PARLIAMENTARY DEBATES

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Public Bill Committee

FINANCE BILL

Eighth Sitting

Wednesday 16 June 2020

(Afternoon)

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PBC (Bill 114) 2019 - 2021

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Sunday 20 June 2020

The Committee consisted of the following Members:

Chairs: Andrew Rosindell, † Siobhain McDonagh

† Badenoch, Kemi *(Exchequer Secretary to the Treasury)*
† Baldwin, Harriett *(West Worcestershire)* (Con)
† Browne, Anthony *(South Cambridgeshire)* (Con)
† Buchan, Felicity *(Kensington)* (Con)
† Cates, Miriam *(Penistone and Stocksbridge)* (Con)
Flynn, Stephen *(Aberdeen South)* (SNP)
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† Millar, Robin *(Aberconwy)* (Con)
† Norman, Jesse *(Financial Secretary to the Treasury)*
† Oppong-Asare, Abena *(Erith and Thamesmead)* (Lab)
† Phillipson, Bridget *(Houghton and Sunderland South)* (Lab)
† Ribeiro-Addy, Bell *(Streatham)* (Lab)
† Rutley, David *(Lord Commissioner of Her Majesty's Treasury)*
† Smith, Jeff *(Manchester, Withington)* (Lab)
† Streeting, Wes *(Ilford North)* (Lab)
† Thewliss, Alison *(Glasgow Central)* (SNP)
† Williams, Craig *(Montgomeryshire)* (Con)

Chris Stanton, Kenneth Fox, Johanna Sallberg, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 16 June 2020

(Afternoon)

[Siobhain McDonagh *in the Chair*]

Finance Bill

2 pm

Clause 86

Rebated fuel: private pleasure craft

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

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

That schedule 10 be the Tenth schedule to the Bill.

The Financial Secretary to the Treasury (Jesse Norman): It is lovely to see you in the Chair, Ms McDonagh. I apologise to hon. Members who have had the pain of seeing me do the urgent question in between our two Public Bill Committee sittings; I can only admire their strength and resilience.

Clause 86 introduces schedule 10, which enables changes to be made to the Hydrocarbon Oil Duties Act 1979 to require white diesel to be used for filling private pleasure craft such as yachts and canal barges, to meet our international obligations under the EU withdrawal agreement. It is an enabling power, and it follows consultation with private pleasure craft users and fuel suppliers in 2019.

There is no current timetable for commencement of these changes. Details of implementation via future secondary legislation will be set out in due course, after the consultation that the Government are planning this summer on wider changes to red diesel that were announced at Budget 2020. Once commenced, the changes will affect only the type of fuel that private pleasure craft can use and not the amount of fuel duty users pay. They already pay the standard white diesel rate for propelling their craft, and they are entitled to use rebated red diesel for other, non-propulsion purposes, such as heating and cooking. The changes will not affect that. Where craft have a shared tank for propulsion and non-propulsion purposes, such as heating, the Government will explore options that prevent users from paying more duty for their non-propulsion use than they would otherwise have to pay.

In 2018, the Court of Justice of the European Union ruled that the use of red diesel to propel private pleasure craft breached the fuel marker directive, which is designed to ensure, given the variation in duty treatment in member states, that any misuse of diesel crossing EU internal borders can be detected. Over the summer of 2019, the Government consulted on how they intended to implement the Court judgment by requiring private pleasure craft to use white diesel for propulsion. More than 1,600 replies were received. At the present time, private pleasure craft use the lower-duty red diesel for both propulsion and non-propulsion, but pay a top-up to the white diesel rate on the proportion of fuel that they use to propel their craft.

Last year's consultation saw evidence on the impact that requiring private pleasure craft to use white diesel propulsion would have on users of diesel-propelled craft operating in UK inland waterways and along the coast, and on the companies that supply diesel to them. The responses are informing implementation issues for suppliers, known as registered dealers in controlled oils, or RDCOs, and users of diesel fuel.

The changes made by schedule 10, once commenced by secondary legislation, will amend sections 12 and 14E of the Hydrocarbon Oil Duties Act 1979, to disallow the rebates that apply to diesel, biodiesel and bioblend not used for road vehicles on the fuel used for propelling private pleasure craft. In practice, such craft have not been benefiting from the rebated rate on fuel use for propulsion, as they have been paying the additional duty to ensure that they pay the full rate as required while we are in the transition period.

Schedule 10 creates new penalties for using marked fuel for propelling a private pleasure craft, similar to those that exist when marked fuel is used in road vehicles, and also gives Her Majesty's Revenue and Customs powers to take samples. It also provides for secondary legislation to mitigate the impact of the measure on houseboats and permanently moored residential craft; as they do not use fuel to propel their houseboat, they should be entitled to continue to use red diesel.

Finally, the schedule amends schedule 7A to the Value Added Tax Act 1994, to provide for the removal, if necessary, of the reference to marked fuel used in private pleasure craft in respect of which a declaration has been received. It provides that the changes will be brought into force on the days and in the areas appointed in secondary legislation at a future date.

This clause and schedule will ensure that we respect our international commitments, by enabling us to make changes to legislation covering fuel use by a private pleasure craft to the extent required to meet those commitments. I therefore commend the clause and the schedule to the Committee.

Wes Streeting (Ilford North) (Lab): I should have said this morning that, although those on the Government Front Bench are doing a joint effort today to give each other a break, this is my penance for the shadow Chief Secretary, my hon. Friend the Member for Houghton and Sunderland South, handling the digital service tax single-handedly last week, so I am afraid that Members will be getting even more tired of my voice than the Financial Secretary's voice.

I want to raise a few points on clause 86. First, as the Minister said, this clause and schedule are intended to enact the judgment of the European Court of Justice and to make sure we abide by our obligations under the withdrawal agreement. The challenge for various industry bodies is that this proposal effectively means that we are going to have to go through a number of changes, unless the Government intend this to be a permanent change in approach.

It is a significant disruption for the industry. British Marine, the main leisure boating industry body, said the change would present

"severe problems for boat users and the industry",

and that was the position of all representative bodies. Given the issues raised by industry bodies and the strength of objections, why has the Minister sought to implement the judgment of the Court of Justice of the European Union when we will have left the European Union and, at some point in the not too distant future, these sorts of judgments will not have to be abided by?

Suppliers and industry bodies have deemed the switch as not viable due to its being uneconomical and impractical to change waterside fuelling locations from red to white diesel. What will the Minister do to support suppliers in this transition and to ensure that commercial users, such as fishing boats, are not negatively impacted by the switch?

Jesse Norman: I thank the hon. Gentleman for his questions. We fully appreciate the degree of concern that has been shown by the industry. As he will be aware, we are under an obligation to abide by EU judgments while we remain under the withdrawal agreement. The proposal underlines how seriously we take legal obligations that have been incurred in the EU withdrawal agreement, and that includes implementing the result of the European Court of Justice judgment.

It should be made clear that, during the transition period, if the Commission were not convinced that necessary steps had been taken to implement the judgement, it could, in principle, refer the case back to the European Court and ask it to levy fines for non-compliance. Those fines can be pretty substantial—up to €792,000 a day plus a potential one-off fine of at least €10 million—so we are very focused on communicating the seriousness of our intent in passing this enabling legislation. We do not believe that paying fines to the EU, especially as we have now left the EU, would be an effective or good use of taxpayers' money, not least when we are making broader changes to reduce the entitlement to use red diesel more widely.

It is worth pointing out one other thing: we have not set an implementation date. The reason is that we recognise that it is important for Government to continue to work with users of private pleasure craft and with fuel suppliers to understand how they can implement the changes, precisely to make sure that those changes are as little onerous and as easy to enact as they can be. It is only once we have seen that consultation, gone through that process, reflected further on it and had a chance to consider how the legislation could be framed that we will be able to return to this issue.

Question put and agreed to.

Clause 86 accordingly ordered to stand part of the Bill.

Schedule 10 agreed to.

Clause 87

Rates of air passenger duty from 1 April 2021

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

The Exchequer Secretary to the Treasury (Kemi Badenoch): Clause 87 makes changes to ensure that the long-haul rates of air passenger duty for the tax year 2021-22 increase in line with the retail price index. The change will make sure that the aviation sector continues to play its part in contributing towards funding our vital public services.

Aviation plays a crucial role in keeping Britain open for business, and the UK Government are keen to support its long-term success. Indeed, the UK has one of the highest direct connectivity scores in Europe, according to the latest Airports Council International Europe report. The Government appreciate the difficulties that the airline industry currently faces as a result of coronavirus. That is why the Chancellor provided a comprehensive package for all businesses affected by the virus on 20 March. However, as air passenger duty is paid on a per passenger basis, the recent decline in passenger demand will have resulted in a reduction in passenger duty liabilities for airlines. As the industry returns to health, it is right that the revenue raised from air passenger duty should continue to remain in line.

The clause increases the long-haul reduced rate for economy class nominally by only £2 and the standard rate for all classes above economy by £4—a real-terms freeze. The rounding of air passenger duty raised to the nearest £1 means that short-haul rates will remain frozen in nominal terms for the eighth year in a row, which benefits about 80% of all airline passengers. More broadly, the Government will consult on aviation tax reform. As part of the consultation, we will consider the case for changing the air passenger duty treatment of domestic flights, such as reintroducing the return leg exemption, and for increasing the number of international distance bands.

The changes made by the clause will increase the long-haul APD rates for the tax year 2021-22 by the RPI. Air passenger duty is a fair and efficient tax, where the amount paid corresponds to the distance and class of travel of the passenger and is due only when airlines are flying passengers. The changes ensure that the aviation sector will continue to play its part in contributing towards funding our vital public services. I therefore commend the clause to the Committee.

Wes Streeting: The industry has stated that the proposed changes do not support it and its net zero plans. The news that the airline industry does not like air passenger duty will come as a surprise to no one. As we are debating air passenger duty under clause 87, and as Treasury Ministers declined to come to the House in response to an urgent question from the Chair of the Transport Committee, this is an opportunity for me to raise concerns directly with Treasury Ministers about support for the airline industry in the light of the challenges it faces because of covid-19.

The Minister said that the airline industry has benefited from Government support. In so far as any industry and employer has benefited from the general schemes made available—the job retention scheme, the self-employment income support scheme, the various business grants and loans that are available—that is true. However, back in March, the Chancellor referred to specific support for the aviation industry. It is now June and that support has not yet materialised. In fact, we do not even have any outline of what that support could entail or whether it will materialise at all.

Let us bear in mind that the industry contributes £22 billion a year to the British economy. It supports 230,000 jobs in aviation and throughout the manufacturing supply chain. If we take into account the broader sweep of jobs based around the supply chain, airports and travel, we are probably looking at something closer to 500,000 jobs.

Ministers, whether in the Treasury or the Department for Transport, ought to be embarrassed by the fact that, only a matter of weeks ago, a leading figure in the airline

[Wes Streeting]

industry told the Transport Committee that the Government have been "asleep at the wheel". That is not the way that the Treasury should approach a major industry. Of course, the airline industry has a lot to change in order to meet our country's net zero ambitions, but I am sure we would all agree that we would prefer it if the aviation industry got to that point through research, innovation, sensible application of technology, change of consumer behaviour and a just transition to support the workforce as the industry changes, rather than because airlines go bust and people lose their jobs.

2.15 pm

In our proceedings this morning, we referred to the fact that unemployment is already a serious challenge in our country. We see that reflected in the figures today. Unless Ministers take action, things are going to get a hell of a lot worse for an awful lot of people. As I told the poor aviation Minister, who was sent along to answer for Treasury Ministers in the urgent question—with her hands tied behind her back because she had zero latitude to speak for the Treasury—the Department for Transport is neither use nor ornament on this matter.

Only the Treasury can now provide the support that our aviation industry needs. People's jobs up and down the country are counting on them. It is wholly unacceptable that the Chancellor made a commitment back in March, but has not put his money where his mouth is since. I hope that Ministers might give some semblance of explanation or hope to people in the airline industry and those whose jobs rely on it more broadly that the Government are listening and are going to act in short order.

Anthony Browne (South Cambridgeshire) (Con): This is my first ever Bill Committee, but I was under the impression that we were meant to talk about the actual elements of the Bill, rather than wider economic policy or industrial strategies for business. The hon. Member for Ilford North has kindly emphasised all the support the British Government are giving the airline industry, but it is completely irrelevant for discussion now.

The Chair: I would just say to the hon. Gentleman that the decision on what is spoken about and what is not is mine. My general attitude is to encourage participation and comment. I will show the same latitude to both Government and Opposition Members. I call the Minister.

Kemi Badenoch: On the issue of a specific support package for the industry, the hon. Member for Ilford North has mentioned the range of measures that we have put in place, and we know that the DFT, the Transport Secretary and the aviation Minister are in close contact with the aviation sector. What the hon. Gentleman does not know is that Treasury Ministers, including myself, have also received lots of representations from the industry—it is not an issue that we are ignoring—but we need to be careful about how we make interventions.

The aviation sector is important to the UK economy. When those companies, as with any other companies that make a material contribution to the economy, find themselves in trouble as a result of coronavirus and have exhausted the measures already available to them, the Transport Secretary and Chancellor are listening to understand the issues, but any intervention needs to represent value for money for the taxpayer.

As we saw in the urgent question earlier today, there are so many people we need to help. We need to be careful about how we spend taxpayers' money and where it should be directed. At this time, the Chancellor has not made that decision, but we will continue to work closely with the sector, and we are willing to consider the situation of individual firms, rather than working a sector-wide basis, once all the other Government schemes and commercial options have been explored and exhausted. That includes—I am sure this is something Opposition Members agree with—raising capital from existing investors and approaching other investors first.

Question put and agreed to.

Clause 87 accordingly ordered to stand part of the Bill.

Clause 88

Amounts of gross gaming yield charged to gaming duty

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

Kemi Badenoch: Clause 88 increases the thresholds for the gross gaming yield bands for gaming duty in line with inflation. This is a very small change, which is assumed by public finances.

Gaming duty is a banded tax paid by casinos in the UK, with marginal tax rates varying between 15% and 50%. Public finances assume that the bands are uprated with inflation each year to prevent fiscal drag. Without an annual uprating, over time, casinos would pay gaming duty at higher rates, so the change made by clause 88 uprates the bands of gaming duty in line with inflation. That is expected by the industry and assumed in public finances. Rates of gaming duty will remain unchanged. The change will take effect for accounting periods starting on or after 1 April 2020. I therefore commend the clause to the Committee.

Wes Streeting: We have heard representations from the chief executive of the Betting and Gaming Council, Michael Dugher, who will be known to many hon. Members across the House. The council is calling for reform of business rates and casino taxation. In the light of its representation, which, unsurprisingly, makes the industry case, and reflecting on some of our earlier conversations about alcohol duties, tobacco and smoking, what plans does the Treasury have, if any, to look at reform of gambling taxation generally and at the specific reforms Mr Dugher is calling for of business rates and casino taxation?

We have also heard strong representations from hon. Members across the House, such as my hon. Friend the Member for Swansea East (Carolyn Harris) and the right hon. Member for Chingford and Woodford Green (Sir Iain Duncan Smith), about their work to highlight the impact that gambling has on people's lives. Irresponsible gambling blights people's lives. In the light of our conversation this morning about the positive role that Treasury decisions can play in promoting good public health outcomes, is the Treasury minded to look at those issues in the round as part of a wider review of the gaming duty and gambling taxation more generally?

Kemi Badenoch: The answer is to look at what the duty is designed to do. It is a change to gambling taxation; it is not related to the regulation of gambling activity, which, as we know, is the remit of the Department for Digital, Culture, Media and Sport.

The Government continue to monitor the effectiveness of existing gambling controls. As the December 2019 election manifesto set out, we intend to review the Gambling Act 2005. We will always consider the potential impact of tax changes at the same time.

We should remember that freezing the duty bands would have a small impact on public finances, while pushing smaller, generally regional, casinos into higher duty bands. The casino industry paid about £220 million in duty in the last financial year. The Government believe that the sector already makes a fair contribution to the public finances. I do not believe it is the small regional casinos that we would be looking to affect in terms of problem gambling.

Question put and agreed to.

Clause 88 accordingly ordered to stand part of the Bill.

Clause 89

Rates of climate change levy until 1 April 2021

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

The Chair: With this it will be convenient to discuss clause 90 stand part.

Kemi Badenoch: Clauses 89 and 90 ensure that the climate change levy main and reduced rates are updated for the years 2020-21 and 2021-22 to reflect the rates announced at Budget 2018. The climate change levy came into effect in April 2001. It is a UK-wide tax on the non-domestic use of energy from gas, electricity, liquefied petroleum gas and solid fuels. It promotes the efficient use of energy to help to meet the UK's international and domestic targets for cutting emissions of greenhouse gases. Energy-intensive businesses that participate in the climate change agreements scheme run by the Department for Business, Energy and Industrial Strategy qualify for reduced rates in return for meeting energy efficiency or carbon reduction targets.

Budget 2016 announced that electricity and gas rates would be equalised by 2025, because electricity is becoming a much cleaner source of energy than gas as we reduce our reliance on coal and use more renewable resources instead. These changes give effect to rate changes announced in 2018 and reaffirm the commitment to equalise the main rates for gas and electricity. The reduced rates will be subject to increases in line with inflation, as in previous years. In order to ensure better consistency in the tax treatment of portable fuels and the off-gas grid market, it was announced in the 2017 Budget that the climate change levy rate for liquefied petroleum gas would be frozen at the 2019-20 level in the years 2020-21 and 2021-22. For that reason, the reduced rate for liquefied petroleum gas that applies to CCA participants will remain set at 23% for the years 2020-21 and 2021-22.

Clauses 89 and 90 will update the climate change levy's main and reduced rates for 2020-21 and 2021-22, as announced in the 2018 Budget, to reflect that electricity is now a cleaner energy source than gas. The electricity main rate will be lowered, whereas the gas main rate will increase so that it reaches 60% of the electricity rate in 2021-22. The rates were announced over two years ago, to give businesses plenty of notice to prepare for the rate changes. To limit the impact on the CCA scheme, participants will see their climate change levy liability increase by retail price index inflation only. That protects the competitiveness of over 9,000 facilities in energy-intensive industries across 50 sectors. I therefore commend the clause to the Committee.

Wes Streeting: The Chancellor suggested that pollution taxes would increase as a result of his Budget, but Jayne Harrold, PwC's UK environmental tax leader, said that under the 2020 Budget:

> "There was not really an increase in pollution taxes as the Chancellor suggested with the climate change levy (CCL) changes announced. In fact, freezing CCL rates on electricity to level up the gas rate faster based on carbon emissions will reduce the amount of pollution tax applied. Extending climate change agreements for two years is equally minor good news for energy intensive businesses who get significant CCL reliefs."

Can the Minister give us a sense of what more the Treasury will do to ensure that taxes from polluting behaviour increase?

I also want to probe on the green gas levy. The 2020 Budget promised the introduction of a green gas levy to help fund the use of greener fuels, to work in conjunction with the rise in the climate change levy. When and how do the Government plan to introduce the levy?

Kemi Badenoch: I missed the hon. Member's last question, but I can write to him on this issue, if he is happy with that. I go back to the question whether we are doing enough to achieve net zero. The answer is that we are going as far as we can, but we must also ensure that we protect the competitiveness of businesses throughout the UK. As announced in 2016, the changes to the climate change levy rates will see electricity and gas main rates equalised. That is being done incrementally—not because we do not want to go far enough, but in order to protect the tax liability of businesses. The Treasury review on the cost of transitioning to net zero will consider the role of tax in the transition. Does that answer the question?

Wes Streeting: My question was specifically about the changes that the Government plan to make in relation to the green gas levy, which had been announced in the Budget. When and how do the Government plan to introduce the green gas levy?

Kemi Badenoch: I cannot give the hon. Member an answer to that, but I will definitely write to him. I think officials will be able to brief him on the green gas levy. I cannot talk about it in the context of the climate change levy, which is what we are discussing, but I take his point. It is a good question. It is a Department for Business, Energy and Industrial Strategy competency, which is why I do not have an answer from a Treasury perspective, but I can speak to my counterparts in that Department and get back to him.

Wes Streeting: Thank you.

Question put and agreed to.

Clause 89 accordingly ordered to stand part of the Bill.

Clause 90 ordered to stand part of the Bill.

Clause 91

RATES OF LANDFILL TAX

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

2.30 pm

Kemi Badenoch: The clause increases both the standard and lower rates of landfill tax in line with inflation from 1 April 2020, as announced at Budget 2018.

Landfill tax has been immensely successful in reducing the amount of waste sent to landfill. Landfill tax provides a disincentive to use landfill and has made it the most expensive waste treatment method in terms of average gate fees. The success of the tax has contributed to a 70% decrease in waste sent to landfill since 2000. Household recycling has increased to 45%, from 18%, over the same period. The benefits of this reduction are twofold: first, there are economic benefits as valuable resources are used better, rather than being simply tipped into a hole in the ground, and secondly, there are environmental benefits, not only from the increased efficiency in the use of our precious resources, but through a reduction in greenhouse gas emissions from decomposing waste.

When waste is diverted from landfill we promote more sustainable waste treatment practice, such as recycling. The Government want to move towards a more circular economy and we are working together with business, industry, civil society and the public to achieve that aim. Landfill tax is one of the Government's primary levers in achieving this.

When disposed at a landfill site, each tonne of standard-rated material is currently taxed at £91.35 and lower-rate material draws a tax of £2.90 per tonne. These changes will see rates per tonne increase to £94.15 and £3 respectively from 1 April 2020. By increasing rates in line with RPI we maintain the crucial incentive for the industry to use alternative waste treatment methods and continue the move towards a more circular economy. The increase in landfill tax will affect businesses and local authorities that send waste to landfill, but by continuing the positive trend of managing waste more sustainably businesses and local authorities will be able to reduce their landfill tax liabilities.

In conclusion, clause 91 increases the two rates of landfill tax in line with inflation from 1 April 2020, as announced in the autumn Budget in 2018. The clause maintains the incentives in the landfill tax for businesses and local authorities to divert waste treatment away from landfill and to continue to invest in sustainable methods of waste disposal, helping the Government meet their environmental objectives. I therefore commend the clause to the Committee.

Wes Streeting: Aside from paying tribute to my own local authority, the London Borough of Redbridge, and other local authorities for the efforts they have made to reduce the amount of waste going into landfill, there is only so much that can be said about an inflationary increase in landfill tax. I am happy for us to support the clause.

Question put and agreed to.

Clause 91 accordingly ordered to stand part of the Bill.

Clause 92

CARBON EMISSIONS TAX

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

The Chair: With this it will be convenient to discuss, That schedule 11 be the Eleventh schedule to the Bill.

Kemi Badenoch: At Budget 2020 the Government announced that they would make the necessary legislative changes to the carbon emissions tax in Finance Bill 2020 to ensure that this policy remained a viable option to maintain carbon pricing in the UK after the transition period, in the event that a trading system proves undesirable. If the Government decide to use the tax as their carbon pricing policy after the transition period, the tax would be commenced, by secondary legislation laid in late 2020, from 1 January 2021.

The clause and schedule strengthen the effectiveness of the carbon emissions tax by ensuring that penalties can be issued for non-compliance and late payment and the legislation is updated to reflect developments since the tax was established in the Finance Act 2019. In line with the withdrawal agreement, the UK will remain in the EU emissions trading system, known as the EU ETS, until the end of the transition period on 31 December 2020. The UK will continue to have legally binding carbon reduction targets after leaving the EU.

As set out in the UK's approach to the negotiation, the UK would be open to considering a link between any future UK emissions trading system and the EU ETS, if it suited both the UK's and the EU's interests. If a linked trading system between the UK and the EU is not agreed, the UK would introduce an alternative carbon pricing policy. The Government are therefore preparing both a UK standalone emissions trading system and a carbon emissions tax.

Budget 2020 announced that legislation would be included in this Finance Bill to provide a charging power to establish a UK ETS linked to the EU ETS or a standalone UK ETS, and update the existing legislation relating to carbon emissions tax. This schedule amends the Finance Act 2019 to ensure that the tax will be ready to be operational from the end of the transition period, if needed. The clause and schedule deal with the latter.

Clause 92 introduces schedule 11, which makes amendments to part 3 of the Finance Act 2019, which established the carbon emissions tax. Schedule 11 will amend the Finance Act 2019 so that the carbon emissions tax is ready to commence from 1 January 2021 if needed.

I will briefly highlight the most significant changes in what is a fairly technical schedule. Paragraphs 9 and 10 add provisions to the tax for a penalty for failure to make payments of tax to HMRC on time. That would be achieved by adopting the existing provisions on late payment penalties in schedule 56 to the Finance Act 2009. The penalty would be commenced by appointed day regulations if the tax were introduced.

Similarly, paragraph 4 allows for provisions to be made for the imposition of civil penalties for failure to comply with a requirement of the regulations; the review of, and a right of appeal against, a specified decision relating to the tax; and the modification of domestic and EU regulations relating to the monitoring and regulation of emissions.

Paragraph 8 amends the commencement and transitional provisions to ensure that the regulations needed to operate the tax may be made before the tax has commenced. It also removes provisions that were needed when we were planning to commence the tax partway through an emissions reporting period. Those are no longer needed, as we would now start the tax on 1 January, the first day of an emissions reporting period.

Paragraph 3 allows the Treasury, by regulations, to exclude regulated installations of a specified description from the charge to tax. That enables the Government, for example, to exclude Northern Ireland power generators from the tax, were they to continue to participate in the EU ETS as provided for in the Northern Ireland protocol. Paragraph 6 ensures that regulators will be able to recover costs incurred in doing work connected with carbon emissions tax, even if that work is done before regulations are made.

In conclusion, the clause and schedule ensure that the carbon emissions tax is ready to commence from 1 January 2021 if needed. It would provide a stable carbon price and help the UK to meet its carbon reduction commitments. I therefore commend the clause and schedule to the Committee.

Wes Streeting: The clause and schedule that we are discussing make perfect sense in light of the impact of our exiting the European Union. I just have a few questions for the Minister.

This clause gives the Government the power to introduce a UK emissions trading scheme or carbon tax via a statutory instrument. As we have already heard from the Minister, and as we have heard from public statements on both sides of the channel this week, we will leave the EU emissions trading scheme on December 31 2020, when we leave the transition period.

I think the Minister alluded to the fact that so many of the questions that stakeholders have remain unanswered. I accept that this is just an enabling clause in anticipation of the further detail, and I appreciate that some of these questions may relate to responsibilities in the Department for Business, Energy and Industrial Strategy, so I will accept it if she sends me in that direction, but does she know when the Government plan to respond to chapters 1 to 3 of the consultation on the future of UK carbon pricing? Can she give assurances that there will be time to scrutinise Government proposals and implement a new scheme by the end of the year, bearing in mind that the proposals will have an impact on a wide range of organisations?

Touching on a theme I raised this morning about support for businesses as they undertake a transition to new frameworks, how do the Government intend to support UK companies during the transition, bearing in mind that, just as we are feeling the impact on Government business of disruption caused by the pandemic, many businesses are feeling exactly the same disruption? Is it realistic or desirable for companies across the country to be adapting to a new scheme that is not yet known and that may need to take force by the end of this year?

Kemi Badenoch: We published a consultation response on 1 June, and the carbon emissions tax consultation is due to be published shortly. I will say to the hon. Gentleman, "Watch this space."

In terms of the impact on businesses, the carbon emissions tax would have an impact on around 1,000 installations that currently participate in the EU emissions trading system, most of which are operated by large businesses. Businesses whose emissions exceeded their allowance would need to familiarise themselves with the tax and pay a bill once a year, in lieu of surrendering trading allowances under the EU emissions trading system. It must be said, however, that the administrative burdens of complying with this tax are not expected to be more than what they would have been under the EU emissions trading system.

Question put and agreed to.

Clause 92 accordingly ordered to stand part of the Bill.

Schedule 11 agreed to.

Clause 93

Charge for allocating allowances under emissions reduction trading scheme

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

Kemi Badenoch: The clause provides the power to auction carbon emissions allowances, to establish a UK emissions trading system, which could be linked to the EU's or operate independently. Alongside clause 92, to update the carbon emissions tax, this clause ensures that a strong carbon price remains in all scenarios, while supporting the ongoing negotiations.

The UK's membership of the EU emissions trading system will end following the transition period. As mentioned in the previous clause, the EU ETS covers around a third of UK emissions, including the power sector, heavy industry and aviation. It has been an important tool, alongside other taxes and regulations, in helping to reduce emissions.

Following the UK's exit from the EU, we have choices about how best to put a price on carbon, tailoring our approach to the UK economy. Carbon pricing will continue to play an important role to help meet the UK's legally binding carbon budgets and net zero. The Government are preparing an independent UK emissions trading scheme, which could be linked to the EU ETS. As set out in the UK's approach to negotiations, we are open to considering a link if it suited both sides' interests.

Clause 93 is essential to the establishment of a UK ETS, as it provides the power for Government to auction emissions allowances and intervene in the market to deal with any price volatility. As I mentioned earlier, the Government are also preparing a carbon emissions tax and a possible alternative in clause 92. Introducing legislation to support potential negotiated options, as well as legislating for alternative approaches to carbon pricing after the transition period, will provide certainty that we maintain an effective carbon price in all scenarios, continuing to drive reductions in emissions on our journey to net zero.

The changes made by clause 93 introduce a charging power. This means that through regulations, emissions allowances can be auctioned by the Government in any future UK ETS, ensuring that participants pay a price for their pollution. The clause will also enable regulations to be made for additional market stability mechanisms, to operate in an independent UK emissions trading scheme. That will ensure a smooth transition for businesses. First, a price rule, known as the auction reserve price, will maintain a carbon signal when allowance prices are low. Secondly, a cost containment mechanism will respond to in-year price fights, protecting the competitiveness of UK business when allowance prices are high. Further detail on these measures has been set out in the Government's recent response to our consultation on the future of UK carbon pricing.

[Kemi Badenoch]

This clause is a prudent and sensible one to legislate for. It will pave the way for an emissions trading scheme, which could be linked to the EU ETS, if that is in our interests. It also ensures that a stand-alone emissions trading scheme could be implemented as an alternative policy, should a link not be agreed. Alongside that, legislation will be updated related to the carbon emissions tax, so we are keeping all options on the table for maintaining a carbon price signal from 1 January 2021.

Wes Streeting: The Minister asked us to watch this space. We will certainly do that and wait to see how discussions progress. We look forward to seeing the details of future arrangements in the not-too-distant future.

Question put and agreed to.

Clause 93 accordingly ordered to stand part of the Bill.

Clause 94

International trade disputes

Alison Thewliss (Glasgow Central) (SNP): I beg to move amendment 14, in clause 94, page 76, line 33, at end insert—

"(2) The Government must lay before the House of Commons by 9 September 2020 a statement of the conditions under which it would consider it appropriate to vary rates of import duty under this Section."

This amendment would require the Government to state the conditions under which it would consider it appropriate to vary rates of import duty in an international trade dispute.

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

Amendment 15, in clause 94, page 76, line 33, at end insert—

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

This amendment would require the Government to seek the approval of the House before making regulations varying rates of import duty in an international trade dispute.

Amendment 16, in clause 94, page 76, line 33, at end insert—

"(2) The Chancellor of the Exchequer must, no later than a month before any exercise of the power in subsection (1), lay before the House of Commons a report containing the following—

(a) an assessment of the fiscal and economic effects of the exercise of the powers in subsection (1);

(b) a comparison of those fiscal and economic effects with the effects of the UK being within the EU Customs Union;

(c) an assessment any differences in the exercise of those powers in respect of—

(i) England,

(ii) Scotland,

(iii) Wales, and

(iv) Northern Ireland; and

(d) an assessment of any differential effects in relation to the matters specified in paragraphs (a) and (b) between—

(i) England,

(ii) Scotland,

(iii) Wales, and

(iv) Northern Ireland."

This would require a review of the economic and fiscal impact of the use of the powers in section 94 including comparing those effects with EU Customs Union membership.

Clause stand part.

2.45 pm

Alison Thewliss: This is a small clause in the Bill, but hidden within it is the Government's intention to set the conditions under which they would consider it appropriate to vary the rates of import duty in an international trade dispute. With amendments 14 to 16, we seek to amend clause 94 because we are concerned that it gives the Government a huge amount of additional power, with which they will avoid scrutiny. The explanatory notes state that the clause

"replaces the requirement for 'authorisation' with a requirement to have regard to international obligations."

The Government need to explain why they feel they need the additional power, what the safeguards to it will be and why they think it is appropriate at this time.

Trade wars are damaging and should be very much a last resort. If the Government intend to take such actions, they deserve the scrutiny of the House. It should not just be about what the Secretary of State deems to be appropriate. I remind Members of the dispute affecting the Scotch whisky industry in Scotland, which is facing a 25% tariff because of US actions regarding Airbus and Boeing. Disputes have spillover effects that affect other parts of the economy, so we need a good understanding of why the Government are seeking these powers.

Amendment 14 would force the Government, by 9 September 2020, to set out the conditions under which they would breach international law to engage in a trade war. If none exist, they can surely remove the clause from the Bill. If there are conditions under which they would jeopardise our economic prosperity, the House deserves to know. Amendment 15 would require Commons approval before Ministers could follow such an irresponsible course of action. Brexit campaigners said they wanted to restore parliamentary sovereignty. If that is the case, the Government should accept that Parliament must have a say in such important matters.

Amendment 16 would force UK Ministers, no later than a month before any exercise of power, to make an economic assessment of the implications of the power and compare it with the economic health that the UK would be enjoying within the EU customs union. Ensuring that the public are informed of the impact of such an act of economic vandalism should not be controversial. We were promised a veritable land of milk and honey during the EU referendum campaign, so we certainly deserve to see the truth about these kinds of actions. The Government must explain why they think it is important to remove that authorisation and allow the Secretary of State to do what they want without the check and balance of this House.

Bridget Phillipson (Houghton and Sunderland South) (Lab): The Opposition have considerable sympathy with the hon. Lady's arguments and the amendments tabled by the SNP. We have many concerns about clause 94, which seems buried, given that it is of such considerable importance for the years ahead.

The change to the language in section 15 of the Taxation (Cross-border Trade) Act 2018 has worrying implications for the Government's adherence to the World Trade Organisation's dispute settlement system. Replacing the requirement for authorisation under international law with the more nebulous consideration of appropriateness is extremely concerning, and implies that the Government may seek to sidestep international law regarding trade disputes. The matters set out in section 28 of the 2018 Act already give the Government considerable flexibility over what they consider to be appropriate action in the light of international law. It is effectively up to the Secretary of State to decide which international agreements are relevant to the exercise of the function. Loosening up the language even further in this clause is thus highly questionable.

The proposed changes seemingly downgrade the Secretary of State's responsibilities when it comes to their international obligations. Having regard is nowhere near as onerous as having authorisation. That would allow the Secretary of State to operate at a much lower standard of requirement, and move away from recognised EU standards. We therefore seek to understand the reasoning behind the change. What is wrong with the current provisions regarding the variation of import duties in trade disputes?

There are further questions to which we seek answers from the Government. What will they use the clause for? It does not detail what kind of dispute is in question. How might the Trade Remedies Authority be involved in the decision-making process? Could this be an upshot of the digital services tax? The US has already found similar measures by France to be trade-restrictive, leaving the office of the United States trade representative to authorise retaliatory tariffs, as we discussed last week in Committee with reference to the digital services tax. While both parties are in the process of reaching a deal over the matter, it is possible that the Government wish to introduce this clause in preparation for a similar confrontation with the US. I hope the Minister can assure us that that is not the case, but why do the Government wish to reduce their responsibilities in adhering to international law?

The amendments tabled by the hon. Member for Glasgow Central and her colleagues go some way towards responding to that. The production of a report by the Chancellor no later than a month before any exercise of the power regarding the economic impact of such an action might enable Parliament to better scrutinise the actions taken through the clause. As it stands, other than through the scrutiny of primary legislation, Parliament has little say over international trade. I welcome the amendment to seek approval of any regulations deriving from the clause by resolution of the House of Commons, in the spirit of parliamentary scrutiny. However, the Government hold a considerable majority, and therefore I question how far the amendment would go in practice towards ensuring that the Government act in accordance with international law.

I welcome the amendment regarding the requirement for the Government to detail the conditions under which they would consider it appropriate to vary the rates of import duty under the clause. However, I believe that the implications of the wider clause are of significance and that the Government ought to provide these details during debate, rather than by September, although we are sympathetic to the intention behind the amendment. I stress that I would like the Minister, when he responds to the hon. Lady's concerns, to explain the reasoning behind this change, what kinds of disputes the clause would cover, and whether the Trade Remedies Authority will be involved.

If the changes in the clause are in anticipation of a dispute with the US over the digital services tax, does this not involve giving the Government permission to ignore international trade rules when disputes arise, undermining the authority of the WTO in the process? I hope that the Minister will provide assurances on the issue of appropriateness and respond to the concerns that the hon. Lady and I have, because this is a significant change. We have reservations about the measure that the Government are putting forward, and we would like to understand much more about their intentions.

Jesse Norman: I thank hon. Members for their comments, and pay tribute to my colleague the Exchequer Secretary for rattling through the clauses we debated earlier with such effectiveness. The hon. Member for Glasgow Central has raised important questions, which I want to address properly, so I will give this issue quite a considerable amount of discussion because it is an important aspect of the Bill.

Clause 94 makes a change to the criteria in section 15 of the Taxation (Cross-border Trade) Act 2018 to ensure that the UK can vary the amount of import duty in the context of an international trade dispute. Provisions in various international trade agreements allow for the UK to vary the amount of import duty applied to goods in the context of an international trade dispute. There is existing provision in section 15 of the 2018 Act that gives the Secretary of State the power to

"make regulations varying the amount of import duty"

where

"a dispute or other issue has arisen between Her Majesty's government…and the government of a country or territory".

Currently, section 15 of the 2018 Act is worded in a way that could be interpreted to mean that a binding ruling of the World Trade Organisation is needed before the UK can impose a duty, which would be restrictive. In certain circumstances, countries are within their WTO rights to impose additional tariffs quickly in relation to the actions of other WTO members and, where necessary, outside of WTO dispute proceedings.

In addition, since section 15 of the 2018 Act was enacted, there have been developments in the wider sphere of trade policy, including increasing trade protectionism and problems with the WTO dispute settlement system. The WTO appellate body has stopped functioning, and it has now become possible for final and binding resolution of a WTO dispute to be blocked by a party to the dispute by appealing a panel report. That means it may not be possible to apply retaliatory duties, even where a panel report has found in the complaining body's favour and the respondent has failed to bring itself into compliance.

Against this background, it is essential to ensure that the UK has the appropriate tools to respond to any unilateral measure or action taken by a WTO member that is not compatible with its obligations to the UK and that harms UK interests. Clause 94 therefore amends the original provision to ensure that, after having regard to relevant international arrangements, the Government may deal with such an issue by varying the amount of import duty. The EU is seeking similar powers, it should be noted, through amendments to its enforcement regulation, because it too recognises the importance of being able to respond quickly in the event of illegal measures being taken against it. What we are talking about is therefore in parallel to a process seeking similar powers within the EU.

[Jesse Norman]

At present, section 15 of the 2018 Act permits variation of import duty only where the UK is authorised under international law to deal with the issue. Clause 94 will amend section 15 to allow the Government to vary import duty where they consider it appropriate, having regard to relevant matters, including the UK's international obligations, as set out in section 28 of the 2018 Act. That amendment will allow the UK to respond more effectively to developments in the international trading system, in line with international laws and our rights as an independent WTO member.

To come to the question asked by the hon. Member for Glasgow Central, there are a number of situations in which it would be appropriate to vary rates of import duty. The most likely situation is that in which the UK has successfully challenged another WTO member's measures in the WTO dispute settlement system, and the other member has failed to bring itself into compliance. The UK could then impose retaliatory measures, including higher import duty against the other member. That is not contrary to and does not undermine the international rule of law; it insists on the international rule of law, in the face of measures that could disable it.

Import duty variations might also be imposed following a dispute brought under a free trade agreement or in the context of a WTO member applying a safeguard measure but failing to agree an adequate level of trade compensation for the adverse effects caused by the measure. It is also possible that the UK could lose a dispute under a free trade agreement and could agree compensation with another country. The compensation could take the form of lower import duty on certain goods.

In each of those circumstances, the Government are still required by the 2018 Act to have regard to our international arrangements that are relevant to the exercise of this power. It need hardly be said that the UK strongly supports the rules-based international trading system and appropriate enforcement of WTO agreements. It is because appropriate enforcement would be otherwise lacking that this clause is being brought into effect.

Amendment 14 would require the Government to state the conditions in which they would consider it appropriate to vary rates of import duty. As you will know, Ms McDonagh, international trade disputes are broad and varied, depending on the nature of the international agreement under which they are conducted and on the subject matter of the dispute. It would limit the Government's ability to respond effectively in a particular dispute if they were required to list in advance conditions for varying import duty in a dispute. I have already set out several situations in which it would be appropriate to vary rates of import duty. Examples have also been provided in the explanatory notes to both the Taxation (Cross-border Trade) Act 2018 and the Finance Bill.

Amendment 15 would require the Government to seek the approval of the House of Commons before making regulations varying rates of import duty in an international trade dispute. It is important to say that clause 94 is not an unchecked power. Any specific tariff measure introduced under section 15 of the 2018 Act would require secondary legislation, as is prescribed in that Act. The requirements set out in amendment 15 are therefore not necessary. Secondary legislation will involve the public passage of a piece of legislation. The Government need flexibility to respond effectively to state-to-state disputes, but with the understanding that they must have regard to the international arrangements to which the UK is party.

Amendment 16 would require the Chancellor of the Exchequer to lay before the House of Commons a report containing an assessment of the economic and fiscal effects of the exercise of the powers in clause 94, including a comparison of those fiscal and economic impacts with the effect of the UK being within the EU customs union, and an assessment of any differences in the exercise or effects of those powers in respect of England, Wales, Scotland and Northern Ireland.

Information on the expected impacts of import duty variations will be provided in the documentation accompanying any and each statutory instrument. However, it would not be appropriate to publish extensive detail, because doing so could undermine the effectiveness of the UK's response. It would also not be appropriate to compare the economic and fiscal impact of the use of the powers in clause 94 with EU customs union membership. First, the EU may not itself have a dispute with the WTO member against which the UK has brought an action. Secondly, even if the EU were applying retaliatory measures against that WTO member, the EU's retaliatory tariffs would be based on the impact on the EU27 and would not take into account impacts on UK industries and sectors. The amendment would therefore invite the Governments and others to compare apples with oranges.

3 pm

Amendment 16 would place a reporting requirement on the Chancellor; however, it is the Secretary of State for International Trade who will utilise the power to make regulations varying tariffs in order to deal with a trade dispute or other issue, as is stipulated in section 15 of the 2018 Act. It would not be appropriate to require the Chancellor to lay a report when it is the Secretary of State who is responsible for making the regulations.

Clause 94 makes an amendment to section 15 of the Taxation (Cross-border Trade) Act 2018 that is needed to ensure that the UK can respond to developments in the international system, in line with international laws and the UK's rights as a WTO member. To be clear, this measure does not impose any new import duties. Changes to import duties would require secondary legislation. It is needed because of the evolution in the trade and policy context that I have described, and it is designed to uphold our rights and the proper exercise of what amounts to international law in a context where the existing mechanisms are not functioning adequately. I therefore commend the clause to the Committee, and ask that it rejects amendments 14, 15 and 16.

Alison Thewliss: Although the Minister spoke for a long time, he did not get to the nub of why the clause is necessary, what safeguards are in place, and why the requirement for authorisation is replaced with a requirement to have regard to international obligations. I will press my amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 5]

AYES

Oppong-Asare, Abena
Phillipson, Bridget
Ribeiro-Addy, Bell
Smith, Jeff
Streeting, Wes
Thewliss, Alison

NOES

Badenoch, Kemi
Baldwin, Harriett
Browne, Anthony
Buchan, Felicity
Cates, Miriam
Jones, Andrew
Millar, Robin
Norman, rh Jesse
Rutley, David
Williams, Craig

Question accordingly negatived.

Amendment proposed: 15, in clause 94, page 76, line 33, at end insert—

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

This amendment would require the Government to seek the approval of the House before making regulations varying rates of import duty in an international trade dispute.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 6]

AYES

Oppong-Asare, Abena
Phillipson, Bridget
Ribeiro-Addy, Bell
Smith, Jeff
Streeting, Wes
Thewliss, Alison

NOES

Badenoch, Kemi
Baldwin, Harriett
Browne, Anthony
Buchan, Felicity
Cates, Miriam
Jones, Andrew
Millar, Robin
Norman, rh Jesse
Rutley, David
Williams, Craig

Question accordingly negatived.

Clause 94 ordered to stand part of the Bill.

Clause 95

HMRC DEBTS: PRIORITY ON INSOLVENCY

Alison Thewliss: I beg to move amendment 17, in clause 95, page 77, line 5, after "tax" insert

"which is due at the relevant date from the debtor and which became due in the 12 months immediately preceding that date, and/".

This amendment seeks to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy from being applied retrospectively and by limiting that preference to only those taxes which became due in the 12 months before the relevant date as given in the Bill (1st December 2020).

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

Amendment 18, in clause 95, page 77, line 6, after "deduction", insert

"from a payment made by the debtor in the period of 12 months immediately preceding the relevant date."

This amendment seeks to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy from being applied retrospectively and by limiting that preference to only those taxes which became due in the 12 months before the relevant date as given in the Bill (1st December 2020).

Amendment 19, in clause 95, page 77, line 29, after "tax", insert

"which is due at the relevant date from the debtor and which became due in the 12 months immediately preceding that date, and/".

This amendment seeks to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy from being applied retrospectively and by limiting that preference to only those taxes which became due in the 12 months before the relevant date as given in the Bill (1st December 2020).

Amendment 20, in clause 95, page 77, line 30, after "deduction", insert

"from a payment made by the debtor in the period of 12 months immediately preceding the relevant date."

This amendment seeks to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy from being applied retrospectively and by limiting that preference to only those taxes which became due in the 12 months before the relevant date as given in the Bill (1st December 2020).

Amendment 21, in clause 95, page 78, line 9, after "tax", insert

"which is due at the relevant date from the debtor and which became due in the 12 months immediately preceding that date, and/".

This amendment seeks to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy from being applied retrospectively and by limiting that preference to only those taxes which became due in the 12 months before the relevant date as given in the Bill (1st December 2020).

Amendment 22, in clause 95, page 78, line 10, after "deduction", insert

"from a payment made by the debtor in the period of 12 months immediately preceding the relevant date."

This amendment seeks to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy from being applied retrospectively and by limiting that preference to only those taxes which became due in the 12 months before the relevant date as given in the Bill (1st December 2020).

Amendment 23, in clause 95, page 78, line 26, at end insert—

"(8) The amendments made by this section do not apply to any debt secured by a floating charge in respect of monies were advanced to the debtor before 1 December 2020."

These amendments seek to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy from being applied retrospectively and by limiting that preference to only those taxes which became due in the 12 months before the relevant date as given in the Bill (1st December 2020).

Clause stand part.

Clause 96 stand part.

Alison Thewliss: The amendments seek to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy being applied retrospectively, and by limiting that preference only to taxes that became due in the 12 months before the relevant date as given in the Bill, which is 1 December 2020. In the current context, that is particularly important. With firms increasingly running the risk of insolvency, it really is unfair to give HMRC a queue jump to recoup lost funds, when other businesses and individuals in the real economy may be well out of pocket.

The plan is to grant HMRC preferential status in insolvency proceedings from December 2020, and measures will make directors personally liable for a company's tax

[Alison Thewliss]

liabilities where HMRC considers that avoidance or evasion is taking place or where there is evidence of phoenixes in the tax abuse using company insolvencies. I understand that the insolvency and restructuring trade body R3 is very concerned about the prospect of the policy. It feels very strongly that introducing such a policy would damage business lending and impede business rescue. UK Finance has suggested that the measure could hit lending to small firms by over £1 billion.

When I made representations in the Chamber on Second Reading, I explained that the policy is incredibly problematic. On the issue of phoenixism, R3 has suggested that the policy could lead to blameless shareholders, lenders, businesses and rescue professionals being made liable for the tax avoidance activities of rogue directors. What do Ministers intend to do to protect those who are innocent in the system from becoming liable under the proposals?

As well as having a detrimental impact on business and economic growth, restricted lending will make it harder to rescue businesses, increasing the knock-on effect of one business's insolvency on other businesses and individuals further down the line. Business investment, returns to creditors and confidence in the UK's corporate framework all stand to be damaged as a result. Ministers really need to give us a bit more detail about why they feel the policy is necessary.

Although the measure on tax abuse using company insolvencies can be mitigated through accurate legislative drafting and detailed guidance from HMRC, the SNP feels strongly that the policy to grant HMRC preferential creditor status should be withdrawn in its entirety. It is an introduction that could well prove a hammer blow to business rescue money across the UK, at exactly the same time as the Government are seeking to level up the economy and support businesses as they try to make their way through these difficult days. We all know of businesses in our constituencies that are really struggling and might not make it further than a couple of months ahead. Knowing that the policy is being introduced could have a detrimental effect on those who are supporting such businesses and on lenders.

In addition to scrapping the clause, the SNP believes that the UK Government must urgently introduce a comprehensive financial package to ensure a strong economic recovery, protect jobs and prevent new businesses from going under. With dire warnings emerging that up to half the loans issued under the bounce-back loan scheme are at risk of not being paid back, and with businesses defaulting on payments due to financial difficulties, it is vital that the Government introduce strengthened and tailored financial support urgently. The Treasury must heed the calls and turn its bounce-back loan scheme into grants for those who require them. It should write off debts for businesses that are facing increased hardship to ensure that they can survive in the long term and that jobs are protected wherever possible.

Many businesses are struggling to stay afloat during these challenging times, and despite the extensive financial support that has been provided by the Government, which we do not dispute, loans will not be the answer for every business. For many businesses, it is not income deferred, but income lost completely. For example, hospitality and tourism businesses will not be able to recoup that money, and loans will just put them further into debt.

It is important that the Government look at this matter very carefully and take on board the very substantial concerns that R3 has raised about the proposed policy, hence why we have tabled so many amendments. I would be grateful if the ministerial team could tell us exactly why this change is required and why it has been brought about.

Wes Streeting: I must confess that I come to this clause with a slightly different set of questions for Ministers to respond to. There is no doubt that in the current climate, the risk of insolvency to businesses is much greater, and it is right that the Government do all they can to stop preventable collapses, to safeguard jobs and to ensure that the UK is well positioned for the economic recovery that we hope will follow in short order, with the aim of making this recession as short and shallow as possible.

That is why my right hon. Friend the shadow Secretary of State for Business, Energy and Industrial Strategy and the shadow Minister for business and consumers, my hon. Friend the Member for Manchester Central (Lucy Powell), were prepared to work closely with their opposite numbers in the Department for Business, Energy and Industrial Strategy to expedite through the House of Commons the recent Corporate Insolvency and Governance Bill.

Turning to clause 95, the question I wish to pose to Ministers is why HMRC is only a secondary preferential creditor. HMRC will remain an unsecured creditor for the taxes that the bankrupt businesses owed, and we have had strong representations for HMRC to be a preferred creditor across the board, to ensure certainty and to recognise the fact that HMRC contributes, through tax collection and maintenance of general rules, to the general operating environment from which all businesses benefit.

Although we have heard that the risk exists that businesses may lose out as a result of HMRC having greater preferential status in the process of recovering money, it does not necessarily follow that the businesses that would lose out are those that most of us would have in mind as being of greatest concern, such as small to medium-sized enterprises. When a business becomes insolvent, bank loans need to be paid off first; unpaid bills to SMEs would have a much lower priority and be less likely to be paid off anyway.

I recognise the concerns expressed by UK Finance. They are concerns I heard in my previous life on the Treasury Committee, and I am always open to talking to colleagues at UK Finance and across the across the banking industry. However, they have to go somewhat further to make a more convincing case than they have outlined. It would be interesting to hear from the Minister why HMRC is only a secondary preferential creditor and why, on this occasion, the Treasury has not gone further.

To respond to the lobbying from the financial services industry, I would say that it was ever thus—when measures like are brought forward, it says that the sky will fall in and business lending will stop. There are challenges with business lending in this country, but it is stretching the imagination somewhat to say that such challenges will be presented by this modest clause.

Anthony Browne: As somebody who used to run the British Bankers Association, which turned into UK Finance, I was very involved in some of those earlier lobbying efforts. I must say that in this case, I simply do not believe it. I do not think this measure would have any impact on business lending; it is quite clear that the tax has already been paid by employers or customers, and it would have a very limited impact—virtually no impact—on the actual risk of a loan or the risk of default. I fully support the Government on this.

Jesse Norman: I am grateful to colleagues for their comments. I will talk about the clauses in a moment, but I will first enjoy this moment in Committee: a senior Opposition Member of Parliament says that he is resistant to financial sector lobbying, which I am thrilled about; and on the other side, someone who headed up the lobbying organisation says that, from an inside standpoint, we are talking about irrelevant minutiae. Let us enjoy for a second that rare moment of harmony and joy in Committee.

3.15 pm

I will outline the measure and then respond to the concerns that have been expressed. Clauses 95 and 96, as has been noted, amend the Insolvency Act 1986, the Bankruptcy (Scotland) Act 2016 and the Insolvency (Northern Ireland) Order 1989 by giving HMRC greater statutory priority in the recovery of certain tax debts in insolvency situations. The clauses apply to PAYE income tax including student loan repayments, employee national insurance contributions, construction industry scheme deductions and VAT.

Clauses 95 and 96 are interlinked and intended to work together. The clauses ensure that more of the taxes paid in good faith by employees and customers, but held temporarily by a business, go to fund public services as intended, rather than being distributed to other creditors such as financial institutions.

The changes will apply across the UK from 1 December 2020. This measure was first announced at Budget 2018. The Government then consulted on implementation and published a response to that consultation exercise in July 2019, along with draft Finance Bill legislation for technical consultation.

The Government's aim is to support companies and to help them to avoid insolvency, especially at this challenging time, and the measures recently announced to restructure the UK's insolvency framework support that. This legislation will not impede those restructuring plans. It focuses solely on the recovery of certain tax debts after a business becomes insolvent, and it has no detrimental impact on the measures that the Government have taken to support business in the light of the challenges posed by the coronavirus.

I will briefly explain the context for the changes introduced by the clauses. Estimated tax losses were £4.5 billion in 2018-19. That is when a taxpayer and HMRC have agreed the amount of tax that is due, but the tax is never paid. Centrally, in this case, a business could become insolvent after the tax becomes due but before it is paid to HMRC.

It is important that I explain the order of distribution as it currently operates in an insolvency. When a company becomes insolvent, the order of distribution for assets from that company—the order in which creditors recover their debts—is set out in legislation. First in the queue, typically, are banks that have charges over fixed assets, such as buildings, followed inevitably by the fees for the insolvency practitioners who administer the insolvency process.

Next come preferential creditors, such as employees who are entitled to wages in arrears, followed by secured creditors with floating charges. Those creditors hold floating charges against liquid, less secure assets, such as stock and machinery. Those charges are often held by banks and other lenders. Claims from unsecured creditors, including suppliers and customers, have the lowest priority. Typically, they recover nothing at all, in the majority of insolvencies certainly.

HMRC is an unsecured creditor for all tax debts—that is, it is last in the queue—but, as a result of the clauses we are debating, it will become a secondary preferential creditor for the taxes I have mentioned from 1 December 2020. The reforms therefore do not place HMRC at the top of the creditor hierarchy. Preferential creditors, such as employees entitled to their wages, will continue to come first.

The reform represents a fair and proportionate position, balancing the needs of the Exchequer, taxpayers and other creditors alike. As I have mentioned, the reforms apply only to taxes that have been deducted from employees' salaries—this question was asked—or paid by customers. It is a tax that those employees and customers consider to have been paid successfully. Many will assume, and rightly expect, that the money will be passed to the Government to fund important public services.

The measure will increase the amount of tax debt that HMRC recovers through insolvency, and it will ensure that up to an additional £220 million is available for public services each year, while not adversely affecting the wider economy. The impact on the economy overall is expected to be negligible and, although there may be modest impacts on some forms of commercial lending, those impacts are expected to be small.

The changes made by the clauses will reduce losses to the Exchequer when companies and individuals become insolvent, ensuring a greater recovery of outstanding PAYE income tax, employee national insurance contributions, construction industry scheme deductions and VAT debts. Those tax regimes are included because they represent, as I have said, a proportionate approach.

The tax debts included will be secondary preferential claims and will sit below the fixed charges held by banks, other lenders and, as I have outlined, the fees owed to insolvency practitioners. HMRC will move ahead of some other less secure creditors for those tax debts, but the other tax debts that are levied directly on businesses, such as corporation tax, will remain unsecured claims; that relates to the question asked by the hon. Member for Ilford North. When most people pay their taxes, they expect them to be used to fund public services, and they would be shocked to discover that when an employer or business goes insolvent, the deductions of PAYE income tax from an employee's wages and the VAT that a customer paid on their goods end up in the pockets of creditors ahead of the public purse.

Amendments 17 to 23 seek to limit the extent of HMRC's status as a preferential creditor in insolvencies by preventing the policy from being applied retrospectively. Furthermore, the amendments seek to limit preference to those taxes that became due in the 12 months before 1 December 2020. We believe that the reforms being made by the clause have a strong and principled rationale to ensure that more of the taxes paid in good faith by employees and customers go to pay for public services.

The tax debts are not an income for business, and they are not taxes that the businesses themselves pay, but merely taxes that those businesses hold temporarily before, in a normal case, passing them on to the Government. They are not income for businesses, and should not be treated as such. The timing of the business's accumulation of debts should not be a consideration. As I have said, the measure represents a proportionate approach.

I turn to the questions raised by the hon. Member for Glasgow Central, who is concerned about pushing businesses into insolvency. It is important to be aware that the reforms will apply to insolvencies only from 1 December 2020, as announced in the Budget. The reform is not expected to have a significant impact on access to finance or, indeed, a significant marginal impact on pushing businesses into insolvency. Let it be remembered that the package of support that the Government have announced for businesses and individuals to protect against the current economic emergency includes £330 billion of guaranteed loans, which is equivalent to 15% of GDP.

To respond to the point raised by my hon. Friend the Member for South Cambridgeshire, the reforms will not have an effect of any significance on financial institutions, the lending market or the wider economy. After all, we are talking about a measure that is forecast to raise £220 million, when bank lending to small and medium-sized businesses alone in 2019 was £57 billion—a massively different order of magnitude. We do not believe that the reforms will have the negative effects that the hon. Member for Glasgow Central outlines.

The hon. Lady asked whether the reforms might somehow affect blameless shareholders. It is important to say that we do not expect that to happen. No one can be issued with a notice—this is really a clause 97 issue, but we have come to it now—unless their connection to the company is significant. Where a person may potentially fall into the regime through connection to repeated insolvencies, HMRC will not issue a notice if it is satisfied that the person acted in good faith and had no material impact on the company's affairs.

That being the case, the Government believe that the measures represent a balanced position, protecting taxes that are held by businesses but have been paid by employees and consumers. I therefore commend the clauses to the Committee.

Alison Thewliss: From what the Opposition Front-Bench team said, I do not think that I have support for the amendment, so I am content to withdraw it, but I may return to the subject later. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 95 ordered to stand part of the Bill.

Clause 96 ordered to stand part of the Bill.

Clause 97

JOINT AND SEVERAL LIABILITY OF COMPANY DIRECTORS ETC

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

The Chair: With this it will be convenient to discuss, That schedule 12 be the Twelfth schedule to the Bill.

Jesse Norman: Clause 97 and schedule 12 introduce a new power to allow HMRC to tackle the behaviour of tax avoiders and evaders who seek to reduce their tax bill unfairly through the misuse of company insolvency. This measure tackles the small minority of people who use insolvency intentionally to sidestep tax liabilities. It does so by allowing HMRC to issue notices that make directors and other persons connected to the company jointly and severally liable for the company's avoidance, evasion or phoenixism debts, as they are described, if insolvency is threatened. It is not linked to clauses 95 and 96, which make HMRC a secondary preferential creditor for certain tax debts.

The Government announced our intention to consult on tax abuse and insolvency at Budget 2017. The consultation ran from April to June in 2018, and the Government published a response document in November 2018. The Government also published draft finance Bill legislation for technical consultation in July 2019.

As I made clear when I discussed earlier clauses, it is the Government's aim to support companies and help them to avoid insolvency, particularly at this very difficult and challenging time, and the measures recently announced to restructure the UK's insolvency framework support this aim. This legislation will not impede those restructuring plans, and the measure focuses firmly on those who misuse insolvency in connection with tax avoidance or evasion, or who run up repeated liabilities that they then step away from.

In ordinary times, insolvency is a highly unfortunate but necessary part of commercial life. However, a small minority of people misuse insolvency for their own ends. They hide behind a company to engage in tax avoidance or evasion, or repeatedly build up tax debts, and then strip out the assets, liquidate the company and leave nothing to meet outstanding tax liabilities. Not only does this deprive the Exchequer of funds for important public services, but it undermines the insolvency process and adversely affects creditors and other businesses, and it casts the whole reputation of insolvency into disrepute. It is only right that we should act to discourage such misuse, and that is what this measure is designed to do.

Clause 97 introduces schedule 12, which contains details of the new regime and sets out conditions that must be met before the legislation will apply. First, paragraph 2 sets out the conditions that must apply before HMRC can issue a notice to an individual connected to a company that has engaged in tax avoidance or evasion. The conditions are: that the company has begun an insolvency procedure, or there is a serious risk that it will; and that the person was responsible for, facilitated or knowingly benefited from the avoidance or evasion.

Paragraph 3 sets out the conditions that must apply before HMRC can issue a notice to an individual who is connected to companies that repeatedly go insolvent with significant outstanding debts. Such companies are often referred to as phoenix companies, and it is widely agreed across the House that they are a blight on commercial life. The conditions are: that the person must have had a connection in the previous five years to at least two companies that began insolvency; that the person has a connection to a new company that carries out the same trade as the old ones; and that the amounts due to HMRC from the old companies total at least £10,000 and at least 50% of the amount due to unsecured creditors overall. That is an important safeguard to ensure that the measure focuses on catching those who play fast and loose with their tax. Paragraph 4 allows the amounts to be varied by a statutory instrument.

3.30 pm

Turnaround specialists try to rescue companies that are in financial difficulty. Obviously, they cannot always be successful, so HMRC will not issue notices to those whose connection to a company is part of a genuine attempt to save the business. The third area that the legislation tackles is set out in paragraph 5, which deals with cases where companies have been issued with penalties for facilitating tax avoidance or evasion, and it sets out the conditions that must apply. Paragraph 9 ensures that a person is not exposed to a double liability for penalties transferred from a company, and paragraph 10 ensures that a notice must be withdrawn if it is no longer needed: for example, because the threat of insolvency has passed.

Paragraphs 11 to 16 deal with rights of appeal against notices and the right to join or take over a company's appeal. Those are powerful safeguards intended to ensure that all taxpayers continue to be treated fairly by the tax system, and the new powers apply only in strictly narrow circumstances. Paragraphs 6, 7, 8 and 19 provide some definitions. Paragraph 17 ensures the measure continues to work where companies have ceased to exist, and paragraph 18 brings in limited liability partnerships.

The insolvency process is an important part of our commercial life and an important part of the process of encouraging investment in British business. A small but persistent minority take advantage of the rules to sidestep their tax responsibilities, seeking to keep the benefits of their avoidance or evasion while denying funds needed for public services. That is bad for the Exchequer, bad for business, bad for consumers and bad for other creditors. It is bad for society. Limited liability is an important part of our legal system, but that protection, intended to benefit honest businesses, should not extend to those who misuse the system to avoid their tax obligations. The Government are clear that everyone must pay the tax that is legally due, no matter who they are. It is therefore only right that we tackle such misuse. For that reason, I commend the clause and schedule to the Committee.

Wes Streeting: It is always the case that when a new measure is introduced, criticism can be made of it simply because it had not existed previously. In this case, it really is a reflection of the Treasury's failure to clamp down effectively on the abuse of the system and the people trying to avoid and evade their taxes. Despite the Government's previous efforts to impose greater accountability for tax avoidance and evasion, there are still too many holes in the system, but I welcome the fact that clause 97 and the schedule will go some way to addressing that.

What is the threshold of responsibility for the conduct? When will HMRC consider the serious possibility that the tax liability might not be paid? At what stage will HMRC conclude that there is likely to be a tax liability arising from the avoidance? Might the Treasury go further, for example, by asking HMRC to report on how much money is lost by companies participating in or promoting tax avoidance schemes and then becoming insolvent before HMRC can counter the schemes and collect the money owed? Following on from that, how much money would be collected if those companies' directors, participators and associated persons were made jointly and severally liable?

Alison Thewliss: I want to comment briefly on the huge gap that exists within Companies House as part of this process. If we go after companies and directors that are involved in phoenixing, why can that not be stopped at source when those companies are registered at Companies House? Why is there no link to the Government's Verify scheme for those who wish to register companies there? Companies House is obliged only to register the information, not to check whether any of the information is accurate, correct or related to any other kind of activity. It is not involved in anti-money laundering obligations, but it really should be. Will the Minister look carefully at the question of Companies House? That could be a key part of preventing phoenixing in the first place. For example, I have a friend who employed a builder to do work on his house for his disabled son. The builder went bust and phoenixed, as he has done on several occasions. My friend is out of pocket, and that company continues to trade. It is employing sub-contractors who lost out last time because there is nobody else to hire them in that small community. There needs to be a stop on those types of people and behaviours, and I urge the Minister to consider ensuring that Companies House is a big part of that.

Jesse Norman: I thank both hon. Members for their comments. I draw from them strong support for the clause, although it was caveated in the way they described. Let me address the issues that they raised.

The hon. Member for Ilford North asked, "Why not do this earlier?" There is a long-standing principle in company law that the corporate veil should not be pierced, and limited liability should exist in place. As he will recall, there was a moment not so long ago when HMRC had Crown preference and was always the first, or close to the first, creditor to get paid out. It then got moved to the back of the queue.

As we think about the current insolvency and abuse regime, there has been a process of further reflection on all the different aspects of it, and that inevitably includes the phenomenon that we have seen. My impression—I do not know whether it is true—is that phoenixism is a better recognised phenomenon and a more widely understood problem than it has been. This is part of a much wider effort that has been made—particularly since I have been Financial Secretary to the Treasury, but before that, too—to really push on the issue of avoidance and evasion, and that is what we are doing.

The hon. Gentleman also asked about process. It is a perfectly good, important question, and I have been through it myself with HMRC officials. I will not read out the conditions in each case, but there are central cases for the issuance of avoidance and evasion notices, avoidance and evasion facilitation notices, and repeated insolvency notices. Each has some quite specific criteria sitting underneath it. For avoidance and evasion facilitation notices, a company must have begun an insolvency procedure or given assurance that it will; it must have incurred a penalty for facilitating tax avoidance or evasion; there must be a serious risk that some or all of

[Jesse Norman]

that liability will not be paid; and the person must have a relevant connection to the company at the time that the behaviour leading to the penalty occurs. There are important threshold tests that must be met, and there are appeals processes against notices that have been filed, which are designed to provide safeguards, for all the reasons that one might imagine.

I have a degree of sympathy for the point that the hon. Member for Glasgow Central makes about Companies House. In the promoter strategy, which we published at the time of the Budget, we looked to create a more integrated approach to trying to crack down on abusive avoidance and evasion, and the promotion of avoidance and evasion. It has been in part about pulling together different entities, one of which might be Companies House and another of which might be the Advertising Standards Authority, if the two had been outside the purview of a more traditional approach. I take the hon. Lady's point, and I thank both hon. Members for their support for this important clause and schedule.

Question put and agreed to.

Clause 97 accordingly ordered to stand part of the Bill

Schedule 12 agreed to.

The Chair: Do I take it that that was the last group?

The Lord Commissioner of Her Majesty's Treasury (David Rutley): One more!

Clause 98

AMENDMENTS RELATING TO THE OPERATION OF THE GAAR

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

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

New clause 12—*General anti-abuse rule: review of effect on tax revenues*—

'(1) The Chancellor of the Exchequer must review the effects on tax revenues of section 98 and Schedule 13 and lay a report of that review before the House of Commons within six months of the passing of this Act.

(2) The review under sub-paragraph (1) must consider—

(a) the expected change in corporation and income tax paid attributable to the provisions in this Schedule; and

(b) an estimate of any change, attributable to the provisions in this Schedule, in the difference between the amount of tax required to be paid to the Commissioners and the amount paid.

(3) The review under subparagraph (2)(b) must consider taxes payable by the owners and employees of Scottish Limited Partnerships.

This new clause would require the Chancellor of the Exchequer to review the effect on public finances, and on reducing the tax gap, of Clause 98 and Schedule 13, and in particular on the taxes payable by owners and employees of Scottish Limited Partnerships.

That schedule 13 be the Thirteenth schedule to the Bill.

Jesse Norman: One more clause unto the breach, dear friends; or close the wall up with our English dead, and possibly our Scottish dead as well—our British dead. We will rephrase the bard.

Clause 98 makes minor procedural and technical changes to the general anti-abuse rule referred to as the GAAR to strengthen its procedural efficiency and ensure that it operates as originally intended. The clause tackles a small minority of taxpayers who deliberately avoid, in this case, providing information and thereby frustrate HMRC's ability to pursue inquiries into abusive tax arrangements under the GAAR.

The clause also introduces some minor amendments to remove ambiguity and to ensure that, where HMRC decides not to pursue a case using the GAAR, inquiries can continue using other arguments. This measure was announced at Budget 2018 and the Government published draft legislation for technical consultation in July 2019. The changes will help to protect over £200 million in tax revenue by ensuring that the GAAR works effectively.

As I have often said, the Government take a firm line against those who seek to avoid tax and try to circumvent the rules. The GAAR was introduced in July 2013 and it has become an important part of the Government's strategy to clamp down on tax avoidance; to deter individuals from engaging in it in the first place; and to prevent promoters from marketing and selling such arrangements.

The GAAR focuses on tackling abusive tax avoidance. By abusive, I mean the sort of arrangements that push the boundaries of the law and are clearly not within the spirit of what Parliament intended. The GAAR legislation asks whether a specific tax arrangement is abusive and applies what is known as the "double-reasonableness" test. Tax arrangements are considered abusive if they cannot reasonably be regarded as a reasonable course of action. An independent advisory panel provides an opinion to HMRC on whether a tax arrangement constitutes a reasonable course of action.

The clause will strengthen procedural changes made to the GAAR previously in 2016 which tackle mass-marketed tax avoidance schemes. The changes in 2016 introduced provisional counter-action notices, which allowed HMRC a 12-month window to gather information and consider whether to continue a GAAR challenge or pursue a different approach.

Some taxpayers and advisers, I am sorry to say, have deliberately refused to co-operate with HMRC during that window, deliberately withholding information to prevent HMRC from making an informed decision. In effect, those people are seeking to run down the clock and it is right the Government take action to prevent this. At the moment, HMRC has no recourse against such people. Once that window closes, no further GAAR action is possible and HMRC is unable to pursue any alternative non-GAAR approaches.

The clause replaces the provisional counter-action notices introduced in 2016 with a simpler protective GAAR notice. This will enable HMRC to carry on its investigations beyond 12 months and it mirrors the way normal tax inquiry notices work. The amendments will also confirm that where HMRC decides not to pursue the GAAR, cases can still be pursued using a technical non-GAAR argument. That has always been the intention of the legislation.

The changes remove the incentive not to co-operate with requests for information and ensure that appropriate safeguards, such as appeal rights and the oversight exercised by the independent GAAR advisory panel remain in place. Given that the GAAR targets the abusive end of the avoidance spectrum, the changes proposed here will only affect a small minority—those who persistently go to extreme lengths to sidestep the rules. These changes are needed now to ensure that HMRC can take action against those who are constantly looking for new ways to avoid paying their fair share of tax.

New clause 12 in the name of the SNP requires the Chancellor of the Exchequer to review the impact of clause 98 and schedule 13 within six months of the Bill receiving Royal Assent. Specifically, it would require the Chancellor to review the effect on public finances and on reducing the tax gap, particularly on taxes payable by earners and employees of Scottish limited partnerships.

In response, I highlight to hon. Members that amendments to the GAAR are minor procedural changes designed to ensure the policy operates as originally intended. The effects of these changes to the regime will not be visible within six months' time. As with all tax measures, however, we will continue to review and monitor the effect of this change, as is standard.

HMRC already publishes the "Measuring the tax gap" report annually which shows how the tax gap has changed year on year for different forms of behaviour and different taxpayer groups. HMRC also publishes an annual report and accounts that provide specific information on the impacts of the GAAR, including the number of GAAR opinion notices issued. For that reason, I ask the Committee to reject new clause 12.

To sum up, these amendments ensure that the GAAR remains an effective tool in HMRC's armoury for tackling abuse of tax avoidance. I therefore commend the clause and the schedule to the Committee.

3.45 pm

Wes Streeting: As the Financial Secretary outlined, this clause is designed to tweak the system. Therein lies my criticism and my concern. The challenges we face when it comes to tax avoidance and abuse have been well documented during this Committee in relation to the loan charge. Even where Government have sought to clamp down on avoidance and HMRC has put in place controversial but rigorous arrangements, there continue to be, to this day, companies and promoters that tout schemes that are patently against the spirit and letter of the law. HMRC has made it clear that such schemes do not work, but those companies and promoters are still at it.

The most recent examples I have seen are of umbrella companies targeting public sector workers in the NHS. Rather than just tweaking, Ministers should be trying to give the general anti-abuse rule more bite. For example, they could extend the general anti-abuse penalty rules to apply a 100% penalty for any tax avoidance scheme that fails the GAAR or, more likely, fails for some other reason, but would have failed the GAAR as well. They could prevent operators of avoidance schemes simply running away from their liabilities and victims, making directors, shareholders and other associated persons jointly liable for the new GAAR penalty, as I alluded to in the previous discussion.

Umbrella companies create a unique opportunity to flog tax avoidance schemes to low-paid workers. We see that exploitation taking place. We could counter that by making umbrella company directors and associated persons jointly liable for unpaid PAYE, national insurance and VAT. We should make the promoters, scheme designers and independent financial advisers jointly liable for unpaid tax and penalties from a failed scheme, with a safe harbour designed to protect people acting in good faith. For example that could be where a promoter followed specific tax advice from a regulated adviser, where factual assumptions in advice were reasonable or where advice was shared with scheme participants; the list goes on. There are reasonable exemptions, or reasonable assessments could be made, where people are acting in good faith, but we still see far too many examples of people designing or promoting schemes in the full knowledge that they will make a quick buck but will not pay the consequences.

As we have seen, the Government and HMRC are trying to clamp down. When they catch up with people who have followed advice, often in ignorance of tax rules and in the belief that they were following good, independent financial advice, the bite really hurts. Why are we not going after the scheme promoters much more aggressively? Despite all the controversy—the headlines generated off the back of the loan charge, the debates in Parliament, inquiries and grillings before the Treasury Committee—we still have not got to the heart of the issue.

In my opinion, and that of many people following our proceedings, the people who design, contrive and promote such schemes are still not paying the price for giving bad advice to their customers, who believe they are following good advice and the law. We are not going to quibble about clause 98 and the tidy up it is doing, but I am disappointed by the lack of aambition. The Treasury has to be much more aggressive with the promoters than it is currently.

Alison Thewliss: In new clause 12, we mention the issue of Scottish limited partnerships. I make no apology for doing so, as they are still a problem. We only need to look at the ongoing campaign journalism by Richard Smith and David Leask on this issue to know that Scottish limited partnerships are being used in nefarious ways to move money and goods around the world. They have been involved in war crimes and all kinds of things. The loopholes existing in Scottish limited partnerships and Companies House must be closed by the Government. They are harming not only individuals who suffer the effects of these crimes, but Scotland's reputation. They are called Scottish limited partnerships, but Scotland really has no part in it; they are an historic arrangement, but they are governed here.

There are still people not doing the simplest things such as registering persons of significant control. The answer to my recent parliamentary question suggested that 948 companies have still not registered a person of significant control. That is dramatically down from where it was, but it tells me that people are using other means to hide their money, rather than going through Scottish limited partnerships, and that no Government fines have been levied on the 948 companies that have not registered a person of significant control. That is money that the Government could have in their pocket. They are deciding that they do not want to pursue that for their own reasons. It really does stick in my craw that this is a continual issue: I have to raise it on the Finance Bill and the Scottish National party has to raise it in this House.

[Alison Thewliss]

We are also concerned about the tax gap. The tweaks being made here are not really going to change that significant gap. In June 2019, HMRC published revised estimates, which put the tax gap at £35 billion for 2017-18, representing 5.6% of total tax liabilities. The Minister, no doubt, will say that the tax gap has fallen—it has—but that does not disguise the fact that it still exists, and that tax is money that could be coming into the revenues. It could be supporting businesses and individuals across the country and we could be abolishing policies such as the two-child limit, because the money would be there in the Government's bank account. The Government could use that money rather than not collecting it. I could go into great detail, which I have here, about all the anti-avoidance mechanisms that have happened. I am sure other hon. Members are as warm as I am and would like to get some fresh air, so I will skip that in the interest of the patience of all colleagues.

We do need workable general anti-avoidance rules. They must tackle tax avoidance in all its forms. They must not exempt existing established abuse from action being taken. They must include international tax abuse within their scope. They must give the right to the tax authority to take action against tax avoidance, defined in an objective fashion capable of being numerically assessed, without the consent of the unelected authority. They must increase the burden of proof on this issue on to the taxpayer.

In 2014, the coalition Government announced the introduction of a system of follower notices and accelerated payment notices. In cases where someone is in dispute over their assessment, HMRC may issue a follower notice if this arises from the use of an avoidance scheme that is the same or similar to arrangements that HMRC has successfully challenged in court. In July 2017, HMRC reported that it issued over 75,000 such notices worth in excess of £7 billion and managed to collect nearly £4 billion. That is still a significant gap of £3 billion. HMRC must be able to collect the taxes it is due in real time instead of waiting for those judicial decisions.

With Scottish limited partnerships, the extent of the abuse of the current system is laid bare in the Global Witness report "Getting the UK's house in order", which highlights the deficiencies at Companies House that have been going on for many years. This needs to be dealt with soon. Reviews have been carried out, things have been talked about, but there has not really been any action. It makes no sense to me that we have such a system but do not allow it to catch the people it should be catching.

I sat on the pre-legislative Joint Committee for the Registration of Overseas Entities Bill in the last Parliament. That Bill seems to have disappeared completely. It would help to tackle some of the money laundering that goes on with property registered in the UK. People across the country, particularly in many London boroughs, see blocks of flats with nobody living in them. People could live in those flats. They are being used for money laundering and moving money about. We need to bring that Bill back and ensure those people are held to account. We should close these loopholes in the system and ensure that the tax that is due is collected for the benefit of all of us.

Jesse Norman: I am grateful to colleagues for their contributions. I want to take up some of the points made by the hon. Member for Ilford North. The delicacy and agility in his ability to pivot from detailed scrutiny to a swingeing extension of tax powers, and new taxes galore, is interesting to watch, but the fertility of his invention is great, and I will read his suggestions with some care, in the record. I am grateful to him for that.

The ugly truth of the matter is that tax avoidance and, in particular, the promotion of it, is an amoebic activity that tends to flow into empty spaces and to be parasitic, if amoebas can be parasitic—I am not sure whether they can—on good activity. So, right next to where we see good or lawful and legal activity, we can see some unpleasant, nasty and abusive tax avoidance.

The hon. Gentleman is right to focus on how we see new forms emerging. It means that the battle against tax avoidance and evasion is never fully won. I hope that he will take some comfort from all the work we are doing on the promoter strategy. It is designed not merely for potential new powers, but for a different way of thinking about disrupting the economics of the supply chain. To pick up on a point that he raised about effectiveness, the GAAR can lead to a fine of 60% of the counteracted advantage. It can be pretty substantial, and it has genuine teeth.

I hope what I say in responding to the point made by the hon. Member for Glasgow Central on Scottish limited partnerships falls within the framework of the Bill. The issue is well understood, and there is public concern about it, which is shared across the House. She will be aware that BEIS introduced some new reporting requirements for Scottish limited partnerships in June 2017. Since then, new registrations have declined sharply. Of course, there is a sump of existing partnerships and, as she will be aware, BEIS is consulting on wider reforms to prevent the criminal misuse of those partnerships but retain their core and, in many ways, effective and important other purpose. It announced reforms in that area as of December 2018, and the Government have made clear that they will legislate when parliamentary time admits. So although the matter does not, in its preponderance, fall directly within the clause, she is right to raise it and the Government are fully sighted in that regard, and fully seized of it.

Question put and agreed to.

Clause 98 accordingly ordered to stand part of the Bill.

Schedule 13 agreed to.

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

3.58 pm

Adjourned till Thursday 18 June at half-past Eleven o'clock.

Written evidence reported to the House

FB28 ETC Tax

FB29 Small to Medium Business Group (SMB) and The Loan Charge Action Group

FB30 Small to Medium Business Group (SMB) supplementary evidence

FB31 Chartered Institute of Taxation New Clause 1 and New Schedule 1 Workers' services provided through intermediaries