislation, and the implications for the UK as a financial services centre.

Report stage is scheduled for 12 March 2010.

1 Introduction

The *Debt Relief (Developing Countries) Bill* is a Private Member's Bill introduced by Andrew Gwynne MP. It was introduced in the House of Commons on 16 December 2009. The Bill was published on 19 February 2010 [Bill 17 of 2009-10], along with explanatory notes prepared by the Treasury.

The Bill successfully cleared its Second Reading on 26 February, and was then considered in a single Public Bill Committee sitting on 9 March. Its Report stage is scheduled for 12 March.

The Bill seeks to limit the amount that can be recovered by commercial creditors from certain debtor countries that have been designated as having unsustainable external debts. In doing so, it would regulate the activities of hedge funds and investment funds that buy developing countries' sovereign debt at discounted prices, then seek to recover its value in full through the courts. These are referred to as 'vulture funds' by their critics. It would be limited to countries that have been determined to have unsustainable debts (those eligible for the Highly Indebted Poor Countries (HIPC) initiative), and would explicitly exclude new debts.

Detailed background, definitions of terms, and information on Bill's provisions can be found in Library Research Paper 10/17, *Debt Relief (Developing Countries) Bill [Bill 17 of 2009-10].*

The Government has indicated its support for the Bill. It follows proposals outlined in the Treasury's response to its consultation on this issue published in February 2010, alongside Explanatory Notes to the Bill and a revised Impact Assessment (updating that published in the original consultation document).[1]

This Research Paper summarises the Second Reading debate and Committee Stage deliberations, and notes the new sunset clause that was added to the Bill during Committee stage.

The Bill's progress through its Parliamentary stages can be followed on the Parliament website bill page, with an RSS newsfeed of progress (see also Bill Gateway on the Parliamentary intranet).

[1] HM Treasury, Ensuring Effective Debt Relief for Poor Countries: a consultation on legislation, July 2009, HM Treasury, "Ensuring effective debt relief for poor countries: a response to consultation", February 2010, para 2.28, Debt Relief (Developing Countries) Bill - Explanatory Notes, and HM Treasury, "Impact Assessment of measures to address non-participation in debt relief", February 2010.

2 Second Reading debate

The Bill had an unopposed Second Reading on 26 February 2010.[2]

Sally Keeble opened the debate, on behalf of Andrew Gwynne, stating that the Bill "was enormously significant for people living at the sharp end of some of the most acute poverty in the world":[3]

> It will prevent commercial creditors, some of them secretive private investment funds, from free-riding on the generosity of the British taxpayer. It will enable poor countries to concentrate funds on much needed new schools, hospitals and other direct services, instead of having to pay unsustainable levels of their Government revenues to service international debt.
>
> The Bill strengthens the UK's commitment to debt relief. This country can take pride in the pioneering role that our Government have played in developing the international initiative to end developing country debt. The Bill takes the logic of public sector debt cancellation into the private sector, and it sets out for the financial services industry some limits to the dealings in which the industry can engage in developing country debt.
>
> One of the results of the credit crunch is public anger about some of the activities of the financial services industry. Profiteering on the back of the debt of some of the poorest people in the world is perhaps the most objectionable activity of all. By passing the Bill, we as a Parliament and as a society will be setting boundaries and saying, "No further."

She added that, while there had "much speculation about the number of financial institutions that will be affected" by the Bill:[4]

> The financial institutions that are likely to be the most sharply affected are the so-called vulture funds-companies that buy up the sovereign debt of the poorest countries on the secondary markets, often at highly discounted prices, and then try to recover the full amount, plus costs and fees, through the courts-often, unfortunately, through the UK courts.
>
> Many of those funds do not participate in debt relief, and by litigating for full repayment of their debt, they reduce the effectiveness of the international debt relief programmes of the UK, our international partners and responsible commercial creditors, and make less effective the very large amounts that the Government and other donors provide in aid for developing countries.

Andrew Stunell, speaking for the Liberal Democrats and a member of the International Development Committee, said he was:

> [...] happy to record my party's strong support for the Bill, which it sees as an important and practical, although small, way of assisting some of the poorest countries in the world-and, more importantly, the millions of poor people who will benefit when this legislation comes into force [It was] a necessary measure to close a loophole that most people probably do not believe could ever have existed in the first place.[5]

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2 HC Deb 26 February 2010 cc559-584
3 ibid., c559
4 ibid., cc559-560
5 ibid., c564

David Gauke, Shadow Minister for the Treasury and speaking for the Conservatives, said there was "a cross-party consensus and real concern about debt:[6]

> We believe that the Bill is extremely well intended and addresses an important issue, and we are grateful for the opportunity to examine it closely to see what we can do about the problem. In our view it should have an opportunity to go to Committee [...]

He raised a number of points of concern.

Contractual rights would be affected by the legislation, and the view in the UK was that these rights "should be respected"[7] and provide certainty. The legislation also raised potential human rights issues, which the Government believed could be overcome because of the compelling policy reasons for the Bill. **David Gauke** believed these should be debated in detail.

He raised the question as to whether the legislation should apply to original creditors as well as those who had bought debt on secondary markets (the latter including the so-called 'vulture funds').

The extent to which the legislation would benefit developing countries was also raised, as was the accuracy of the Treasury's estimate of the benefit to developing (HIPC) countries of those monies not transferred to commercial creditors, which had been revised down from £254 million initially to £145 million in the Bill's Impact Assessment. He noted "arguments that that methodology was wrong, out of date and failed to address several points", and that the Treasury itself had flagged "a degree of uncertainty" over its estimates.[8]

The scale of any 'spillover' costs associated with the Bill (such as increased costs of lending for developing countries) could undermine the benefit to developing countries. He noted that the Treasury "acknowledges uncertainty"[9] over these spillovers, and that they were "based on markets assuming – or at least contemplating the possibility of – a significantly increased risk that the Government will in future enact legislation different from that being introduced."[10]

He also asked whether other countries would follow the UK with legislation to address what was an international problem. His "principal concern" was the effect on developing countries, but also noted "a commercial knock-on effect for the UK, were contracts simply to use a different form of law-for example, New York law."[11] This effect would in part depend on other jurisdictions did, including the US, where proposals to tackle vulture funds had been introduced in Congress. He also sought the Government's views on a 'sovereign debt work out mechanism', which would allow countries to address their bad debts as individuals and companies could through bankruptcy or voluntary liquidation.

Ian Pearson, Economic Secretary to the Treasury, speaking for the Government said it fully supported the Bill:[12]

> It was not a hard decision to support a Bill that will protect the debt relief that is vital to the development of the world's poorest countries by preventing it from being exploited and diverted. It will do so efficiently and fairly, respecting legitimate commercial rights,

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6 ibid., c565
7 ibid., c566
8 ibid., c570
9 ibid., c568
10 ibid., cc568-569
11 ibid., c570
12 ibid., c571

> and will ensure that the aid and debt relief funded by UK taxpayers will be used effectively to tackle global poverty.

He noted that around one-fifth of litigation cases against HIPC countries since 2002 had been brought in the UK, and said:[13]

> I find the actions of commercial creditors morally repugnant. Only legislation, in the Bill before us today, can prevent such free riding under UK laws and in UK courts by a small minority of unscrupulous commercial creditors. By passing the Bill, I believe that we can help to protect Liberia, Ethiopia, Sierra Leone, the Democratic Republic of the Congo and the other heavily indebted poor countries facing litigation.

Ian Pearson made a number of further points.

There was no immediate prospect of an international solution to the problem of certain commercial creditors not taking part in debt relief initiatives. A sovereign debt work-out mechanism had been discussed some years previously, but there was no “renewed prospect” for international proposals.[14] The Government had “instead prioritised consulting on and supporting measures though legislation”.[15]

Interfering with contractual rights in this case was “morally and economically justified”, and done only where “there is a compelling public policy case to do so”.[16] He highlighted precedents for “changing existing contractual and other property rights” and said:[17]

> I am clear that creditor rights are vital to smoothly functioning financial markets and they should be altered only in exceptional circumstances. That, however, is what I think this Bill does-these are exceptional circumstances because the international community has come together to agree to debt relief as a solution to what has been a decades-long debt crisis. It has commanded support from all the major creditor countries and from very many commercial creditors. Governments have taken the steps they can to reduce the problem without legislation, but although it has been reduced, the problem remains. A piece of legislation tightly targeted at a fixed and limited stock of historical debt owed by the poorest countries provides an important means of tackling the problem.

He did not expect the legislation “to result in any significant impact on the UK's competitiveness for financial services.”[18] He said concerns that the Bill could jeopardise “the City and its status” as a financial centre “have been overstated”, and those expressing concerns “do not necessarily object to the targeted measures in the Bill, but they say that they would not want them to go further.”[19]

On a similar point, **Andrew Stunell** said:[20]

> There are other centres of financial services and court regimes and, if the loophole is shut here, those anonymous financial experts will no doubt start to look elsewhere in greater numbers than before. We already know that the United States legislature is

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[13] ibid., c574
[14] ibid., c574
[15] ibid., c575
[16] ibid., c575
[17] ibid., cc577-8, The precedent noted were the Banking (Special Provisions) Act 2008 and the Banking Act 2009 “both of which provide, in limited and defined circumstances, for powers to transfer the shares in, or property of, a bank to another person. (c575)
[18] ibid., c575
[19] ibid., c576
[20] ibid., c565

> looking at parallel proposals. I hope that this morning will start a domino effect that will end up closing, at worldwide level, this ridiculous loophole and redirecting income streams that were always intended to alleviate poverty in poor countries back to those countries without further delay.

Sally Keeble noted that there was "a need for international action": legislation had been introduced in the US, and there was a need "to look to other European jurisdictions to ensure that similar action is taken." She added:[21]

> Importantly, however, action must start somewhere, and if it starts in this country that is fine, particularly given the global role of our financial services industry and the fact that our courts are often, unfortunately, the locus for action. In reality, we make a start and then look to the rest of the world to follow, as my hon. Friend said we have done on other issues.

Christopher Chope, a Conservative backbencher, also recorded several reservations.

He said the Minister had not adequately addressed investment managers' concerns about the impact of the Bill on indebted countries' future ability to access finance.[22] He later added: "in terms of commercial loans in the private sector, the consequences of the Bill's measures will be dire in the extreme, and will ultimately prove to be to the detriment of third world countries."[23]

He was also concerned about the retrospective nature of the legislation, and that intervention "can be justified only in the most extreme circumstances, and I do not think that the Government have set out those extreme circumstances."[24] This has implications for compliance with the European Convention on Human Rights (ECHR), as had been raised in responses to the Government's consultation. He added:[25]

> if we are unable in future to demonstrate some consistency in how we organise our legal affairs in this country, potential creditors will engage in forum shopping and make sure that the contracts are drawn up in law other than English law and that the forum where they are determined are courts other than the British courts. That would undermine our system of justice. As a result of history, we have, in London in particular, an international forum for resolving international disputes by both arbitration and litigation, and that provides employment to a lot of people. Anything that is done that, unwittingly or otherwise, has the consequence of undermining that very important part of the British economy can only be bad news.

Closing the debate, **Sally Keeble** said:[26]

> We obviously could not get through all the stages today because, rightly, it needs scrutiny and discussion and people need to see that happen so that they can be reassured. However, we do need to get it through before the election and time is limited, so I hope we can get Government time for Committee stage, and Opposition support for that. I urge my hon. Friends who are the business managers, and the hon. Member for South-West Hertfordshire, to ensure that that happens, because there is a further issue at stake: the credibility of this House and of our processes.

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21 ibid., c560
22 ibid., c579
23 ibid., c580
24 ibid., c579
25 ibid., c580
26 ibid., c584

She warned that:

> [...] people will have heard that there is huge support for this legislation from all the parties, and that is unusual. They will say, "Well that's funny; everybody agrees with it, and everybody says that it is a good idea and that they want it to happen-so why hasn't it happened?" That is why it is important that if there really is a political consensus on getting this measure on to the statute book-and sooner rather than later, because things take time to get up and running again after an election-we take the opportunity to do it. This is not a matter of the political arguments, because we have been through them all and they have pretty much been won; this is a matter of the political will to manage the process. I very much hope that in the remainder of this Parliament this will all be achieved. I commend the Bill to the House and I hope that people will support its Second Reading.

Members made several references in the debate to a BBC Newsnight item on vulture funds screened the previous evening.[27]

NGO reaction

The Jubilee Debt Campaign, a coalition of NGOs that have vocally supported measures to limit the activities of 'vulture funds', welcomed the successful Second Reading, but "expressed disappointment" that the Conservatives had delayed passage of the Bill "by insisting it goes through full committee stage." It also claimed that the Conservatives "failed to give a commitment to tackling the issue" should they win the General Election.

Nick Dearden, Director of Jubilee Debt Campaign said:[28]

> We are delighted that the vultures bill attracted cross-party support, and we understand the desire of MPs to scrutinise the bill to make sure it is as effective as possible. But we are also concerned that the bill may now fail to become law through lack of time. We call on all political parties to ensure that this bill progresses as fast as possible through Parliament, and that all parties commit to introducing legislation if they form a government in a few months time.

[27] "On the trail of the vultures picking over Liberia's debt", BBC Newsnight, broadcast 25 February 2010.
[28] "Vultures Bill passes second reading, but Tories slow progress", Jubilee Debt Campaign, 26 February 2010

3 Committee Stage deliberation

The Bill was considered in a single Public Bill Committee sitting on 9 March 2010. A full transcript is available from the Parliament website.[29]

Sally Keeble said it was "an historic Bill":[30]

> it is the first to deal with this issue, which is a concern in a number of countries. We have an opportunity to get the Bill through by the end of this Parliament. Given the time constraints, it is important that the issues are aired and that people are clear about the Bill's purpose.

Two amendments were proposed. Neither amendment was put to a division. ***Clauses 4 and 6*** were not debated.

Two new clauses were proposed. The first would have required the Treasury to report to Parliament on the legislation's effects within one year of coming to force. The second was a 'sunset clause', whereby the legislation would expire after one year, unless renewed for one further year or made permanent by order. The new 'sunset clause' was added to the Bill in preference to the duty to report to Parliament.

The Bill is scheduled to have its Report stage on 12 March 2010. The notice of amendments includes a proposal to leave out ***clause 5***, on qualifying judgements.

3.1 Qualifying countries (*clause 1*): amendment

One "probing amendment"[31] was a proposed by **David Gauke** for the Conservatives, intended to clarify the countries that qualify under the Bill. It would effectively limit to those countries currently in the Highly Indebted Poor Countries (HIPC) and five further countries that had been identified as eligible, but had not yet entered the initiative: Comoros Islands, Eritrea, Kyrgyz Republic, Somalia and Sudan.

The issue concerns a 'sunset clause' for the HIPC initiative took effect at the end of 2006, the IMF and World Bank chose to extend the HIPC initiative to any country that met its income and indebtedness criteria on the basis of its 2004 statistics. Potentially, further countries (beyond the five noted above) that did not meet the policy conditions previously remain eligible if they were to meet them at some point in the future, although there would be limited scope for this (e.g. revised or previously entirely unknown statistics).

David Gauke stated that he "was not entirely clear when reading the provision whether it included simply those potentially eligible initiative countries identified at that point, or subsequently." He said the use of the word "currently" in the Explanatory Notes suggested "that the position could change, and that it is not a cut-off point." He made reference to ***clause 1 subsection (11)***, under which any future changes to eligibility conditions for HIPC would not apply for the purposes of the Bill. He added:[32]

> One reading of the Bill suggests that a country could become eligible and at that point, debts that were entered into before the legislation's commencement, but which could not currently be identified because we do not necessarily know which countries will become eligible, would suddenly fall within that jurisdiction.

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[29] PBC Deb 9 March 2010
[30] ibid., c6
[31] ibid., c5
[32] ibid., c5

Sally Keeble said the legislation "is based on the 2004 ring-fencing of the HIPC initiative, so there is no question of revisiting the matter and including new countries, to a point", adding:[33]

> There are some countries that might have been completely closed but might have been eligible for the HIPC initiative at the 2004 point, based on information that has come to light. The example that springs most to mind is Afghanistan, which, on the 2004 figures, qualified for the initiative. I imagine that Zimbabwe is the only country anyone can think of that is currently a closed society in which information is not known, that might be included on 2004 data.
>
> The only other possible circumstance would be a country that currently does not exist but for which there is data, and it is clear that on the 2004 data it would have qualified. Perhaps the only such country that one can think of is southern Sudan, and people would accept that, given the circumstances—depending on what happens, as there will be a referendum there—that might also be appropriate. It is not a matter of saying, however, that we will have a 2008 or 2009 cut-off point. The data that are used to determine whether a country is a HIPC were ring-fenced in 2004 and are therefore not open to variation. That provides a consistent and coherent way of dealing with the debts of a closed list of 45 countries, as set out in the explanatory notes.

Following the clarification, the amendment was withdrawn.

3.2 General debate on qualifying countries *(clause 1)*

There followed a general debate on the merits of the Bill and country eligibility: whether it was too broad or too narrow and should cover all developing countries.

The matter was broadly accepted to be a balance between interfering with contractual rights (with potential effects on availability of finance and interest rates for developing countries) on one side and preserving UK debt relief expenditure from unfair appropriation and protecting the interests of developing countries on the other.

David Gauke said:[34]

> [...] we recognise that there are times when we have to do so in a case of bankrupt individuals and insolvent companies. He is making a helpful point; those are the narrow circumstances in which interfering with contractual rights can be accepted.

Rt Hon Stephen Timms, Financial Secretary to the Treasury, said:[35]

> The Government agree that the Bill should mirror the internationally agreed HIPC initiative, as the clause specifies. The aim is to ensure that all creditors provide debt relief in line with the initiative, as the vast majority of creditors are already doing.

Sally Keeble acknowledged that some argued for broader coverage of the Bill provisions than the HIPC countries alone, but it was important that the Bill was "properly targeted"[36] on the most indebted countries. She outlined the "two logics" within the Bill:[37]

> One is about justice for developing countries; the other is about justice for British taxpayers, [another] is about different types of debt being treated equitably but also about protecting British taxpayers' interest. The HIPC countries have benefited from

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[33] ibid., c6-7
[34] ibid., c9
[35] ibid., c10
[36] ibid., c11
[37] ibid., c10

> UK taxpayers' funds, so there is a need to ensure that different types of debts are treated equally. That second logic is often overlooked in some of the discussions.

She also acknowledged the issue of moral hazard:[38]

> The moral hazard of letting people off their debts is why it is so important that the legislation is carefully defined with safeguards so that we cannot suddenly extend the list of countries and extend the debt to others. My right hon. Friend the Financial Secretary has set out why new debts are not included. If we look at the other part of the HIPC initiative, the debt write-offs and the protection against profiteering by vulture funds and others have a quid pro quo, which is that developing countries have to engage in the programmes that are required as part of the HIPC process. That also gives some protection against what otherwise might be seen as the moral hazard of the excuse of private debt.

John Hemming also raised the issue of whether Government corporations should be included alongside sovereign debt.[39]

3.3 Qualifying debt *(clause 2)*

Tim Boswell sought clarification over the definition of external debt, specifically whether the currency the debt was denominated in was relevant and whether debt owned by multiple creditors was an issue for the functioning of the legislation:[40]

> Presumably some of the debt is factored around, and may be owned by a number of creditors who may or may not be resident in the particular country, quite apart from the fact that the currency may or may not be a currency that goes from outside that country to another country. I am concerned to probe whether, if there are different categories of creditor, some of whom are clearly resident in the country and others of whom may not be, that affects the treatment of the overall debt, or means that individual debts would be treated differently, depending on whether the holder of the tranche of the debt was in one country or another.

David Gauke also raised the "carve-out" in ***clause 2(3)(a)*** of the Bill for liabilities arising from goods and services. In response, **Sally Keeble** stated that ***clause 2*** reflected World Bank and International Monetary Fund (IMF) definitions, and that residence was not based on currency but on the country of residence of the creditor. She added that the Government had confirmed with the IMF that it had "been able to apply the residence test without difficulty."[41] The "carve out" for goods and services was also part of the standard definition, and "if we included liability to pay for goods and services, almost all Government spending would apply to the kind of relief involved, and that would clearly be unworkable."[42]

3.4 Amount recoverable *(clause 3)*

David Gauke raised the human rights concerns that had been highlighted during the Second Reading debate and through the Government's consultation process.[43]

The concerns reference article 1 of protocol 1 (A1P1) of the European Convention on Human Rights (ECHR). **David Gauke** noted the Government's view that the Bill constituted a

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38 ibid., c11
39 ibid., c9
40 ibid., c 12
41 ibid., c12-13
42 ibid., c13
43 This issue is explored in part 5.4 of Library research paper 10/17 and paragraphs 41-50 in the Explanatory Notes to the Bill.

'control of use' of possessions, rather than a deprivation of possessions, as creditors would still retain the ability to recover some of the debt.[44] This would an important distinction for judgments on the compatibility of the legislation with human rights commitments.

He also raised the point that retrospective measures on this point could be compatible with A1P1 if an "'obvious and compelling public interest' was met.[45] While he accepted "the obvious and compelling public interest in the Bill", he noted that some consultees had argued that because of "the narrowness of the Bill", the benefit to developing countries was "now so small that the compelling nature of the public interest has diminished." He also noted the reduction in Treasury estimates of the benefits to HIPC countries had been revised down (from £254 million initially to £145 million in the Bill's Impact Assessment), and its acknowledgement of the inherent difficulties in estimating them.

Tim Boswell noted the hierarchy of ECHR rights, and that property rights in the protocol were "in a sense, subordinate" to considerations "such as murder, torture and the rights of prisoners and of family life, which are convention rights."[46] He also commended the Treasury's consideration of the human rights implications in the Explanatory Notes. He also raised the potential "danger of forum shopping — of people going somewhere else if they think they will get a better deal."[47] **Tony Baldry** also noted that proceedings regarding some debt in Africa could be brought in the UK or South Africa.[48]

Rt Hon Stephen Timms confirmed the Government's view was that "the Bill is compatible with the European convention on human rights." He added:[49]

> It reduces the recoverability of debts in line with the HIPC initiative. The reduction, in our view, is not a deprivation of property but a control of use. The European Court of Human Rights has found there to be a deprivation only where there is a total practical or legal extinction of the rights of ownership. Under the Bill's provisions, the creditors will still retain an asset of some economic value. Although the face value of the debts will be considerably reduced by the Bill, their current market value is likely to be much lower than their face value. We consider that control of use to be justified in the interests of promoting fairness among creditors and promoting the development of poor countries.

He said the £145 million estimate was "as good an estimate as one can make." (c20) He also notes that, in Liberia's case, the sums involved represented 5% of annual government revenue, and that claims for active or unresolved law suits reported by the World Bank amounted to $1.2 billion. **David Gauke** noted arguments against this approach, that claimants had a tendency to inflate their claims which were later reduced by the courts. C19

Clause 4 was not debated separately.

3.5 Judgements for qualifying debt *(clause 5)*

Clause 5 concerns the treatment of judgments that have already been made prior to the Bill's entry into force.

David Gauke argued that ***clause 5*** was "key": "If we stripped it out, we would substantially reduce the best estimate of £145 million".[50] He also noted suggestions that Liberia would

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[44] ibid., c14
[45] ibid., c14
[46] ibid., c16
[47] ibid., c16
[48] ibid., c14
[49] ibid., c18

benefit due to the judgment made at the end of 2009, and not more widely.[51] **Rt Hon Stephen Timms** stated that the benefit to HIPC countries "would be reduced by a third" if ***clause 5*** was removed.

David Gauke also raised the issues on enforceability of judgments and ECHR article 6:[52]

> [...] the explanatory notes set out the grounds on which the Bill can be distinguished from such decisions. Those grounds include the state itself being a party to the proceedings, or situations in which the state could and should have adopted other measures to achieve its objectives. Clearly the state—the UK—is not party to the proceedings. Could the objectives have been achieved in other ways? [...]
>
> The second argument is that the Bill would be significantly hindered if it did not extend to judgment debts, which is the point that I was making a moment or so ago. [...]
>
> The third distinguishing feature is that in this context, there is little difference in principle between creditors who have obtained a judgment debt and other creditors.
>
> [...] it seems to suggest that the more contentious the judgment, the more important its enforceability.
>
> The final point, set out in the explanatory notes, is that
>
> "judgment debts are possessions within A1P1. It would be inconsistent for the state to be given a wide margin of appreciation in relation to A1P1 for judgment debts, but to be subject to an absolute prohibition when controlling the use of judgment debts by the terms of Article 6."

John Hemming noted that the situation was analogous to "insolvency legislation, where judgment debt is treated the same as non-judgment debt. Neither of the creditors is preferred, and on that basis, the application is not retrospective."[53]

Stephen Timms added that:[54]

> [...] having legislation that affects cases where a court has already given judgment rightly raises some important issues. It is not something that should be done lightly or often—it needs to be considered carefully. Here, there is a compelling case for doing so on three grounds, which the hon. Gentleman touched on. First, there is $1.2 billion-worth of HIPC debts worldwide on which judgments have already been made or action is continuing. Other creditors can theoretically go to court before any legislation comes into effect to get judgments on those debts, which would then be excluded from the legislation. Creditors would be able to enforce those debts in UK courts against the assets of poor countries, disrupting trade and investment, which would clearly be inconsistent with the aims of the legislation.
>
> Secondly, excluding judgments would not be economically logical. The purpose of the legislation as a whole is to limit repayment of otherwise valid debts to the level the debtor can afford to repay.
>
> The question that follows is whether to exclude some kinds of debts, such as judgment debts, which would, in effect, be treating them more favourably. I do not think there is a

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50 ibid., c22
51 ibid., c21
52 ibid., c21
53 ibid., c22
54 ibid., cc22-23

> strong argument for doing that; it is logical to treat them equally. The judgment will have been reached on the validity of the debt, rather than on the debtor's capacity for repayment. The hon. Member for Birmingham, Yardley is right to highlight the strong similarities with insolvency law, which provides for a fair and orderly restructuring in situations in which creditors' claims in total exceed the capacity for repayment. As he says, in insolvency law, a debt on which there is already a judgment is not, in general, treated more favourably—that is, to be repaid at the expense of other debts. The same effect should apply in this legislation, as the hon. Gentleman suggested.
>
> Thirdly, excluding judgment debt would considerably reduce the effectiveness of the legislation. Around a third of the value transferred to creditors would be at stake. If we accept the reasons for enacting this legislation in general, it is important that the judgments be included. Although I recognise the seriousness of this issue, we should include judgments and this clause should stand part of the Bill.

Concluding, **Sally Keeble** noted that:[55]

> [...] the main point is to have consistency and to deal with different types of debt equally and fairly. To exclude judgment debt would be to give status to a particular type of debt, which would not be consistent with the orderly management of the debts of the country in question. It is very important, therefore, that clause 5 remain part of the Bill.

The notice of amendments for Report Stage includes a proposed amendment to leave out ***clause 5***.

3.6 Remaining clauses

Clause 6 was not debated, and ***clauses 7, 8 and 9*** (as published) of the Bill were debated briefly.

On ***clause 8***, **Sally Keeble** clarified that: "When claims have already been settled they should not be reopened, because it would cause many difficulties and would be of questionable benefit." The only other substantive point made was about the delay of two months between Royal Assent and entry into force ('commencement'). **Sally Keeble** replied "I understand that that is standard."

3.7 New clause 1: Duty to report on impacts (not adopted)

New clause 1, proposed by **David Gauke** for the Conservatives, would have required the Treasury to report to Parliament on the effect of the legislation within one year of coming to force. This report would cover:

- Effects on availability and cost of lending to HIPC countries, on potentially eligible HIPC countries, and on other (non-HIPC) developing countries;
- The scale of the transfers from creditors to debtors due to the legislation; and
- Any change in the choice of law and jurisdiction for financial contracts.

He argued that witness sessions would have allowed greater scrutiny and proved "useful in these circumstances":[56] "the parliamentary timetable has meant that we have been unable to

[55] ibid., c23
[56] ibid., c25

question and scrutinise in Committee those who have raised concerns about the Bill." [57] He said a report could provide clarity on the inherent uncertainties highlighted:

> It would be helpful to consider the matter again to see what has actually happened. Will some of the concerns turn out to be overblown? Will there be a detrimental impact? What will be the benefit to developing countries in terms of the debt that is not pursued? How many cases will be dropped? How much will the amount to be recovered be reduced by as a consequence of the judgment, and so on?

It would also allow time to see whether "other jurisdictions will follow suit".[58]

John Hemming believed that this new clause had merit, while the second new clause (see below) did not.[59] **Rt Hon Stephen Timms** said the Government kept "all legislation under review" and "would certainly do so in this case, without the need for the proposed duty to do so." [60]

The clause was withdrawn.

3.8 *New clause 2*: Duration of Act (*clause 9* of the Bill as amended)

New clause 2 was proposed by **David Gauke** as an alternative method of tackling the inherent uncertainties around the Bill to the first new clause (above). It proposed a 'sunset clause', whereby the legislation would expire annually unless renewed for one further year, or made permanent, by order. Each House of Parliament would have to approve a statutory instrument by the affirmative procedure.

David Gauke raised the potential 'spillover' effects of the Bill (which would include for example increasing the perceived risk premium of developing countries to lenders), and proposed a sunset clause of one year to allow the Bill to proceed while allowing for an assessment of its effect. At the end of a year they could see[61]

> [...] whether there has been a risk premium, and what the benefit to developing countries has been. At the very least, the new clause would stop the pursuit of outstanding debts under the HIPC regime over the course of those 12 months, and would provide immediate relief for developing countries that are in the scheme."

The new clause included the option to renew the legislation for a further year (if insufficient evidence was available) or make it permanent.

He said the legislation was "somewhat rushed", and called for "a proper opportunity to scrutinise the provisions" of the Bill further, and suggested that the International Development Committee might wish to inquire into the issue: "It could dig into the evidence on the basis that the Bill was on the statute book. We could then see what the Bill's impact was, and would have the opportunity to return to the issue."[62]

Rt Hon Stephen Timms, Financial Secretary to the Treasury, said he had "some reservations"[63] about the new clause, but that "in the interests of ensuring that the Bill is

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57 ibid., c26
58 ibid., c25
59 ibid., c26
60 ibid., c26
61 ibid., c27
62 ibid., c27
63 ibid., c28

passed smoothly" he was happy to accept it, noting that there was "an advantage in ensuring that the effect on new lending is assessed before making the Bill permanent."[64]

Sally Keeble said that "although we would prefer not to have to accept a sunset clause, in the interests of ensuring that we can make orderly progress, the new clause should be agreed." She concluded:

> The Bill will be a world first, and I am sure that it will be greatly appreciated by other jurisdictions around the world and by developing countries.

The clause was duly added to the Bill.

NGO reaction to 'sunset clause'

In its Committee Stage response, the Jubilee Debt Campaign said:[65]

> The only amendment passed was a sunset clause - a clause which means the bill could be repealed after a year if it seems the bill has not worked or has had negative side effects. Although we accept the need to make sure law is achieving what it's intended (indeed there's an argument to be made for having a sunset clause attached to all legislation) we think it will be very difficult to assess the impact of the act effectively (it's really trying to prove a negative) and we are worried that this could be used to drop the law once interest in this issue is less intense. At least, we want to make sure a proper debate would have to ensue before repeal could take place.

[64] ibid., c28
[65] "Committee stage for vultures bill", Jubilee Debt Campaign, 10 March 2010

Appendix 1: Members of the Public Bill Committee

Chair

Mr Christopher Chope *(Christchurch)* (Con)

Members (16)

Tony Baldry *(Banbury)* (Con)

Mr Brian Binley *(Northampton South)* (Con)

Mr Tim Boswell *(Daventry)* (Con)

Peter Bottomley *(Worthing West)* (Con)

Mr Tom Clarke *(Coatbridge, Chryston and Bellshill)* (Lab)

Michael Connarty *(Linlithgow and East Falkirk)* (Lab)

Frank Cook *(Stockton North)* (Lab)

Mr David Gauke *(South West Hertfordshire)* (Con)

John Hemming *(Birmingham, Yardley)* (LD)

Sir Gerald Kaufman *(Manchester, Gorton)* (Lab)

Ms Sally Keeble *(Northampton North)* (Lab)

Mr Andrew Love (Edmonton) (Lab/Co-op)

Judy Mallaber *(Amber Valley)* (Lab)

Stephen Pound *(Ealing North)* (Lab)

Mr Stephen Timms *(East Ham)* (Lab) – Financial Secretary to the Treasury

Mr Roger Williams *(Brecon and Radnorshire)* (LD)

Committee Clerk

Eliot Wilson

Appendix 2: Guide to amended Bill clauses

The following is only a selective summary. A clause-by-clause summary can be found in the Explanatory Notes to the Bill,[66] with further details available in the Library Research Paper for Second Reading of the Bill[67] (part 5), and the Treasury's response to its consultation and revised Impact Assessment.[68]

This has been updated from the original in the Second Reading to include the new 'sunset clause' (***clause 9***).

Qualifying debt *(clauses 1 & 2)*

Clauses 1 and 2 define which debts qualify under the Bill.

Clause 1, subsection (2) specifies that the Bill applies in relation to the IMF and World Bank Heavily Indebted Poor Countries (HIPC) initiative only.

Clause 1, subsection (3) defines the relevant debt for the Bill's purposes to be external public debt of a country eligible or potentially eligible for the HIPC initiative. For HIPC countries it applies to debt "incurred before decision point is reached" (subsection (3)(d)). Any additional debts occurring after decision point (before and after completion point) would therefore not be subject to the Bill's provisions. ***Subsections (4) and (5)*** clarify that debt incurred before the Bill enters into force and restructured after decision point is reached is to be treated as if it was incurred at its original time (and therefore remains eligible for treatment under the Bill's conditions). These subsections allow new debts to be covered if they replace old debt through debt restructuring. As the Explanatory Notes state, this approach "follows the practice of the Initiative in determining whether or not a debt is included in the Initiative on the basis of the nature of the original debt, rather than of a replacement that arises through a restructuring."[69]

Clause 1, subsection (6) clarifies that "potentially eligible" countries are determined by the IMF and World Bank, and refer to countries where decision point has not been reached. The five eligible countries which have so far not taken part in the initiative (at 'pre-decision point') are: Comoros, Eritrea, Kyrgyz Republic, Somalia and Sudan. ***Subsections (11) and (12)*** state that, should the HIPC initiative eligibility conditions (based on income, debt or economic size) for debt relief change after the Bill enters into force, any such new conditions will not apply under this legislation. The Explanatory Notes state that these clauses "stop the scope of the Bill from expanding (or contracting) if a future policy decision were reached to change" the HIPC conditions.[70]

Clause 2, subsections (2) and (3) define exactly which debts are applicable and not applicable respectively under the Bill. Eligible debt is specifically that to which the HIPC Initiative applies, based on definitions used by the IMF and World Bank. Short-term debt, of

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[66] Debt Relief (Developing Countries) Bill - Explanatory Notes

[67] Library Research Paper 10/17 *Debt Relief (Developing Countries) Bill*

[68] See HM Treasury, "Ensuring effective debt relief for poor countries: a response to consultation", February 2010 and HM Treasury, "Impact Assessment of measures to address non-participation in debt relief", February 2010.

[69] Debt Relief (Developing Countries) Bill - Explanatory Notes, para 13

[70] ibid., para 14, specifically: "The current conditions for a country to be designated eligible or potentially eligible for the Initiative include the following: (i) for the country's income levels currently and at the end of 2004 to be below the level for qualification for lending from the World Bank's International Development Association and the IMF's Extended Credit Facility and (ii) for its level of indebtedness at or before the end of 2004 to be such that it would remain above sustainable levels even after provision of a 67% reduction in the net present value of its debts through so-called traditional relief."

under one year, is specifically excluded in ***subsection (3)(b)*****,** unless it should have been discharged more than year before the Bill enters into force or more than a year before decision point (where a given country has reached decision point), in ***subsection (4)***. ***Subsections (5)*** **and** ***(6)*** define 'public' debt to include that incurred by a government (including local government), central bank/monetary authority or a "body corporate controlled (directly or indirectly)" by such either. ***Subsections (7), (8)*** **and** ***(9)*** define which debt is to be regarded as 'publicly guaranteed' and 'external' for the purposes of debt qualifying under the Bill. ***Subsection (10)*** allows for debt to be considered as external debt (and thus qualifying) unless it is proved through proceedings over disputed debt not to be external.

Recoverable debt *(clauses 3-5)*

Clause 3 limits the amount a creditor can recover to the amount they would have been able to recover under HIPC debt relief terms.

Clause 3, subsection (1) applies this principle to the original debt and any "causes of action" linked to it, such as "a damages claim."[71]

In instances where a creditor and debtor have agreed to reduce a debt/cause of action, ***subsections (3)*** **and** ***(4)*** ensure that the HIPC debt reduction level is applied to the original debt, rather than the negotiated lower value, which the explanatory notes state ensures "that a creditor that has agreed to such a compromise is not disadvantaged in comparison to a creditor that has not."[72] ***Subsections (5)*** **and** ***(6)*** apply the same principle to rescheduled debt repayments, while ***subsection (8)*** ensures debt reductions apply to secured debt, where "the secured creditor attempts to enforce the security."[73] ***Subsection (9)*** ensures that UK courts must apply the reduction even if they are applying foreign laws.

Clause 4 specifies what the 'relevant proportion' to be used in ***clause 3*** should be. It states that this should be the proportion under the HIPC initiative. This is essentially the sustainable debt level determined by the initiative, i.e. the 'traditional' level of debt relief (of 67%),[74] plus reduction by the 'Common Reduction Factor', this being the proportion of debt creditors' are called on to forgive in order to reduce the country's debt to a sustainable level. The Explanatory Notes offer this example:[75]

> The Common Reduction Factor for an eligible country might be 33%. A debt of £100, if reduced in accordance with the Initiative, would first be reduced by 67% through traditional relief, to a new value of £33. Further reduction by the Common Reduction Factor gives the amount the debt would be if it were reduced in accordance with the Initiative (A) as £22, and hence the relevant proportion as 22%.

The Bill assumes that the country concerned has reached completion point, even if it has not done so. This is because creditors may not actually provide debt relief at decision point (although they do in practice), only at completion point, hence the Bill assumes that envisaged debt relief will take place. If a higher Common Reduction Factor is needed at completion point, the notes state that HIPC practice of using the most recent figure would be followed.[76] ***Subsection (3)*** sets the relevant proportion as 33%, for those 'potentially eligible' countries which have not begun the HIPC initiative, and so have had a reduction factor calculated for their debt. On the basis that 'traditional' debt relief of 67% would be the

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[71] ibid., para 18
[72] ibid., para 17
[73] ibid., para 20
[74] Paris Club debt rescheduling on 'Naples terms', involving 67% debt reduction in Net Present value terms.
[75] Debt Relief (Developing Countries) Bill - Explanatory Notes, para 24
[76] ibid., para 26

minimum reduction those countries could expect (given that the purpose of the HIPC initiative was to help those countries that could not reduce their debts to sustainable levels through traditional debt relief mechanisms).

Clause 5 allows for the value of judgments and arbitration awards to be reduced in line with Clause 4. This applies to judgments made before the Bill comes into force (two months after Royal Assent), and is therefore retrospective. It also applies to the enforcement of judgments made in foreign jurisdictions which are being pursued through the UK courts.[77]

Remaining clauses *(clauses 6-10)*

Clause 6 exempts any sovereign debts where the debtor country does not offer to reduce that debt to the level that HIPC terms would allow for. The Explanatory Notes state that the purposes of this provision, which is not part of the HIPC initiative:[78]

> […] is to increase the creditor's prospects for recovering the amount to which it remains entitled, and to encourage the debtor to participate in negotiations to agree settlement of the debt rather than oblige the creditor to recover the debt through the courts.

Where judgements (or attempts to pursue foreign judgments) were made before the Bill entered into force, those proceedings are excluded from this provision. As noted above, this provision is not currently part of the HIPC initiative, and as the Explanatory Notes state: "In those situations, the reduction will apply to the judgment or award, without the need for the debtor to make an offer."[79]

The Bill covers foreign judgments, other than those exempted by ***Clause 7,*** where the UK is obliged to implement certain judgments, "even where such enforcement is contrary to the UK's public policy," while ***subsections 6(2)(a)* and *6(2)(b)*** also exclude "two procedures for fast-track enforcement under EU Regulations" which apply only to uncontested claims.[80]

Clause 8 ensures that nothing already paid by the debtor in relation to any of debt liabilities covered by the Bill should be returned as a result of it.[81]

Clause 9 (of the Bill as amended) is a new clause added at Committee Stage (see part 3.8) which sets a time limit on the legislation, i.e. is a 'sunset clause'.

Subsection (1) states that the legislation would expire one year after coming into force: fourteen months from Royal Assent. However, ***subsection (2)*** allows the Treasury to renew the legislation by one further year by statutory instrument, approved by a resolution of both Houses of Parliament, as established in ***subsections (4)* and *(5)***. ***Subsection (3)*** also allows for the Treasury to make the legislation permanent by the same process. ***Subsection (6)*** states that should the legislation not be renewed or made permanent and expire, it should be "treated as never having been in force", and that for any judgments made while the legislation had been in force and where the amount recoverable was less than it would otherwise have been, the original amount, rather than reduction agreed under HIPC initiative, should stand.

Clause 10 (of the Bill as amended) states that the legislation would enter force two months after Royal Assent, and that it extends to the whole of the UK.

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77 see ibid., para 28
78 ibid., para 30
79 ibid., para 3
80 ibid., paras 33, 34 and 35
81 ibid., para 37