PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TAXATION (CROSS-BORDER TRADE) BILL

Seventh Sitting

Thursday 1 February 2018

(Morning)

CONTENTS

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

not later than

Monday 5 February 2018

The Committee consisted of the following Members:

Chairs: †Ms Karen Buck, Mrs Anne Main

† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Chapman, Douglas *(Dunfermline and West Fife)* (SNP)
† Dakin, Nic *(Scunthorpe)* (Lab)
† Davies, Chris *(Brecon and Radnorshire)* (Con)
† Dodds, Anneliese *(Oxford East)* (Lab/Co-op)
† Dowd, Peter *(Bootle)* (Lab)
† Hair, Kirstene *(Angus)* (Con)
Hardy, Emma *(Kingston upon Hull West and Hessle)* (Lab)
† Hill, Mike *(Hartlepool)* (Lab)
† Kwarteng, Kwasi *(Spelthorne)* (Con)
† Menzies, Mark *(Fylde)* (Con)
† Morris, Grahame *(Easington)* (Lab)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)
† Rowley, Lee *(North East Derbyshire)* (Con)
† Rutley, David *(Lord Commissioner of Her Majesty's Treasury)*
† Stride, Mel *(Financial Secretary to the Treasury)*
† Stuart, Graham *(Parliamentary Under-Secretary of State for International Trade)*
† Sturdy, Julian *(York Outer)* (Con)
† Wragg, Mr William *(Hazel Grove)* (Con)

Colin Lee, Gail Bartlett, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 1 February 2018

(Morning)

[Ms Karen Buck *in the Chair*]

Taxation (Cross-border Trade) Bill

11.30 am

Clause 23

Approvals and authorisations granted under regulations

Clauses 23 and 24 ordered to stand part of the Bill.

Clause 25

Disclosure of information

Kirsty Blackman (Aberdeen North) (SNP): I beg to move amendment 117, in clause 25, page 17, line 2, leave out "1998" and insert "2018".

This amendment seeks to provide that the powers of disclosure cannot be exercised in breach of the updated data protection framework to be enshrined in the Data Protection Bill as enacted.

It is a pleasure to serve under your chairmanship, Ms Buck. Amendment 117 is a tidying-up amendment. The Scottish Law Commission raised the point that the relevant data protection legislation for the purposes of the Bill will be the Data Protection Act 2018, not the Data Protection Act 1998. The amendment would simply make a technical change to ensure that the correct legislation is used.

The Financial Secretary to the Treasury (Mel Stride): It is a pleasure to serve under your chairmanship, Ms Buck. Clause 25 permits disclosures for customs duty purposes, but makes it clear that disclosures that would contravene the Data Protection Act 1998 are not permitted. Amendment 117 would provide instead that disclosures that would contravene the Data Protection Act 2018—currently the Data Protection Bill—were not permitted.

The Government intend that data protection safeguards will need to be complied with when powers under the Bill are exercised. Given that the Data Protection Bill is not yet in law, it would be inappropriate to refer to it in this Bill, but I am happy to assure the Committee that the Government are committed to ensuring appropriate data protection safeguards and will therefore seek to make the appropriate amendments at the appropriate time. In the meantime, I ask the hon. Lady to withdraw her amendment.

Kirsty Blackman: If the Government amended the Bill to specify "appropriate data protection legislation", rather than "the Data Protection Act 1998", that would fix the problem and ensure that the correct legislation is used. I am sure that the Minister has listened, so I will not press the amendment to the vote, but I hope the Government will make reasonable changes on Report or at another stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 25 ordered to stand part of the Bill.

Clauses 26 to 29 ordered to stand part of the Bill.

Schedule 7 agreed to.

Clause 30

General provision for the purposes of import duty

Anneliese Dodds (Oxford East) (Lab/Co-op): I beg to move amendment 81, in clause 30, page 18, line 9, at end insert—

"(2) No regulations may be made under this section after the end of the period of two years beginning with exit day.

(3) In this section, "exit day" has the meaning given by section 14(1) (interpretation) of the European Union (Withdrawal) Act 2018 and subsections (2) to (5) of that section apply to the term under this section as they apply to the term in that Act.".

This amendment limits the duration of the delegated power under Clause 30 to the period ending two years after the United Kingdom leaves the European Union.

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

Amendment 131, in clause 30, page 18, line 9, at end insert—

"(2) No regulations may be made under this section unless a draft has been laid before, and approved by a resolution of, the House of Commons.".

This amendment requires regulations under Clause 30 to be subject to the affirmative procedure.

Clause stand part.

Amendment 132, in clause 32, page 19, line 32, after "regulations" insert "under section 30 and".

This amendment is consequential on Amendment 131.

Anneliese Dodds: It is a pleasure to see you in the Chair, Ms Buck, and a pleasure to see the rest of the Committee.

Our amendments would qualify the powers in clause 30 that enable the Treasury to make, by regulation, a wide range of provisions relating to the imposition of import duty. In particular, amendment 81 advocates the inclusion of a sunset clause, whereby no regulations can be made under clause 30 after the end of the two-year period, beginning with exit day, when the UK is set to leave the EU.

The Government suggested on Tuesday that the Opposition's contributions had been on the theme of greater parliamentary accountability, for which I suspect many of our constituents would thank rather than criticise us. Today, one of our themes will be the use of sunset clauses where appropriate. I hope the Minister will listen to our arguments with an open mind.

It is not just the Opposition who have argued for the use of sunset clauses in the Bill and more generally. The House of Lords Committee that examined the subject also recommended their greater use. My hon. Friends will elaborate on that point later. I will point out the Government's inconsistent approach to this Bill compared with the use of sunset clauses in other areas.

The European Union (Withdrawal) Bill commits to ensure that delegated powers in many of the areas it covers will not be available in perpetuity but only for the period necessitated by leaving the EU, and yet even that approach is not adopted here. The Enterprise and Regulatory Reform Act 2013—not necessarily an Act that I would otherwise support, because of its negative impact on health and safety regulation—appropriately suggested that sunset clauses could be a helpful mechanism

to ensure that provisions are kept up to date. That commitment was placed into guidance on the conduct of impact assessments, which advocates that

"opportunities to use sunset clauses should be explored where appropriate."

The use of sunset clauses was a core element of the better regulation agenda. In theory, the Government are still committed to that, although I was pleased to hear from the Prime Minister that she will remove some elements of it, such as the one in, two out rule.

There are many other historical parallels. Sunset clauses applied to legislation used during the first and second world wars, and to legislation dealing with a heightened terrorist threat. The lack of a time limit on some temporary legislation passed in the second world war exposed Governments to legal action in the late 1970s, when they tried to implement new control orders on the export of goods using the temporary legislation that had never been repealed.

I am not saying that sunset clauses are never abused. Arguably, in the US, President Bush sprayed them around routinely and inserted them into tax-cutting measures to try to hide the magnitude of revenue that the US Government would lose over time. However, they can play an important role when they are used appropriately, especially in trade and customs policy. The OECD's policy framework for investment explicitly mentions the need to consider including sunset clauses in trade facilitation measures.

Antonios Kouroutakis published an interesting book a couple of years ago on sunset clauses. He shows that they have been used for centuries as a means of balancing the powers of the Executive with those of the legislature, especially when there is a need to develop parliamentary consensus and accelerate decision making when time is tight.

I am not sure about other Committee members, but I cannot imagine an epoch that fits those characteristics more fully than this one. The Government should aim to build trust across Parliament, not diminish it, and to achieve parliamentary consensus. I hope they will heed our call for a sunset clause in clause 30 and take it as the constructive suggestion that we intend it to be.

Mel Stride: Clause 30 allows the Treasury to make regulations for the purposes of import duty, which will prove necessary to ensure that the UK's import duty regime operates effectively. As the Committee will be aware by now, the Bill contains several new powers to make regulations. As I have explained, although the Bill sets out the requirements for import duty, the need for more detailed rules will likely arise once the new regime is implemented. That is what the power in the clause allows for.

The clause permits regulations to be made to deal with administrative matters, the needs of which cannot be identified at this time because, for example, of unforeseeable changes in business practice. It is worth noting that the Union customs code, which establishes the current customs regime, provided powers to the Commission to make implementing and delegated Acts to supplement the rules set out in that code.

Amendment 81 seeks to limit the period in which the power to make regulations under clause 30 can be exercised to two years after exit day, as the hon. Lady outlined. The power will ensure that the UK can make the regulations necessary to deliver an effective import regime into the future. It allows the Treasury to respond as necessary to any future developments that might have a bearing on import duty.

The power will play an important part in ensuring we have the ability to address any circumstances that arise in the future that might require modification in the UK's import duty regime, conceivably beyond the term of the period that the hon. Lady has suggested. It is for that reason that the power in the clause is not subject to a time limit. Amendment 81 seeks to impose just such a time limit of two years following exit day. If it were accepted, there would be a risk of limiting the Treasury's capacity to make or require changes to the UK's import duty regime in the future.

To pick up on a specific point raised by the hon. Lady about the Lords Committee and its assessments around sunsetting, it should be noted that the aims of this Bill are somewhat different from some of the other Brexit Bills that were referred to in that report. For example, while the European Union (Withdrawal) Bill makes provision for day one, with the understanding that further primary legislation will be made to supplement it, this Bill will be required in order to maintain a functioning customs regime and effective VAT and excise regimes on an ongoing basis. That is a key point. For those reasons, I urge the hon. Lady to withdraw the amendment.

Amendments 131 and 132 seek to apply the draft affirmative procedure to regulations under clause 30. As I set out to the Committee previously, the Bill ensures that the scrutiny procedures that apply to the exercise of each power are appropriate and proportionate, taking into account what could be covered by the regulations and the frequency and speed at which changes may need to be made. The Government believe that the negative procedure for regulations made under clause 30 provides an appropriate level of parliamentary scrutiny. The Government need to be able to administer the tax system effectively, for example to collect the right amount of tax from the right person at the right time. That clearly applies to the collection of real-time taxes such as import duties. Changes in circumstances, for example the emergence of a new category of goods or the proliferation of one means of importing goods, may need to be addressed in real time. Therefore, application of the draft affirmative procedure to regulations made under clause 30 is inappropriate. Unlike the negative procedure, the draft affirmative procedure will not be capable of implementing those essential policy changes immediately. Before the UK joined the EU, none of the provisions that could be made in secondary legislation in relation to import duty were subject to the draft affirmative procedure. For those reasons, the Government do not support the amendments.

Anneliese Dodds: I am grateful to the Minister for that explanation. However, I wonder if I could probe a little further. First, will it be possible for the Government to legislate in order to extend some of the provisions if necessary? Is that a theoretical or actual possibility? It is my understanding that it would be both. Therefore, it is not clear to me why he does not accept the sunset clause.

Secondly, the Minister referred to the need to insure that the Government can respond to calls for frequency and speed in processing new measures. He appeared to imply that that need might go beyond two years after

[Anneliese Dodds]

the Government's planned exit day. I wonder how many years exactly he envisages that we might need the last-minute decision-making proposed in the Bill. Will it continue indefinitely? If that is the plan, it might concern many constituents.

Mel Stride: The hon. Lady knows the answer to her theoretical question—whether in theory Parliament could, in the absence or with the existence of a sunset clause, none the less extend the provisions in the Bill—as well as I do. It is, of course, yes: Parliament can decide to do broadly that which it wishes to do in the legislative sphere.

How long we expect to rely on the provisions in the Bill and whether that will be beyond two years depends on a wide variety of circumstances, some of which will almost certainly necessarily be completely unknown at the current time. We do not actually know for certain whether there will be an implementation or transition period with the European Union and what the length of that would be, for example. That situation and the fact that, on an ongoing basis, we will need to make adjustments to regulations, potentially into the future, justify the measure.

The final point is that the clause and its powers do not amend primary legislation. They introduce new secondary legislation and the scope is restricted solely to those matters in relation to import duty. I hope that, on that basis, the hon. Lady might consider withdrawing her amendment.

Anneliese Dodds: We are willing not to have a vote on the amendment, but we hope that the Government have listened to our concerns, particularly on the need to ensure that there is appropriate review. The intention behind much of the push for greater use of sunset measures is the concern that these provisions could be extended to cover other areas potentially not directly connected to the UK leaving the EU, as the Government have said they wish to do. I hope the Government continue to be mindful that there are concerns that the measure is part of a wider attempt to allocate more power to the Executive, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 30 ordered to stand part of the Bill.

11.45 am

Clause 31

Territories forming part of a customs union with UK

Peter Dowd (Bootle) (Lab): I beg to move amendment 6, in clause 31, page 18, line 31, at end insert—

"(3A) Before laying a draft of an Order in Council before the House of Commons in accordance with section 32(10)(a), a Minister of the Crown must lay before the House of Commons a statement about—

(a) the arrangements entered into; and

(b) the Minister's assessment of the effect of the arrangements on trade relations with other countries and territories."

This amendment requires a statement to precede a draft of an Order in Council giving effect for the purposes of import duty to a Customs Union with another country or territory.

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

Amendment 82, in clause 31, page 19, line 10, at end insert—

"(8) No regulations may be made under this section after the end of the period of five years beginning with exit day.

(9) Any Order in Council made under subsection (4) and any regulations made by HMRC Commissioners under subsection (5) shall cease to have effect after the end of the period of six years beginning with exit day.

(10) In this section, 'exit day' has the meaning given by section 14(1) (interpretation) of the European Union (Withdrawal) Act 2018 and subsections (2) to (5) of that section apply to the term under this section as they apply to the term in that Act."

This amendment limits the duration of the delegated power under Clause 31 to the period ending five years after the United Kingdom leaves the European Union and limits the duration of any delegated instruments under the Clause to six years, so that a permanent customs union would require primary legislation.

Clause stand part.

Peter Dowd: It is a pleasure as always to see you in the chair, Ms Buck. I want to speak to Opposition amendments 6 and 82, which seek to amend clause 31. Clause 31 in its current form gives Ministers the powers to create a customs union between the UK and another country, overseas territory or multilateral body, including, for example, the European Union.

There has been much debate in this Committee of the possibility of the UK forming a customs union with the European Union after we leave. It is stating a fact that when the UK leaves the European Union it will also leave the European customs union. However, we have been consistent in our belief that it would be wrong to take the option of the UK forming a customs union with the EU off the table at this early stage of UK negotiations. Therefore, we welcome the Government making specific provision for the option of a customs union in the Bill.

There are a variety of customs unions, and an internal customs union between the UK and its overseas territories and Crown dependencies is far different from a customs union with a single country or a multinational organisation such as the EU. It is a welcome sign that the Government have considered that and ensured that clause 31 is drafted in a way to fit the scenario.

Although the Opposition accept the principle of what the Government are attempting to do, we once again take issue with the concealed manner in which they plan to do it. Under the measures in clause 31, the formation of a customs union would be made through the declaration of an Order in Council, completely cutting out Parliament, in effect, as I understand it—the Minister may wish to clarify that.

We have heard from Ministers on a number of occasions that their action is related to delegated legislation, for example, and that it is always commensurate and proportionate. Setting up a customs union, of whatever construction, without commensurate and proportionate parliamentary involvement is not consistent with the approach that the Government have taken thus far in relation to that commensurate and proportionate principle. It is simply a matter of the Government changing the goalposts capriciously. I completely acknowledge that the Minister may put me right on that.

This appears a rather strange way for the Government to uphold the central theme espoused by those advocating leaving the European Union—of "taking back control." It confirms one of the central objections that we have made time and time again, and stated throughout this Bill and others, concerning Executive overreach and the centralisation of power. That issue will not go away any time soon. Conservative Members also have concerns about that.

Opposition amendment 6 would instead require a Minister to make a statement to the House of Commons on the establishment of a customs union, outlining the specific details of the customs union and how they were reached, as well as the effects of the new customs arrangements on trade with other countries and territories. I consider that—I think that most people will—to be the minimum level of parliamentary oversight that we should expect, and one that would ensure the Government are accountable to this House.

Several customs unions exist in the world, including the EU customs union, Mercosur and the Caribbean Community. There are more in the pipeline, with negotiations on potential customs unions taking place in the middle east, parts of Africa and between New Zealand and Australia. Under amendment 6 the House will be able to give proper scrutiny to what kind of customs union the Government have in mind. Is that a detail that Parliament need not bother about? Our view is that it is an important fact.

If the Government intend to keep the option of forming a future customs union with the European Union on the table, as clause 31 makes possible, they must consider the variety of needs of UK businesses, manufacturers and stakeholders. Customs unions are ordinarily designed to address trade in goods. However, the new UK-EU relationship will also need to deliver trade in services, cross-border Government procurement and, possibly, regulatory equivalence, as well as a host of other issues that others may want to comment on. I have made that point previously.

The debate on the UK's future trading relationship remains controversial. The Secretary of State continues to shroud the progress of future deals in a veil of secrecy, under issues to do with commercial sensitivity, except when, as today, we are told there will be £9 billion of trade with China. The Government pick and choose what to tell us. We have consistently opposed such a level of secrecy, and we believe that Parliament should have the right to give proper scrutiny to future trade agreements and customs arrangements.

Amendment 6 would therefore ensure an open process, and a level of transparency around the negotiation and establishment of a customs union; it would ensure that the negotiation and implementation would be subject to parliamentary scrutiny. The amendment would also allow Members of the House, who bring diverse experience—a vast range of experience in many situations—and who represent a variety of key sectors and stakeholders, to debate an issue that is very important.

The Government would also be required under the amendment to consider the impact of the establishment of a customs union on trade with other territories and countries. That is an important factor, particularly given that, currently, the UK's membership of the EU customs union means it is unable to enter into trade agreements outside the EU. Part of the issue is that we have seen what happens when Governments do not consider the impact of entering a customs union on trade with other countries.

We need only go back to the time when we first entered what was then the European Economic Community. We failed to take account of the impact on trade with Commonwealth countries, which then accounted for 20% of all imports and exports. The result was unhappy and damaging, with Commonwealth countries losing out. The Labour Prime Minister had to renegotiate better terms that ensured that trade with Commonwealth countries could continue. There is a history, and we need to make sure we get things right, as best we can. Parliament's role is to tease those issues out, especially given the seriousness of this.

Amendment 6 is intended to prevent a scenario such as I have outlined by requiring Ministers to make clear to the House and other trading nations the possible impact of forming a customs union—internally or with another country or a multinational organisation—on trade.

Amendment 82 would limit the period for which a customs union agreed by the Government through delegated legislation could be in force. It would set the period at six years, after which the Government would have to introduce primary legislation if they wanted to extend the customs union. The amendment would be an important part of guaranteeing that Parliament, not the Executive, would have the final say in any customs union that was established. It would constrain and limit Ministers' power and ensure that the long-term establishment of a customs union would receive the proper parliamentary scrutiny that such a move deserves.

Under clause 31, delegated powers could be used to bring the UK into a permanent customs union without a vote in the House of Commons. In that scenario, Members would not be able to assess the benefits of that customs union before the Government entered into it. There would also be no recourse to a reversal of the decision if it proved costly to the UK—other than through primary legislation, presumably, so let us do that first. Just as the Opposition have forced and required the Government to concede a vote to the House on the final deal reached in the negotiations between the UK and the European Union, amendment 82 would require the Government to put the formation of a future customs union to a vote.

There is of course a difference between a temporary customs union and a permanent one, and amendment 82 makes that distinction. While we accept that the Government may need the powers in clause 31 to put in place temporary measures as part of a transitional process, more permanent changes should receive proper parliamentary oversight and sanctions. We believe six years to be time enough for the House to consider the net benefits or costs of a customs union, be that an internal customs union with overseas territories and Crown dependencies, or a customs union with another country or a large, multinational organisation such as the EU. Six years would prove enough time for Members to assess whether that customs union protects UK manufacturers, supports UK businesses and works in the interest of the country.

As the Minister has stated many times, the Bill is a framework Bill. Clause 31 sets out framework powers that will give Ministers the ability to introduce regulations

[Peter Dowd]

for the creation of a customs union. Our opposition to this matter is clear: while we welcome the Government including these powers in the Bill, as I said earlier, amendments 6 and 82 would guarantee that Parliament has the final say.

Mel Stride: Clause 31 caters for a situation in the future in which the UK has made an agreement with an overseas country or territory to enter into an arrangement to establish a customs union. The clause allows such a customs union to have effect for the purposes of import duty. It also allows HMRC to make regulations that might prove necessary to ensure that a customs union functions effectively.

As I previously set out, the Bill caters for a range of possible outcomes after the UK has left the EU. There are various circumstances in which the Government might wish to establish a customs union with a country or territory overseas, and to have that union apply for import duty purposes. One instance might be to establish a customs union with a Crown dependency—namely Jersey, Guernsey and the Isle of Man.

The clause caters for any international arrangements such as this that establishes a new customs union. The clause does not provide the power to enter into an international agreement; such an agreement does not require a specific statutory basis. Instead, it simply allows the UK's customs regime to reflect such an agreement by providing the means necessary to implement it. Once an agreement has been reached, an Order in Council will be required before it can take effect for import duty. That order can itself be made—this is a critical response to the remarks of the hon. Member for Bootle—only if it has first been approved, in draft, by the House of Commons under the draft affirmative resolution procedure. I am sure the Committee agrees that that will afford a high level of parliamentary scrutiny for each stage of the process.

It is likely that further provisions will be needed to make an international agreement effective for import duty purposes. The most obvious instance would be to ensure that import duty is not charged on the movement of goods between the UK and the overseas country or territory. For that reason, the clause allows HMRC to make any necessary changes in regulations.

Amendment 82 seeks to add a restriction to that process in two ways. First, it would limit the ability of HMRC to make regulations to five years from exit day. Secondly, it would make any Order in Council cease to have effect six years after exit day. Both of those positions are misguided. I am sure that I do not need to remind the Committee that establishing a new customs union with an overseas territory or country is likely to be a long-term process, not least because of the need to ensure that it reflects the UK's new international trading relationship once we have left the European Union. It would therefore be wrong to limit the ability to adapt the UK's legislation to a period of five years following exit.

More importantly, it would be rather perverse to make any customs union simply cease to have an effect on domestic law after a six-year period. As I explained, the level of parliamentary scrutiny that would apply to such a union is very high, requiring both an Order in Council and the draft affirmative procedure in Parliament, as well as all the potential debates and votes that may occur around the negotiations that led to that customs union arrangement in the first place.

There is therefore no case for time-limiting an agreement in the way proposed by the amendment. Indeed, it could make it far more difficult, if not impossible, to reach any agreement if our overseas partners were aware that such an agreement would no longer function effectively at a future point because of limitations on powers in our domestic legislation. I therefore urge the Committee to reject amendment 82.

12 noon

Amendment 6 would require the Government to lay a statement before the House before laying the draft Order in Council giving effect to a customs union between the UK and an overseas country or territory. That is simply unnecessary. As I have explained, appropriate procedures are in place to ensure that Parliament has proper scrutiny before a customs union can take effect for import duty purposes. The House will have full opportunity to debate any draft order, and to scrutinise its contents as necessary. That could include the potential effects of the draft order on the UK's trade relations with other countries or territories. There is therefore no need to put such information on the face of the Bill. I therefore urge the Committee to reject amendment 6 and vote that clause 31 stand part of the Bill.

Peter Dowd: We will not press amendment 6 to a vote, but we will no doubt tease the issue out a little more in due course. Again, I am not completely reassured by the Minister's statement in relation to affirmative resolutions. I do not accept that the process is as rigorous as he has implied throughout.

The other aspect is that, if Parliament will have to do huge amounts of work, we had better make sure that we get everything right and get the ducks set up in a row. The idea that the Government's proposal and mechanism for authorising are commensurate and proportionate is, in my opinion, far off the mark. It is a very important area, and Parliament should have significantly more of a say in it.

This issue will clearly not be resolved today, any more than many other things will be, but it is really important. We will not push the amendment to a vote today, but there is no doubt that we will, in due course, come back to this issue and the whole question of parliamentary scrutiny, particularly in relation to this sort of matter. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 31 ordered to stand part of the Bill.

Clause 32

Regulations etc

Kirsty Blackman: I beg to move amendment 89, in clause 32, page 19, line 18, at end insert—

"(c) regulations under paragraph 4(2), 9(3) or 14(4) of Schedule 4."

This amendment provides for regulations made under certain provisions of Schedule 4 (regarding dumping of goods or foreign subsidies causing injury to UK industry) to be subject to the made affirmative procedure rather than the negative procedure.

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

Amendment 90, in clause 32, page 19, line 18, at end insert—

"(c) regulations under paragraph 1(2), 3(2), 4(2) or 5 of Schedule 5."

This amendment provides for regulations made under certain provisions of Schedule 5 (regarding an increase in imports causing serious injury to UK producers) to be subject to the made affirmative procedure rather than the negative procedure.

Amendment 91, in clause 32, page 19, line 21, at end insert—

"(2A) Section (super-affirmative resolution procedure) applies to regulations under paragraph 1(3), 3(5), 5(2), or 6(2) of Schedule 4."

This amendment provides for regulations made under certain provisions of Schedule 4 (regarding dumping of goods or foreign subsidies causing injury to UK industry) to be subject to the super-affirmative resolution procedure, as defined in NC12.

Amendment 92, in clause 32, page 19, line 21, at end insert—

"(2A) Section (super-affirmative resolution procedure) applies to regulations under paragraph 2(2) or 2(3) of Schedule 5."

This amendment provides for regulations made under certain provisions of Schedule 5 (regarding an increase in imports causing serious injury to UK producers) to be subject to the super-affirmative resolution procedure, as defined in NC12.

Amendment 93, in clause 32, page 19, line 32, after "(2)" insert "or (2A)".

This amendment is consequential to Amendment 92.

Amendment 94, in clause 42, page 29, line 23, leave out subsection (1).

The effect of this amendment would be to remove from the Bill the proviso that retained EU law on VAT should not have effect, despite forming part of UK law as a result of Clause 3 of the European Union (Withdrawal) Bill. This would mean that EU legislation affecting VAT and the operation of the common VAT area would continue to have effect as retained EU law for the transitional period.

Amendment 95, in clause 42, page 29, line 44, leave out from "regulation" to end of line 45.

The effect of this amendment would be to ensure that the UK Government does not exclude aspects of the EU's principal VAT Directive that remain relevant by delegated legislation.

Amendment 96, in clause 42, page 30, line 1, leave out subsection (6) and insert—

"(6) Section (super-affirmative resolution procedure) applies to regulations made under this section."

This amendment applies the super-affirmative resolution procedure, described in NC12. to regulations made under this section.

New clause 12—*Super-affirmative resolution procedure*—

"(1) For the purposes of this Act, the 'super-affirmative resolution procedure' in relation to the making of regulations to which this section applies is as follows.

(2) If a Minister considers it necessary to proceed with the making of regulations to which this section applies, the Minister shall lay before the House of Commons—

(a) draft regulations,

(b) an explanatory document under subsection (3), and

(c) a declaration under subsection (4).

(3) The explanatory document must—

(a) introduce and explain any amendments made to retained EU law by each proposed regulation, and

(b) set out the reason why each such amendment is necessary (or, in the case where the Minister is unable to make a statement of necessity under subsection (4)(a), the reason why each such amendment is nevertheless considered appropriate).

(4) The declaration under subsection (2)(c) must either—

(a) state that, in the Minister's view, the provisions of the draft regulations do not exceed what is necessary to prevent, remedy or mitigate any deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU (a 'statement of necessity'), or

(b) include a statement to the effect that although the Minister is unable to make a statement of necessity the Government nevertheless proposes to exercise the power to make the regulations in the form of the draft.

(5) Subject as follows, if after the expiry of the 21-day period a committee of the House of Commons appointed to consider draft regulations under this section has not reported to the House of Commons a resolution in respect of the draft regulations laid under section 32(2A) or 42(6), the Minister may proceed to make a statutory instrument in the form of the draft regulations.

(6) A statutory instrument containing regulations under subsection (5) shall be subject to annulment in pursuance of a resolution of the House of Commons.

(7) The procedure in subsection (8) to (15) shall apply to the proposal for the draft regulations instead of the procedure in subsection (5) if—

(a) the House of Commons so resolves within the 21-day period,

(b) the committee appointed to consider draft regulations under this section so recommends within the 21-day period and the House of Commons does not by resolution reject the recommendation within that period, or

(c) the draft regulations contain provision to—

(i) establish a public authority in the United Kingdom,

(ii) provide for any function of an EU entity or public authority in a member State to be exercisable instead by a public authority in the United Kingdom established by regulations under sections 42, 43 or schedule 8,

(iii) provides for any function of an EU entity or public authority in a member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,

(iv) imposes, or otherwise relates to, a fee in respect of a function exercisable by a public authority in the United Kingdom,

(v) creates, or widens the scope of, a criminal offence, or

(vi) creates or amends a power to legislate.

(8) The Minister must have regard to—

(a) any representations,

(b) any resolution of the House of Commons, and

(c) any recommendations of a committee of the House of Commons charged with reporting on the draft regulations,

made during the 60-day period with regard to the draft regulations.

(9) If, after the expiry of the 60-day period, the Minister wishes to make regulations in the terms of the draft, the Minister must lay before the House of Commons a statement—

(a) stating whether any representations were made under subsection (8)(a), and

(b) if any representations were so made, giving details of them.

(10) The Minister may after the laying of such a statement make regulations in the terms of the draft if it is approved by a resolution of the House of Commons.

(11) However, a committee of the House of Commons charged with reporting on the draft regulations may, at any time after the laying of a statement under subsection (9) and before the draft regulations are approved by that House under subsection (10), recommend under this subsection that no further proceedings be taken in relation to the draft regulations.

[The Chair]

(12) Where a recommendation is made by a committee of the House of Commons under subsection (11) in relation to draft regulations, no proceedings may be taken in relation to the draft regulations in the House of Commons under subsection (10) unless the recommendation is, in the same Session, rejected by resolution of the House of Commons.

(13) If, after the expiry of the 60-day period, the Minister wishes to make regulations consisting of a version of the draft regulations with material changes, the Minister must lay before Parliament—

(a) revised draft regulations, and

(b) a statement giving details of—

(i) any representations made under subsection (8)(a); and

(ii) the revisions proposed.

(14) The Minister may after laying revised draft regulations and a statement under subsection (9) make regulations in the terms of the revised draft if it is approved by a resolution of the House of Commons.

(15) However, a committee of the House of Commons charged with reporting on the revised draft regulations may, at any time after the revised draft regulations are laid under subsection (12) and before it is approved by the House of Commons under subsection (13), recommend under this subsection that no further proceedings be taken in relation to the revised draft regulations.

(16) Where a recommendation is made by a committee of the House of Commons under subsection (14) in relation to revised draft regulations, no proceedings may be taken in relation to the revised draft regulations in the House of Commons under subsection (13) unless the recommendation is, in the same Session, rejected by resolution of the House of Commons.

(17) In this section, references to the '21-day' and '60-day' periods in relation to any draft regulations are to the periods of 21 and 60 days beginning with the day on which the draft regulations were laid before Parliament."

This new clause applies an amended version of the super-affirmative resolution procedure to certain powers to make regulations under Schedule 4 and 5, and Clause 42.

Kirsty Blackman: Amendments 89 to 96 would have a number of different effects. If the Committee will allow me, I will talk through all of them, and all the surrounding details.

Amendment 89 would subject regulations made under certain provisions of schedule 4 to the made affirmative procedure, rather than the negative procedure, and would ensure a higher level of parliamentary scrutiny. Particularly in schedules 4 and 5, which amendment 90 relates to, the Government have left an awful lot to regulation. I understand that the Bill is a framework Bill, but we could really do with a bit more information around it. If there had been more information, we would not need to make these calls to move things up the agenda, in terms of requesting more scrutiny.

We have concerns about how the Trade Remedies Authority will operate, and how it will decide things such as the amount of injury that has been sustained. The Government have not yet provided enough information on that. It is not reasonable for the Government to do such things by the negative procedure, rather than either the made affirmative procedure or the super-affirmative procedure. Amendments 91 and 92 would subject certain regulations to the super-affirmative procedure, instead of leaving them subject to the negative procedure.

We heard concerns during the evidence sessions about how trade remedies would work. As I have said previously, the Government are asking us to trust them an awful lot on this, but because they have not been responsible for this area in recent years, as the UK has been part of what the EU has done, they do not have a track record. We cannot just take it on trust that they will do the right thing; in fact, we have already criticised their choice to have the lesser duty rule, for example. Clearly, the UK Government are already making decisions that we would not like them to make.

The Government are asking us to trust them, and to accept negative procedure, which makes it very difficult for parliamentarians to be involved in the scrutiny of legislation. That is a real concern. Amendments 89 to 92 would therefore subject regulations under schedules 4 and 5 to a higher level of scrutiny. I do not consider that an unreasonable ask in the light of the importance of this issue, particularly to industries such as steel and chemicals that rely on trade remedies to continue producing, selling and competing in the domestic market. Amendment 93 is consequential on amendment 92.

Amendment 94 would delete clause 42(1) and thus remove from the Bill the proviso that direct EU legislation on VAT would no longer have effect in the UK. It would ensure that EU legislation affecting VAT and the operation of the common VAT area would continue to have effect in the UK for the transitional period. The amendment is important because it would address concerns raised by the British Retail Consortium about replacing acquisition VAT with import VAT.

Losing membership of the EU VAT area in just over a year's time would cause major problems for businesses, including with cash flow, because they would end up having to pay VAT on goods before they were released. Businesses planning for the future are having to make projections now without having all the information about what the VAT position will be. If the Minister makes it clear that the Government will continue with their apparent intention to replace acquisition VAT with import VAT, significant changes will be required, either in how businesses operate or in how HMRC ensures businesses pay VAT.

We do not suggest in any way that businesses should not be liable for VAT. Our concern relates to cash flow. We suggest that businesses should not have to pay VAT on goods the second they hit UK shores. Perhaps they should be able to roll it up and pay it quarterly or in some other way that makes cash flow easier.

The UK Government have not been as clear as they could be on this. If the Minister is unequivocal in his desire for us to move to import VAT, and if he states unequivocally that there will be no scheme for VAT deferral, businesses will be incredibly unhappy, but at least we will have more clarity. It would be pretty devastating for businesses in a number of ways, but at least they will able to factor it into their projections. It would be useful to have more clarity on whether we are leaving the EU VAT area and whether, if we move from acquisition VAT to import VAT, there will be more opportunities for deferral.

It would be better for the Government to keep open the possibility of remaining in the EU VAT area, which clause 32 seems to rule out. If we leave the EU VAT area, we will lose the triangulation simplification exemption—I am glad to have my teeth in this morning so that I can say that. The exemption currently provides a simplification mechanism that means that UK-based businesses do not have to register for VAT in various EU countries.

If we leave the EU VAT area, not only will they have to contend with cash flow issues and moving from acquisition VAT to import VAT; they will also have to register for VAT in those other European countries, as well as in the UK. It seems to me that that issue has not been adequately discussed.

We do not have enough clarity about the Government's intentions. I have made this case before, but it would be useful to know the Government's desired direction of travel, even if the eventual outcome of negotiations is different. Do the Government intend to leave the EU VAT area but retain some elements of triangulation simplification?

Anneliese Dodds: It might be useful to mention the enormous problems faced by microbusinesses when they had to comply with the reduction in the threshold for VAT applied to digital services within the EU. Even without having to register in those different countries, but simply paying the VAT, that was a huge adjustment that many firms had to make. Would it not be much more of a problem if we had the approach that the hon. Lady describes?

Kirsty Blackman: Absolutely. For a number of businesses, particularly those that are quite small and do a lot of exporting and importing, VAT is a major part of their costs and they have to deal with that on a regular basis. There would be a disproportionate impact particularly on smaller businesses were there to be changes without sufficient notice.

The effect of amendment 95 would be to ensure that the UK Government do not exclude aspects of the UK's participating in the EU VAT area or in the EU's principal VAT directive by delegated legislation. The amendment would ensure that there is more parliamentary scrutiny around any changes. We have been clear that we want more parliamentary scrutiny. The evidence sessions that we had were useful because we had people here talking about actual impacts on actual businesses and not just the impacts that the policy makers might think will take place. It was useful to learn about some of the technicalities.

We might have legislation and changes made in future by delegated legislation with no ability for us to have written and oral evidence and all of those people coming together to ensure that those of us in Parliament who make the laws are as well briefed as possible and able to make the best possible decisions. That is one of the most important things specifically in the area of VAT. I do not think many people in the House of Commons are expert in VAT. I am sure there are some, but not a huge number. We would have to be incredibly lucky to have all of them on a delegated legislation Committee and to have enough knowledge in the room to make reasonable decisions.

Nic Dakin (Scunthorpe) (Lab): That sounds like a fun Committee.

Kirsty Blackman: VAT is incredibly interesting and such a Committee would be an absolute hoot. The point is that there are not enough people in the House with enough knowledge on this subject, and there would be a massive benefit from not legislating in delegated legislation but in a situation in which we could properly take evidence and make the right decisions so that businesses were not disproportionately affected.

Amendment 96 and new clause 12 would apply a super-affirmative procedure in relation to the VAT issues that I have discussed. As I have said, we would benefit from having more parliamentary scrutiny of these issues. Any changes of any sort, as mentioned by the hon. Member for Oxford East, have a significant impact on businesses. They are a significant proportion of costs and other matters that businesses have to think about. A super-affirmative procedure would mean more scrutiny and that better law is made.

This is not about the Opposition wanting to have a go at the Government. It is about making sure we have the most workable possible laws in place and making sure that with all the stuff that is happening around Brexit, with the possibilities of leaving the customs union and the single market, and with all the possible changes that are coming through, having better scrutiny over what is happening in relation to VAT would be incredibly helpful. Businesses would have more comfort that better rules would be made and that they would not be hit with massive negative changes in how they have to deal with VAT, as well as having to contend with leaving the single market and the customs union and all of the other things that they currently have to contend with.

The two different areas that I have talked about relate to the Trade Remedies Authority, subsidies and countervailing measures, dumping, all the trade remedies and VAT. I think we should have more parliamentary scrutiny of those things. The amendments all attempt to make sure we have better law that means businesses can cope better with whatever the future throws at them.

12.15 pm

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): It is lovely to see you in the chair, Ms Buck. I would like to say a brief few words in support of amendments 89, 90 to 96 and new clause 12 tabled by colleagues from the Scottish National party.

There is no doubt that the most consistent area of discussion in this Committee has been the constitutional implications of the Bill and the concentration of too much power in the hands of the Executive as a result. We have discussed ways to try to make the Trade Remedies Authority more available to scrutiny, how to improve the scrutiny of secondary legislation and how to adjust the public notice procedure—all of which were intended to provide some basic safeguards against the abuse of power and, as the hon. Member for Aberdeen North said, are an attempt to make better laws. We therefore support this package of amendments, which seek to achieve the same, and point out to the Government that it is not only opposition political parties that are concerned about the precedent being set here.

As the hon. Member for Aberdeen North said, the amendment would simply add an important layer of parliamentary scrutiny, by enforcing the super-affirmative resolution procedure where regulations have been created with regard to trade remedies. That would help to address some of the shortfalls of the secondary legislative process.

As the Committee well knows, statutory instruments when carried out under the negative procedure only permit Parliament to raise objections. We support the extensive stipulations in the amendments on presenting draft regulations to the House, which the Minister would be mandated to carry out. We believe that will prompt greater accountability and a better legislative process.

Mel Stride: New clause 12 and its consequential amendments propose a process by which Parliament scrutinises and approves secondary legislation. The hon. Member for Aberdeen North referred to the process as the super-affirmative resolution procedure. I commend her on her creativity, but I must urge the Committee to reject what has been proposed.

As I understand the super-affirmative resolution procedure, it would initially require the laying in draft of any regulations, alongside an explanatory document and a declaration to which the new procedure would apply. It would also entail the appointment of a House of Commons Committee, which would initially have the power to recommend that more onerous procedures should apply to the draft regulations than those currently provided by the Bill. At the same time, those more onerous procedures would apply automatically to certain regulations, as set out in the amendments. The Committee would have the power to recommend that any draft regulations were rejected before they could be approved by the Commons under the affirmative procedure.

The powers of that Committee would be fairly wide, but at the same time, its remit would be relatively modest, only relating to the trade remedies provisions and regulations under clause 42 which deals with amendments regarding how EU law applies to VAT. I have already explained why it is entirely right that regulations for the trade remedies framework should be subject to the negative procedure. Clause 42, along with other provisions in the Bill, is necessary to ensure that the UK has a fully functioning VAT system once we leave the European Union. As there is limited direct EU legislation relating to VAT, the power in clause 42 is therefore equally limited. Given that limited scope, it is only right that its exercise should be subject to the negative procedure.

No case has been made that the existing and well-understood parliamentary procedures for making regulations are inadequate. To establish an entirely new procedure would mark a major precedent in Parliament and I cannot see any reason for doing so. That is particularly true in the case of limited regulation-making powers, which are the subject of the amendments.

Peter Dowd: Does the Minister not accept that this might be unprecedented, but so is leaving the European Union and all the institutions associated with it and all the mechanisms that go with it? That is unprecedented, so we need to have unprecedented parliamentary scrutiny of that unprecedented move.

Mel Stride: The word "unprecedented" could be applied to almost everything that happens in the future; it is always different to that which occurred in the past. I think it might be stretching Parliament's patience if on every occasion we came across something unprecedented, we conjured up some unprecedented way of dealing with it. I really do not want to re-rehearse all my arguments on the relative merits, proportionality, appropriateness and so on of the various approaches that we take on those matters. To conclude, we believe that the various new parliamentary processes proposed would hamper the UK's ability to respond swiftly to future developments and to provide an important but proportionate safety net to UK industry in a timely fashion.

Amendments 94 and 95 seek to retain the effect of direct EU legislation. Amendment 94 would do that by retaining EU regulations on VAT that will be brought into UK law as a result of the European Union (Withdrawal) Bill. According to the explanatory statement accompanying the amendment, that is so the EU legislation in the area will continue to have effect during the implementation period. Amendment 95 seeks to limit the power to exclude certain provisions of the VAT-implementing regulations.

The Bill enables the Government to respond to a range of outcomes. By way of background, the Value Added Tax Act 1994 and subordinate legislation already implements the majority of EU law on VAT, including the VAT directive. The 1994 Act as amended by the Bill will continue to apply post-EU exit. Few EU regulations apply to VAT and in the main those relate to single market reciprocal arrangements such as exchange of information. In the absence of an agreement, those will simply have no application—we would not want them to be incorporated into UK law for obvious reasons—which is why they are disapplied by clause 42(1). Removal of EU legislation that is no longer required or otherwise deficient is anticipated in the withdrawal Bill.

At this stage I will deal with the specific point made by the hon. Member for Aberdeen North about VAT, and how it operates now and might operate once we have left the European Union. She has raised issues that will certainly be very important—it is not the first time that she has raised such issues—to how businesses interact with what will then be the remaining EU27. I made it clear on Second Reading that we will look sympathetically and appropriately at the particular issue of the change from acquisition VAT to import VAT, including the change in timing of VAT payments with its effect on a large number of businesses as they trade with the European Union in future.

The note to amendment 94 refers to ensuring that EU legislation continues to have effect during an implementation period, but it may not be necessary to switch our provision on until after a transitional period or at all. Alternatively, EU regulations disapplied under clause 42(1) could be reinstated by the power in clause 51, which we will come to. What is ultimately required will depend on the outcome of the negotiations. However, we anticipate that the rules in an implementation period will be broadly reflective of the existing ones.

Amendments 89 and 90 seek to change the parliamentary process for some of the regulation-making powers provided in parts 1 and 3 of the Bill and their related schedules. For indirect taxation measures, it is common to have a framework in primary legislation supplemented by secondary legislation. The Bill establishes a comprehensive framework for a new standalone customs regime that will be underpinned by detailed and technical secondary legislation.

The trade remedies framework contains a great deal of such technical detail and the secondary legislation made under the Bill will comply with WTO rules, which is why we propose that the regulations are subject to the negative procedure. With that I ask Opposition Members to consider withdrawing their amendment, or at least the Committee to resist them.

Kirsty Blackman: I will begin by arguing slightly with the Minister and then I will go on to be a bit nicer to him—so it may start off badly, but it will get better.

The Minister said that the case had not been made for the operation of delegated legislation being inadequate. I believe that the case has been made that how delegated legislation in this House operates is inadequate, in particular by the gentleman from the Hansard Society who gave evidence in Committee. He was pretty scathing about the negative procedure in particular, but also about the other delegated legislation methods. Most of us around the House see the shortcomings in how delegated legislation operates, especially given the lack of scrutiny and amendability, whether by the Opposition or Back-Bench Government Members. There are major shortcomings in how delegated legislation works. I think that few people outwith Government would say that it is all working fine, because the Government have an interest in ensuring that measures have little scrutiny.

On the movement from acquisition VAT to import VAT, I appreciate that the Minister will consider it sympathetically. I am not sure whether HMRC would make any sympathetic changes as part of a public notice process or in some other way, or whether legislation would be needed to include VAT deferral methods or something similar. Whatever it is, it would be useful for it to happen sooner rather than later, and for the Government also to set out their intentions for how any scheme would work sooner rather than later, so business can have a level of certainty.

I was pleased by what the Minister said about increasing head count in HMRC to ensure that customs will work more smoothly. That is welcome, but the information that we have had thus far about the resourcing of HMRC has not been particularly in-depth; it has just been that head count will increase. There is no clarity about how those people will be deployed or what level of support businesses will receive from HMRC, for example, when they make both the change in relation to VAT and any customs changes that they need to make.

We expect that 132,000 firms will be caught by VAT on imports for the first time. That is a significant number of firms currently wondering how it is going to work. The sooner they can have that information, the better. We do not want negative impacts on our economy, although it is just the case that Brexit will have negative impacts on our economy, because the single market is better for our economy than any possible trade deal, even if it includes services. Although our preferred position is to remain in the EU and second best would be remaining in the single market and the customs union, whatever we can do to mitigate the impacts on businesses and on people who live in our constituencies—in towns, cities and rural areas—we will push the Government to do. We are trying to mitigate the worst possible excesses of the most extreme Brexit. We are driving off a cliff with a huge amount of spikes at the bottom. We are just trying to have fewer spikes at the bottom of the cliff. That is what we are asking for, particularly in relation to VAT.

I would like to return to these amendments and to new clause 12 on Report, so I do not intend to press them to a vote at this point, but I appreciate the Minister's time and attention, as well as his comments.

Mel Stride: That was a thoughtful contribution, and I would like to respond to one or two of the points raised by the hon. Lady.

First, on delegated legislation, I am aware that there is a difference of opinion between the sides of this Committee generally about how rigorous oversight is relative to the measures to which the powers relate. The hon. Lady prayed in aid the Hansard Society's evidence during the witness session, and I think that I am right in saying that the Hansard Society representatives stated that there was no circumstance in which the enhanced level of scrutiny proposed by Her Majesty's Opposition throughout the various debates that we have had—that is not quite what the hon. Lady is putting forward—would appropriately apply to measures in the Bill, so I am not sure that this heavy version of scrutiny would necessarily be supported by the Hansard Society, although it would be interesting to know.

Secondly, I would like to address the point about Government not having an interest in scrutiny. We most certainly do, because it makes for better law. Even from a narrow perspective, there is always a Government interest in ensuring that there are no problems further down the line and that we do not need to revisit legislation to deal with the dissatisfaction of Parliament or, indeed, of Members of Parliament from our own party.

12.30 pm

The hon. Lady also raised, quite rightly, the move from acquisition VAT to import VAT and the repercussions of that in the context of the 122,000—or thereabouts—companies that trade only intra-European Union. I can reassure her that in the Value Added Tax Act 1994 powers are already available that will allow us to make the kind of changes we are likely to be considering as we make sure we move forward in a positive way and do not penalise the businesses she rightly mentions.

Anneliese Dodds: I will respond briefly, if I may, to the Minister's comments. I do not want to get into a semantic discussion about precisely what the speaker from the Hansard Society did or did not say. Ultimately, he was trying to preserve the independence of the Hansard Society. Therefore, when he was being pushed about the Bill more globally, he resisted. I can understand that, because he wished to protect the independence of the Hansard Society, but to my memory, he did not comment directly on the proposals that have been put forward by the Opposition. I do remember him commenting directly, for example, on the cumbersome and difficult nature of the negative procedure and the fact that it operates through early-day motions and all those kinds of things. I cannot remember him specifically saying that he felt that the suggestions being put forward by the Opposition were incorrect. He resisted being pulled towards a global assessment of the Bill, but I can understand why he did that, given his need to retain independence.

Peter Dowd: I can remind my hon. Friend of what Mr Blackwell said. In relation to the 150 delegated powers, he said:

> "Some of the justifications I am struggling with, particularly as regards the use of urgency and non-urgency. I think time is an issue here, particularly if you do not have the backstop of further scrutiny by a Chamber—the second House—that is usually very good at looking at delegated legislation".—[*Official Report, Taxation (Cross-border Trade) Public Bill Committee,* 23 January 2018; c. 53, Q77.]

He was absolutely clear and unambiguous that this really was not a way to do matters of this nature.

Kirsty Blackman: It has been an interesting debate, and I am glad to have had the opportunity to start it. I really do appreciate some of the clarification that has

[Kirsty Blackman]

been given by the Minister, particularly around moving from acquisition to import VAT. As I said earlier, I do not want to press any of these amendments, because I would like to return to them at Report stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Anneliese Dodds: I beg to move amendment 121, in clause 32, page 19, line 33, at end insert—

'(5A) Subsections (2) and (5) are subject to section (Affirmative procedure: further provisions).'

This amendment, together with New Clause 14, provides that the made affirmative procedure under Clause 32 is only used in specified circumstances and that, in other circumstances, the draft affirmative procedure is used.

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

Amendment 122, in clause 40, page 28, line 8, at end insert—

"(5A) Subsections (2) and (5) are subject to section (Affirmative procedure: further provisions)."

This amendment, together with New Clause 14, provides that the made affirmative procedure under Clause 40 is only used in specified circumstances and that, in other circumstances, the draft affirmative procedure is used.

Amendment 123, in clause 48, page 33, line 32, at end insert—

"(6A) Subsections (2) and (6) are subject to section (Affirmative procedure: further provisions)."

This amendment, together with New Clause 14, provides that the made affirmative procedure under Clause 48 is only used in specified circumstances and that, in other circumstances, the draft affirmative procedure is used.

Amendment 124, in clause 51, page 35, line 26, at end insert—

"(7A) Subsections (4) and (7) are subject to section (Affirmative procedure: further provisions)."

This amendment, together with New Clause 14, provides that the made affirmative procedure under Clause 51 is only used in specified circumstances and that, in other circumstances, the draft affirmative procedure is used.

Amendment 125, in clause 54, page 37, line 44, at end insert—

"(11A) Subsections (8) and (11) are subject to section (Affirmative procedure: further provisions)."

This amendment, together with NC14 , provides that the made affirmative procedure under Clause 54 is only used in specified circumstances and that, in other circumstances, the draft affirmative procedure is used.

New clause 14—*Affirmative procedure: further provisions*—

"(1) The appropriate Minister may only make regulations under the powers specified in subsection (2) if the condition in subsection (3) or the condition in subsection (4) is met.

(2) The powers specified in this subsection are those under—

(a) section 32(2),

(b) section 40(2),

(c) section 48(2),

(d) section 51(4), and

(e) section 54(8).

(3) The condition in this subsection is that the instrument contains a declaration that the appropriate Minister concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft of the instrument being laid before, and approved by a resolution of, the House of Commons.

(4) The condition in this subsection is that the instrument contains a declaration that the appropriate Minister concerned is of the opinion that it is necessary to make the regulations without a draft of the instrument being laid before, and approved by a resolution of, the House of Commons in order to secure—

(a) the protection of the public revenue, or

(b) continuity in the administration of the tax system.

(5) In any case where neither the condition in subsection (3) nor the condition in subsection (4) is satisfied, no regulations may be made in exercise of the powers specified in subsection (2) unless a draft has been laid before, and approved by a resolution of, the House of Commons."

This new clause provides that the made affirmative procedure is only used in specified circumstances and that, in other circumstances, the draft affirmative procedure is used.

Anneliese Dodds: These amendments and the new clause focus specifically on the made affirmative procedure. We have tabled them because we want to ensure that the made affirmative procedure provided under clause 32 is used only in specified circumstances and that, in other circumstances, the draft affirmative procedure is used.

There have been consistent calls, even before the Government's current enthusiasm for the made affirmative procedure, for it to be used judiciously. This is not a partisan point. In 2009 the Lords Constitution Committee maintained:

"Whilst accepting that in a very limited number of circumstances there may be grounds for seeking to fast-track parliamentary procedure of draft affirmative instruments, we take this opportunity to remind the Government of the importance of executive self-restraint."

When made affirmative procedures have been used in the past, there appears to have been a strong commitment by the Government of the day to restrict their use as much as possible. That is certainly my impression having looked at some of the commitments made by the then Government in relation to the Banking Act 2009. Similarly, with the new approach to financial regulation that came in in 2011, the then Government stated that the made affirmative procedure would be used as a last resort. They said it would

"rarely—if ever—need to be used".

Hon. Members will surely agree that the financial crisis required action just as rapid as is currently necessitated by the Government's approach to leaving the EU. However, in the former case, there seems to have been a commitment to be sparing in the use of the made affirmative procedure that we do not have in this case. Because of that, this approach has received significant criticism in the House of Lords. We have already referred to the Lords' general criticisms, and I hope that the Government will heed our concerns.

I do not want to repeat the debate that we had previously on whether we are in an unprecedented period, but there have been situations in the past when Government have had to speedily enact different types of policy making. However, as I said, in those situations, Government appear to have been more restrained in their use of these kinds of procedure, particularly in their use of the made affirmative procedure. We cannot understand why the Government are so wedded to this procedure, without further qualifications, that enables the Executive to make law that is binding from the moment it is laid down, without any parliamentary engagement whatever.

Mel Stride: New clause 14 and amendments 121 to 125 seek to add further parliamentary scrutiny of the way that certain powers in the Bill to make secondary legislation can be exercised. The Bill allows the powers in question to be exercised under the made affirmative procedure; the amendments would change that in certain circumstances to the draft affirmative procedure.

The Committee is aware that the Bill contains a range of powers to make regulations on a number of different aspects of VAT, customs and the excise regime, which will come into effect after the UK leaves the EU. New clause 14 is concentrated on a small subset of these powers, namely those that apply with respect to setting or increasing tariff rates, charging export and excise duty, some of the general rules for excise duty, and provisions under clauses 51 and 54, to the extent that they amend or repeal primary legislation. All those powers are subject to the made affirmative procedure.

In each case, the amendment would require a Minister who wished to exercise a power using the made affirmative procedure to make, on each occasion, a declaration that such a procedure is warranted, either for reasons of urgency, revenue protection or security continuity in the administration of the tax system. When a Minister does not make such a declaration, the regulation in question would default to the draft affirmative procedure.

I fully understand concerns about the inappropriate use of parliamentary procedures, but there is a compelling case for using the made affirmative procedure for the powers referred to in the amendments. We must not lose sight of the fact that the Bill is primarily concerned with the charging of tax and duty. Usual procedure when giving effect to changes in tax policy is the made affirmative procedure—that is a very important point in the context of the other examples I appreciate the hon. Lady making in this regard. The reasons for that are that any changes need to come into effect quickly—in some cases immediately. The made affirmative procedure is the standard mechanism for achieving that aim.

It is generally accepted that change in tax policy—such as when the Government change a rate of tax—should come into effect immediately. The use of the made affirmative procedure allows the Government to give effect to such changes immediately, in order to avoid a gap in UK legislation. The same principle will apply for matters covered by the Bill. At some point in the future, the Government might wish to amend the customs tariff quickly to reflect a change in international trade. That is vital for tax matters, and the reason why the made affirmative procedure is the norm for tax legislation. Because tax entails financial consequences for both taxpayers and the Exchequer, clarity and certainty are essential.

Although the intention of the amendments may be to improve parliamentary scrutiny, if they were adopted, they would create uncertainty for businesses, and that uncertainty would be in nobody's interest. On that basis, I hope that the hon. Lady will not press new clause 14 and amendments 121 to 125. If not, I urge the Committee to resist them.

Anneliese Dodds: I am grateful to the Minister for his explanation. I question, however, whether the circumstances he just described as appropriate for the use of the made affirmative procedure do not fall precisely within the circumstances we ask the Government to demonstrate are in place within the declaration we are asking for. We say that it is possible for the made affirmative procedure to be used, provided the Government make clear that these measures are necessary for the protection of the public revenue or continuity in the administration of the tax system. Those are exactly the kinds of circumstances that the Minister has referred to, so it is not clear to us why he would not accept our amendment. We are saying that we do accept the use of the procedure in such circumstances as he just described: it is when things go beyond them into other areas that we are not satisfied with the use of the procedure.

Mel Stride: I understand the hon. Lady's argument, but the matter comes down ultimately to the relevant level of scrutiny. The argument is strong that the circumstances that we are discussing, of a quick response and the ability immediately to set the tariff or change duties—things of that kind—lend themselves to the approach in question. If the central argument is about scrutiny, the question is whether the made affirmative procedure provides sufficient scrutiny. I maintain that it does. It requires in-depth scrutiny by the House, which would be subject to a Division if there were differences of opinion on the matter in hand.

Perhaps I may briefly pray in aid Joel Blackwell, the witness from the Hansard Society, who is getting a lengthy outing in our discussions today. I take on board the Opposition points about its being important, from his perspective, to maintain impartiality in the deliberations of the Hansard Society; we all respect it, which is why we were pleased to have him in particular as a witness. However, he did state that

"the Brexit Bills are going to have to be framework Bills—based on the fact that the legislation for Brexit is going to need some speed and flexibility"—[*Official Report, Taxation (Cross-Border Trade) Public Bill Committee,* 23 January 2018; c. 47, Q63.]

That is at the heart of our arguments that we are putting on these matters in general.

Anneliese Dodds: I shall not return to what the witness did or did not say. I think there may be a difference of opinion there. I am afraid I do not agree with the Minister's description of the made affirmative procedure. In practice, of course, that procedure means that measures are in place from the moment they are laid, so they are immediately enacted. There need be no effective scrutiny by way of discussion by the House or other bodies, to allow them to stay in place over time. We are talking about a mechanism very different from what would usually be applied.

I shall not push the point. I appreciate the Minister's comments. I just hope that the Government will heed our call for them to restrict the use of the measure to exactly the kinds of areas that the Minister just described—only those where the procedure is necessary to protect public revenue, or for continuity in the administration of the tax system. If its use goes beyond that, we fear we shall be in tricky waters. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Jonathan Reynolds: I beg to move amendment 140, in clause 32, page 20, line 8, leave out subsection (9).

This amendment limits the powers with respect to public notices.

The Chair: With this it will be convenient to discuss amendment 141, in clause 37, page 24, line 36, leave out "that provision" and insert

"ensuring that public notice is available in an accessible form to all people who are likely to be affected by or interested in the notice".

This amendment makes specific provision about the accessibility of public notices.

Jonathan Reynolds: The amendments deal with public notices—one relates to powers and the other to accessibility. The Opposition have already raised concerns, by way of amendment 139, about the alarming concentration of power in the hands of the Executive that would come about if the conversion of public notices into regulations were to be allowed. It is a deeply troubling constitutional overstep, which must be challenged at every stage.

The amendments focus on limiting the powers of the Executive with regard to public notices, which the Opposition believe would be a fundamental over-reach of the Executive's powers. We are not the only ones to argue that case. The House of Lords Delegated Powers and Regulatory Reform Committee published its report after Second Reading in the Commons. That flagged up the constitutional difficulties that would arise from making law by public notice. It was scathing in its assessment of the provision.

Amendment 141 also addresses a pressing issue that arises from using the method in question as a tool for creating regulations. At no point does the Bill indicate what constitutes a public notice. As the House of Lords Committee highlighted, under clause 37(5), the only qualification at present is purely that the person issuing it has selected a channel that they consider appropriate. A definition of "appropriate" is absent from the Bill. We are told that that could even include a tweet or a message on Facebook. We can all agree that policy made by Twitter is not a good idea.

12.45 pm

Amendment 141 therefore proposes adding to the Bill a provision to ensure that a public notice is made

"available in an accessible form to all people who are likely to be affected by or interested in the notice".

That would mandate the Government to ensure that notices are properly communicated, rather than running the risk of them being snuck out through obscure channels such as the Prime Minister's personal Twitter account. The public notice provisions are fraught with concerns, and these amendments seek to build in basic safeguards to prevent the worst abuses that may be made possible by the Bill.

Kirsty Blackman: I rise to support the amendments. I said in a previous sitting—one is encouraged to repeat oneself here—that one of the first things I said when I saw the clause was, "What constitutes a public notice? What does that even mean?" I am no more happy about it now that I have found out what the definition is. I am concerned that there are no rules about how such notices need to be shared. The Government probably need to look at putting into all laws that come forward what constitutes a public notice and what constitutes the public having enough notice of something.

With regard to this clause, it would be sensible for HMRC, whatever changes it makes, to ensure that everyone knows what those changes are and that all affected people are aware of them. Otherwise, we will have a situation where HMRC chases people for doing the wrong thing when they did not know they were doing the wrong thing, because the change was tweeted on the Prime Minister's Twitter feed rather than put out in an accessible format. I do not imagine that the Government would be daft enough to put a public notice in a place where no one would see it, but it would be useful to have clearer rules about public notices. I therefore support what my honourable colleagues on the Labour Front Bench seek to do with the amendments.

Mel Stride: Amendment 140 seeks to limit the powers in the Bill to use public notices. However, a notable effect of the amendment would be to remove the ability to use regulations to cover matters that are dealt with in a public notice, which may limit the Government's ability to package delegated legislation in the most effective way.

The circumstances in which provision can be made by public notice are well defined in the Bill. There is no power in the Bill to allow for provision that may be made by regulations to be made alternatively by public notice. I reassure the Committee that it is not unusual for public notices to be used to make provision in relation to the administration of tax regimes. They are typically used, for example, to make provision that is purely technical or administrative in nature; that may be subject to regular updating, including to take account of external factors; that may need to be changed swiftly; that is based on external sources; or that is not otherwise required to be set out in secondary legislation, but is included to improve transparency. An example in the Bill is the provision enabling the form and content of a customs declaration to be set out in a public notice.

Another effect of the amendment would be to disapply subsections (6) to (8) of clause 32 in respect of public notices, although they would continue to apply in respect of regulations. Let me reassure the Committee that those subsections do not widen the subject matter that public notices can be used to address. As I have stated, that subject matter is set out clearly by the relevant clauses and schedules. On that basis, I urge the Opposition to withdraw amendment 140.

Amendment 141 aims to require public notices published under the Bill to be made in a form that is accessible to

"all people who are likely to be affected by or interested in"

them. I sympathise with the amendment's general thrust. It is, of course, vital that any public notice published by HMRC is made available in an accessible format to everyone affected. However, I assure the Committee that including such an obligation in the Bill is unnecessary. HMRC has extensive experience of producing public notices to communicate changes in tax policy to affected parties, whether individuals or businesses, as part of its wider engagement with bodies that represent customers. That includes ensuring that any information set out in a public notice is clear and accessible. Indeed, the Government already make everything we publish on gov.uk accessible and available in a variety of formats. The public notices published under the Bill will be no different.

HMRC also has good working relationships with a range of business representative groups and uses those channels to reach the wider business community. For example, it is normal practice to share advance drafts with business groups to seek their views. HMRC will continue to follow the same approach with its public notices on the changes introduced by the Bill. I therefore ask the hon. Gentleman to withdraw his amendments.

Jonathan Reynolds: I have listened intently to the Minister's reassurance, particularly about the modesty of public notices and the undesirability of making more

specific recommendations about their accessibility. I also listened to his point that public notices cannot replace regulation. However, the Bill states that regulations can replace public notices, which suggests that the burden of what is being considered is wider than the Government have declared.

Even in my relatively short time as a shadow Treasury Minister, I have seen relatively arcane bits of our regulatory constitutional apparatus used on several occasions, for instance to limit the scope of debate on amendments to a Finance Bill. Once powers are in place, they can be used for ends for which they were not intended when they were put on the statute book.

I do not intend to press the amendment to a vote, but I think that we may have to return to the issue on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 32 ordered to stand part of the Bill.

Clauses 33 to 38 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(David Rutley.)*

12.53 pm

Adjourned till this day at Two o'clock.