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Public Bill Committee

FINANCE BILL

Second Sitting

Thursday 4 June 2020

(Afternoon)

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Monday 8 June 2020

The Committee consisted of the following Members:

Chairs: Siobhain McDonagh, † Andrew Rosindell

† 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)

Kenneth Fox, Chris Stanton *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 4 June 2020

(Afternoon)

[Andrew Rosindell *in the Chair*]

Finance Bill

2 pm

The Chair: Good afternoon, colleagues. Consideration of the Finance Bill recommences. I remind everyone that *Hansard* reporters would be grateful if hon. Members could email electronic copies of their speaking notes to hansardnotes@parliament.uk. If everyone could remember to do that, that would greatly assist those recording the proceedings. We now return to line-by-line consideration of the Bill.

Clause 13

Voluntary office-holders: payments in respect of expenses

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

The Financial Secretary to the Treasury (Jesse Norman): What a delight it is to see you in the Chair, Mr Rosindell. As I touched on earlier, this is one of those clauses that I do not think elicits any spirit of contention on the different sides of the room.

Clause 13 creates a statutory income tax exemption for payments and reimbursements of reasonable private expenses incurred by voluntary office holders in carrying out the duties of their offices. Individuals undertaking voluntary work for an organisation such as a charity or local benevolent society are not generally classed as office holders or employees, so the payment or reimbursement of any reasonable expenses incurred by those individuals when doing the work of that organisation is not liable for tax. However, in some circumstances, an individual who does unpaid work for an organisation may also be an office holder. That is because they are appointed to a role that exists regardless of who occupies the position at any one time. They are referred to as a "voluntary office holder" in tax legislation. People in that position include, for example, magistrates and special constables.

An office holder, including a voluntary office holder, is chargeable to tax on any earnings from their position and subject to the tax rules for expenses and deductions on the same basis as employees. Her Majesty's Revenue and Customs' long-standing practice is that no tax arises on private expenses paid or reimbursed to voluntary office holders so long as they receive no reward for carrying out the duties of their office and any payments or expenses do no more than meet the expenses incurred. That treats voluntary office holders in the same way as volunteers in relation to expenses paid or reimbursed by their organisation, but the treatment is at the moment only concessionary.

This measure therefore places the current concessionary treatment on a statutory tax footing. That ensures that reasonable out-of-pocket private expenses paid or reimbursed to voluntary office holders in relation to their duties of office remain tax-exempt. The exemption recognises the role of voluntary office holders and the services that they provide. It ensures that the tax treatment of their private expenses continues to be comparable to that of volunteers, and it provides certainty by placing that treatment on a statutory footing.

Those who hold voluntary offices often—in fact, almost invariably—give valuable service in our communities. It is right that we legislate to provide certainty for people in such roles and bring the tax treatment of their expenses in line with that for others who volunteer their time. This is a simple and sensible technical change, and I therefore urge that the clause stand part of the Bill.

Bridget Phillipson (Houghton and Sunderland South) (Lab): It is a pleasure to serve under your chairmanship this afternoon, Mr Rosindell, and I welcome you to the Chair.

Opposition Members have no issue with the intention behind clause 13. It is right that the tax treatment of those carrying out valuable work on a voluntary basis is put on a statutory footing so that it is the same for all voluntary office holders, across the board.

Of course, most individuals who do unpaid voluntary work for an organisation are not office holders or employees, and I would like to take this opportunity, at this time, to express my gratitude for the amazing work that volunteers are doing right across our country in responding to the crisis we are experiencing. The work they are doing includes running food banks. Amazing volunteers in my constituency are providing that kind of support to vulnerable people and, frankly, to too many families. I yearn for the day when they will be able to be redeployed in other areas of activity because the support provided by the Government—the state—is adequate for all families to put food on the table. Many other volunteers at this time have been delivering meals or supporting people with prescriptions. There is a whole range of help and support being provided, which just demonstrates how important a role volunteers play in our society. That is of course no substitute for the necessary action we expect from Government, which has sadly been too lacking in recent years, and after a decade of big changes. That has meant that volunteers have filled the gap that should be filled by the state itself.

As for the scope of the clause, the Chartered Institute of Taxation has identified some technical issues, and I hope the Minister will be able to respond to some points about them. The first is about the lack of a definition of a volunteer office holder in this legislation and the fact that that may lead to some confusion as to whether charitable or other unpaid trustees would be regarded as office holders for the purpose of this exemption. The Minister was right to point to office holders such as special constables and magistrates—and perhaps those who are office holders in community amateur sports associations—but I would be grateful if he could clarify the scope of the clause.

The second concern that the Chartered Institute of Taxation has identified is whether this legislation will achieve its intended purpose, given that the clause covers

expenses incurred in carrying out the duties of the office, but not explicitly those expenses that enable such duties to be carried out—for example, childcare costs. I would be grateful if the Minister could clarify the position and put on record that such costs would be tax-exempt for voluntary office holders under the legislation.

Jesse Norman: I thank the hon. Lady for her questions. These are two technical issues that she is right to cover. The position of Revenue and Customs, and of the Government, is that there is adequate clarity about the scope of the clause. It passes into law only a considerable body of accumulated practice in dealing with expenses of the kind that we have described. As I have mentioned, commissioners have discretionary powers—those collection management powers—to manage these taxes and duties, and are able to exercise those powers in particular circumstances. So if there is a concern that, somehow, the scope of the clause is inadequately defined, there remains extra statutory power for the commissioners to exercise those collection management powers in so far as they wish.

The hon. Lady is also absolutely right to raise the secondary issue of what counts as an allowable expense. The answer is that a definition of reasonableness exists in general in people's minds and in law—of course, it reflects the facts of a case and is context-dependent. The core idea is that the payment or reimbursement should do no more than meet the actual expenditure that has been incurred by volunteers.

To give an example, someone may be volunteering for a charity, perhaps as a treasurer, which is an office holder, and doing most of their work from home. If the charity offers them a small weekly payment to cover the additional cost of using their home, that is a reasonable expense. To take a different example, if someone is volunteering as a magistrate at their local magistrates court for one day a week and seeks reimbursement for their childcare costs for the week, even if the court agrees to that, the full week will not be considered a reasonable reimbursement for private expenses, because it does not relate to the actual expenditure that has been incurred.

I can clarify, to that extent, the point the hon. Lady made. I think that tracks relatively clearly our normal intuitions about working, as well as working practice elsewhere in the voluntary sector. With that said, I would like to move that the clause stand part of the Bill.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clause 14

Loan charge not to apply to loans or quasi-loans made before 9 December 2010

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

Jesse Norman: This is the first of seven clauses—clauses 14 to 20—that bear on the loan charge. I do not need to tell any Member of the House of Commons that the loan charge has elicited a degree of controversy in some quarters. It might be helpful if I remind the Committee of the nature of the loan charge and what it actually is.

The clause amends the date from which disguised remuneration loans are subject to the loan charge specifically from 6 April 1999 to 9 December 2010. That has the effect of removing loans entered into before 9 December 2010 from the scope of the loan charge.

Disguised remuneration, as it is described, is a form of abusive tax avoidance, where individuals seek to avoid paying income tax and national insurance contributions by receiving payment through a loan that is itself never repaid—a remuneration practice that costs the Exchequer hundreds of millions of pounds a year. In many cases, the loans are paid over and above a smaller payment that goes through the pay-as-you-earn system, and the payment is made, perhaps on a monthly basis, in the form of an accumulation of a loan. The loan never, in my experience, has interest charged to it. The expectation is that it will never be repaid. It is typically administered through an offshore vehicle, which highlights how contrived this approach is to the avoidance of tax.

The loan charge was designed to combat that form of tax avoidance. It was introduced as a new measure in 2017. In September 2019, the Chancellor commissioned Sir Amyas Morse to conduct an independent review into whether the loan charge was an appropriate policy response to the use of such disguised remuneration schemes. Sir Amyas had full control over the review's management and recommendations. He received evidence from a very wide range of individuals affected. He spoke to interest groups, Members of Parliament, tax specialists, legal experts and many other stakeholders.

Sir Amyas's report, which is 76 pages in length, is a thorough and exacting review document, which painstakingly worked through the issues and recommended notable changes to the policy, including substantial carve-outs regarding who was affected. The Government accepted all but one of Sir Amyas's recommendations, and more than 30,000 people will benefit from the changes. This clause, along with others in the Bill, make changes to bring about those recommendations in so far as they require statutory change. Work is under way by the Government to implement the recommendations that do not require legislation.

Sir Amyas's careful and considered report examined the question of the date from which the loan charge should apply. He concluded that the law regarding the tax treatment of disguised remuneration loan schemes was clear from 9 December 2010, when draft legislation was published setting out that income provided through schemes using third parties, such as loan schemes, would be subject to income tax and national insurance.

Clause 14 amends the date from which disguised remuneration loans can be subject to the loan charge and removes those loans entered into before 9 December 2010 from the scope of the loan charge. The clause, along with clauses 15 to 20, legislates for several recommendations from the independent review on the loan charge. It takes about 11,000 people out of the loan charge entirely, and it reduces the tax charge of around 21,000 individuals. I therefore commend the clause to the Committee.

2.15 pm

Wes Streeting (Ilford North) (Lab): It is a pleasure to serve under your chairmanship, Mr Rosindell, not least as a parliamentary neighbour.

[Wes Streeting]

As the Financial Secretary has outlined, this is the first of a number of clauses related to one of the most politically contentious issues—certainly across the House—in the Bill. By way of introduction, it would be helpful if I set out the Labour party's position on the loan charge overall and on how we intend to approach the clauses and amendments this afternoon.

It will come as no surprise to any Member of this House that the Labour party takes a dim view of tax avoidance. We believe that tax is the price we pay for a civilised society, that it is important that all of us—individuals, organisations and businesses—pay our fair share of tax, and that when people contrive to avoid their tax, they rob and short-change all of us of the revenues needed for the state to do the essential things it needs to do, whether that is keeping our country and our borders safe or providing the public services on which all of us rely.

Turning to the loan charge specifically, we have not opposed the Government's changes, as we recognise their general approach to clamping down on tax avoidance schemes in this way. What I want to do with this clause and those we will discuss later this afternoon is to give an airing to many of the detailed and contentious issues that have been raised by Members of all parties right across the House.

The all-party loan charge group has more than 200 members, drawn from parties right across the Chamber. When we come to the later stages of the Bill on Floor of the House, Members will no doubt want to put forward amendments and push the Government to go further in some respects. It is therefore important in our proceedings here in Committee that we delve as deeply as possible into these issues, so that all Members can understand the Government's thinking and the way in which policy evolved and then consider whether it would be appropriate to bring forward further changes and what those changes might be.

Let me turn now to clause 14. As we have heard from the Financial Secretary, these changes are made in response to Sir Amyas Morse's independent review into the design and implementation of the loan charge. It was commissioned by the Government, but it is fair to say on behalf of Members across the House not only that the Government appreciate the work Sir Amyas Morse did—it is a thorough piece of work—but that we thank him too. He has done a great service to Parliament and to the wider public debate.

The Financial Secretary mentioned that the Government have accepted all but one of the recommendations from the review and, at some point this afternoon, he should elaborate further on the particular recommendation that the Government have chosen not to accept and implement and explain why.

Here, of course, we are looking specifically at the amendment to the date from which disguised remuneration loans are taxed under the loan charge from 6 April 1999 to 9 December 2010. The 2019 loan charge justified looking back to 1999 by saying that the Government and HMRC had always said that the schemes did not work, but Sir Amyas found that this was not the case before the 2011 legislation. Approximately 40% of the pre-2011 tax years in scope of the loan charge did not even have an investigation into them opened up by HMRC. Even if HMRC had made its position clearer, taxpayers are entitled to rely on the law as interpreted by the courts, and, clearly, legal proceedings have had a bearing on the Government's considerations.

We will return to HMRC across the afternoon, but this is probably an appropriate time to say two things in relation to it. First, I place on record my thanks and the thanks of the official Opposition to all the staff and leadership at HMRC for the difficult work that they are doing overall at the moment on all our behalves, in the extraordinary circumstances we are all living through. Secondly, let us not forget that HMRC also has a slightly technical and complicated piece of work going on in the background, by which I mean the implementation of Brexit. In normal times, the demands placed on the Revenue are significant, but these are extraordinary times with unique challenges. I want to make that really clear up front, not least because I am about to criticise HMRC.

I must say, having served on the Treasury Committee in the previous Parliament and in the 2015 Parliament, that my discussions with HMRC in relation to the loan charge did not fill me with a great deal of confidence about the way in which it approached this issue over a great many years.

On the controversy generated around the issue of retrospection, where charges are being applied retrospectively, and why that is a really difficult principle and challenge for Members to accept, we in this House, whichever party we represent, do not like the idea of retrospective legislation. We do not like the idea that decisions—certainly levies or charges—apply retrospectively.

HMRC would have given the Government a much easier ride if it had done its job more thoroughly in terms of looking closely at individuals' tax affairs over many years. One of the things that shocked me most, both as a constituency MP looking at my loan charge casework and as a member of the Treasury Committee, was that those individuals were filing their tax returns over many years. HMRC has said for a great many years that it has considered disguised remuneration schemes such as those covered by the loan charge, and specifically those covered by the loan charge, to be unlawful and contrived schemes, yet, in so many cases, no enforcement action was taken. People were happily sending in their tax return at the end of the tax year, not hearing anything further and assuming that that was good news: "If HMRC has looked at it and considered the tax return, then it must be fine." Clearly, that is not the case.

I really hope that Ministers have properly dragged officials over the coals—not literally, of course, but metaphorically. In terms of the political controversy, the pain of a lot of victims—in a lot of cases there are victims of the loan charge, as well as people who sought to ruthlessly exploit it, not least the promoters, and there are a lot of people in our constituency casework who I would consider to be victims of the loan charge—would not have taken place if the tax inspectors had done their job more thoroughly and picked up on this activity earlier.

Constituents at my advice surgeries on Friday afternoons, many of whom have been in serious financial distress, have told a story familiar to Members across the House: "My circumstances were unusual. I am not a tax expert, but I took professional tax advice and made arrangements thinking that they were within the law." The point is

that, had HMRC picked up on some of these issues earlier, some of those constituents would have corrected their tax affairs much earlier, they would not have been in this position, and this debate on clause 14—on when the loan charge should take effect—would have been rather more redundant. None the less, we are in the position this afternoon where the date has been settled on as a result of the work not just of the courts, but of Sir Amyas himself in the report. We therefore support these clauses.

I would like the Minister, when he replies on this clause, to touch on a few issues. First, I would like him to say something about the discrepancy between the action being taken on taxpayers and on enablers of tax avoidance. That has been another significant controversy. It is not just the case that people have been scouring the internet in search of ways to minimise their tax liabilities. A number of promoters have been engaged in the promotion of aggressive tax avoidance schemes and have put their clients in an invidious position. I am sure I speak for people across the House in saying that we need tougher action against those promoters, who do a real disservice to the wider profession of financial service advisers. I do not believe, despite the reassurances we have been given by Ministers during successive rounds of parliamentary debate on this issue, or by HMRC in hearings of the Treasury Committee, that the action matches the rhetoric.

I would like the Minister to say more about what action is being taken against the promoters of these schemes.

As the Minister will be aware, the all-party parliamentary group is dissatisfied with the date set out in the Bill. Its report on Sir Amyas's report picked up on some of the expert views that Sir Amyas drew on in setting out his conclusions. As set out on page 28 of the APPG's "Report on the Morse Review into the Loan Charge" of March 2020, a number of experts were consulted during the review and asked the simple question of whether they agreed or disagreed with the statement that

"schemes entered into on or after 9th December 2010 would clearly generate an income tax consequence."

Of the 14 or so experts listed on page 30 of the APPG report, a number did not comment, but—as the Minister and his officials will see when they review this, if they have not already done so—a number of those tax advisers disagreed with the statement.

The APPG cites that point in support of its view that the retrospective application of the loan charge is still going back too far. Given we are likely to return to this issue at later stages of the Bill, it would be helpful for all Members of the House—those who are APPG members and those who are not, but who may at some point be asked to express their view in a Division of the House—if the Minister responded to the point about how the date was arrived at, and whether there was a clear and consistent view or whether some of the arguments about retrospection are either highly relevant or redundant.

As the Minister explained in his introductory remarks, clause 14 enacts a recommendation of Sir Amyas's report that rights a wrong. The Opposition will certainly not oppose the Government doing the right thing after a thorough review of the evidence and the judgments of the courts.

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Mr Rosindell. I agree with much of what has been said by the hon. Member for Ilford North. The SNP believe, fundamentally, that people should pay the tax that they owe, but it is clear from the evidence put to the all-party parliamentary group and in various reports that HMRC's implementation has not involved appropriate communication with affected individuals. We believe that a review is in order to ensure that nobody is made homeless or bankrupt as a result of the loan charge.

I would also ask what consideration the Government have given to people's ability to pay due to coronavirus, which may change people's circumstances and their ability to repay. What consideration has HMRC given to those circumstances and how they might affect somebody's ability to pay? It certainly will be beneficial to HMRC to get the money at some point, but if there is a strict time limit, within which people just cannot pay because they do not have the money and need to put food on the table, that needs to be taken into consideration.

It is something of a scandal that tax professionals advised clients to use these loopholes. There needs to be a further review into the advice given by those professionals and some comeback on the promoters of the schemes, who have clearly encouraged people to take them up. Individuals may have gone into them with their eyes open or their eyes closed, but the promoters of the schemes almost certainly knew what they were doing, what they were advising and what their intention was. We should go after those people aggressively, to ensure that they are not only held accountable for what they have done in the past, but prevented and disincentivised from coming up with similar loophole schemes in future. The very nature of our complex tax system means that the people out there who can benefit from those loopholes will always seek to find them. If we can send a clear message that that is unacceptable and there are consequences for doing so, that is worth considering.

My hon. Friend the Member for Inverness, Nairn, Badenoch and Strathspey (Drew Hendry) tabled early-day motion 296 welcoming the publication of Sir Amyas Morse's loan charge review, the UK Government's amendments to the relevant legislation through the Finance Bill such that loans made before 2010 will no longer be subject to the loan charge, and delaying the self-assessment deadline until 30 September 2020. The initial analysis suggests that more than 30,000 individuals will benefit from these and related measures, but we still believe that a pause in the policy is necessary before continuing to provide a report, assuring Members that HMRC is working constructively with those seeking a reasonable repayment plan—one that recoups the unpaid tax while avoiding the unacceptable risks of bankruptcy and homelessness. If HMRC is not in a position to deliver that, an independent arbitration mechanism should be used to achieve it.

2.30 pm

Those reasonable arrangements take into account what campaign groups have highlighted about the impact of this on mental health. There is significant evidence to suggest that the mental health of people involved in this has been seriously impacted. We should not diminish the impact on individuals and families. People have lost their lives through this.

The Scottish National party supported new clause 26 to the previous Finance Bill, which would have reviewed unrelated tax code changes and compared them with

those related to the loan charge. Despite the amendment not seeking to change or review the loan charge itself, it allowed us to express our concerns, alongside other parties, and we were happy that the UK Government conceded on that provision, in order to avoid yet another Commons defeat at that time.

My hon. Friend the Member for Aberdeen North (Kirsty Blackman) wrote to the then Treasury Minister, the right hon. Member for Central Devon (Mel Stride), seeking assurances that evidence would be provided to parliamentary hearings. This goes to my earlier point that we need evidence, and that we need to be able to interrogate and ask questions of that evidence. Somebody sending a briefing is useful, but being able to have some back and forth with people who know more about this than we perhaps do would allow us to make the right decisions. Evidence from the likes of the all-party parliamentary loan charge group or other experts in the field might have been incredibly useful to the Committee.

Jesse Norman: I thank the hon. Members for Ilford North and for Glasgow Central for their speeches. The hon. Member for Ilford North started by setting out the principles of, as it were, a Labour approach to tax avoidance and evasion, and described how, in the Labour view of things, tax avoiders were in fact guilty of robbery, which I thought was a very big claim. Robbery is not a word I would ever use in this context, but there is a serious problem of avoidance and evasion, and—as I will come on to, and as the hon. Member for Glasgow Central mentioned—there is a serious problem with the promotion or enabling of tax avoidance and evasion schemes.

I thank the hon. Member for Ilford North for his comments in support of Revenue and Customs, with which I fully concur, as I am sure does everyone in this Committee and the more than 10 million people who now have their livelihoods or jobs supported by schemes that HMRC has put in place in a very short period. He also rightly praised Sir Amyas Morse, saying that the Labour party accepted the Morse review as a piece of work. He is absolutely right about that. Sir Amyas, on his retirement, elicited unimpeachable measures of approval and statements of support from across the House.

Where I think the hon. Gentleman is wrong is on the question of retrospection. He will be aware that the loan charge is a new charge and is therefore not retrospective legislation. The common understanding of retrospection is that it somehow changes the law as it was at the time when people operated, but the whole point is that, as Sir Amyas found, from at least 9 December 2009, the law was as indicated. One can dispute the period before that, and HMRC retains the ability in the case of certain years to pursue people for tax due before that period. But the review made clear—this is very important—that Sir Amyas Morse accepted the principle of the loan charge. The review made significant changes to the application of a principle that Sir Amyas accepted.

We are bound to return to these themes later on in our discussions, but it is worth touching on them now. The hon. Member for Ilford North raised the provision that the Government did not accept in the Morse review, which was the idea that arrears in tax should be written off after 10 years. The reasons that the Government did not accept that were twofold. The first was that it would have had the effect of treating people who had engaged in these disguised remuneration schemes and benefited from this approach more favourably than other people who might be in arrears in tax with the Revenue, which the Government felt was not appropriate.

The second reason was that the Revenue and Customs has highly effective time-to-pay arrangements, which have been further extended in the case of the loan charge, to allow people on lower incomes an additional seven years of time to pay as a minimum. Those arrangements are very flexibly and intelligently administered by the Revenue and Customs, and they are already being utilised by people in significant numbers before the coronavirus pandemic and undoubtedly as a result of it. There is no need for a statutory change, and such a change would have had the effect of treating scheme users more favourably than others.

The hon. Member for Ilford North raised the all-party parliamentary loan charge group and the Loan Charge Action Group, which has been very vigorous on social media and elsewhere. Colleagues' input is always valuable, but we should take this one with a little pinch of salt, because it is the product of an enormous amount of concerted political lobbying of an extremely intense kind on Members who are members of that group. In that sense, it does not exercise what I would consider the kind of independent judgment that we would want an all-party parliamentary group to exercise.

The contrast is with the Morse review itself, which was an admirably independent-minded piece of work. It by no means took a Government line in any of its recommendations and showed itself all the more valuable for that. It was itself a comprehensive response to the concerns that had been raised. If people have concerns about, for example, the choice that Sir Amyas made to locate the point of cut-off for the application of the loan charge to 9 December 2009, they have merely to read the relevant chapter, which is an extremely thorough and careful reconstruction of the legal process and the enforcement process up to and after that date.

I am struck by the fact that many of the themes that came through in the Morse review were picked up by a rather important recent case which related to the loan charge—Zeeman and Murphy *v.* HMRC—in which the judge said:

> "This is not a tax on fictitious income or benefits, but on genuine remuneration received for work done or services rendered, paid in the form of a loan. The recipients of the money have had the advantage of its use for some time…over many years."

That is true. The judge went on to say that

> "it was well within the generous margin of appreciation for Parliament to decide that it would tackle the matter in the way that it did, and impose a present tax liability in respect of money whose use, tax-free, had been enjoyed by the recipient over a number of years."

I do not want to comment on that, because I do not think that proceedings in a law court should be commented on by Members of Parliament, but I draw it to the Committee's attention.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

ELECTION FOR LOAN CHARGE TO BE SPLIT OVER THREE TAX YEARS

Jesse Norman: I beg to move amendment 1, in clause 15, page 9, line 8, at end insert—

'(11) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that sub-paragraph (7)(a) applies to a specified class of persons as if the reference to 1 October 2020 were to such later date as is specified.

(12) In sub-paragraph (11) "specified" means specified in the regulations.'.

This amendment will allow HMRC to extend the deadline for making an election to split the loan charge over three years for particular classes of person liable to the loan charge by virtue of Schedule 11 to the Finance (No.2) Act 2017.

The Chair: With this it will be convenient to discuss Government amendments 2 and 3.

Jesse Norman: The clause allows taxpayers to make an election to spread their outstanding disguised remuneration loan balance evenly across three tax years. The effect is to give to taxpayers greater flexibility on when the outstanding loan balance is subject to tax. In some circumstances, that will mean that the loan balance is subject to lower rates of tax than if taxed only in the 2018-19 tax year.

As I described, the Government accepted all but one of Sir Amyas Morse's recommendations, which included that taxpayers should be able to choose not to stack their outstanding loan balances into a single year. In deciding to allow individuals to elect to spread the loan charge over three years, the Government balanced the aim of reducing the number of people affected by higher marginal rates of tax against the administrative burden on individuals, employers and HMRC.

The Government wanted to ensure that people have a choice about whether to make an election. Some taxpayers may prefer to settle their loan charge liability in one year, providing certainty for them going forward. For many individuals, however, the option to spread the loan charge balance over a three-year period will allow for the amounts to be repaid over a longer time than otherwise required, and potentially with a tax advantage, had they paid the loans in the years received

Part 1 of schedule 1 provides consequential amendments to schedules 11 and 12 to the Finance (No. 2) Act 2017 to give effect to clause 14 of the Bill. The changes amend further references to the date of 6 April 1999 to remove references to approved fixed-term loans, which related only to loans made before 9 December 2010 and so are no longer affected by the loan charge—they have essentially been taken out of scope. Those consequential amendments are necessary to give effect to the legislative changes introduced following the recommendations by the independent review into the loan charge.

Part 2 of schedule 1 makes the consequential amendments to the Income Tax (Earnings and Pensions) Act 2003 necessary to give effect to clause 15 of the Bill, which allows an individual to make an election to spread their loan charge balance over three consecutive years: specifically, the years 2018-19, 2019-20 and 2020-21. Furthermore, part 2 sets out consequential amendments to the Social Security (Contributions) Regulations 2001—S.I. 2001, No. 1004—to ensure that the liability to national insurance contributions can also be spread over three years. Part 2 also introduces amendments to ITEPA to ensure that where a person dies before 5 April 2019, the schedule 11 loan charge will not apply.

Government amendments 1 and 2 to clause 15, and Government amendment 3 to clause 17, seek to achieve the same aim of giving Her Majesty's Revenue and Customs the flexibility to defer the dates set out in those clauses. Clause 15 deals with the date by which an election must be made by an individual subject to the loan charge where that person wishes to split their tax liability over three years. Clause 17 deals with the date by which an individual subject to the loan charge must submit a complete and accurate 2018-19 self-assessment tax return and pay the balance of their 2018-19 tax liabilities if they are to avoid paying interest.

Recognising the impact of the coronavirus pandemic on the potential ability of some loan charge taxpayers to finalise their affairs in time to meet those dates, as raised by the hon. Member for Glasgow Central, the Government think it prudent to enable HMRC to defer those dates for particular classes of loan charge taxpayers, should that prove necessary. Accordingly, the amendments will enable HMRC by laying regulations to defer the dates for a specific class of loan charge taxpayers. For many individuals, clause 15 will reduce the amount they need to pay. It will also reduce the administrative burden on individuals, employers and HM Revenue and Customs.

2.45 pm

Schedule 1 makes the changes to prior legislation necessary to give effect to clauses 14 and 15 and ensures that the loan charge does not apply if a person died before 15 April 2019. In addition, Government amendments 1, 2 and 3 enable HMRC to respond positively to challenges that may be faced by some loan charge taxpayers, to ensure that they are not prejudiced due to factors beyond their control. For those reasons, I commend clause 15, schedule 1 and Government amendments 1, 2 and 3 to the Committee.

Wes Streeting: As the Financial Secretary has outlined, these relatively straightforward Government amendments allow for flexibility in making the election to spread the loan charge possible. I have some questions for the Minister about that, but I also want to raise several issues about his earlier remarks, which are relevant to this clause and the Government's amendments, as well as some of the other issues that we will consider this afternoon.

First, in relation to the all-party parliamentary loan charge group, of course we are aware that the secretariat is the Loan Charge Action Group and that it contains lots of people who are subject to action by HMRC and have a direct personal interest in changing the law and affecting the course of Government policy. The Minister has done a real disservice to Members on both sides of the House, however, by suggesting that the all-party parliamentary group is not independent and does not exercise independent judgment.

It is common practice in this place for external organisations to provide the secretariat for all-party parliamentary groups, but if it were the case that any of those secretariats, whose work is funded to support the

[Wes Streeting]

work of parliamentarians, were in any way directing the work of Parliament or of Members, that would be an issue for the Committee on Standards. No Member should be exercising their voice or their vote because of outside financial pressure or well-funded lobby groups. We are always expected to exercise our independent judgment.

The co-chairs of the all-party parliamentary group are the right hon. Member for Kingston and Surbiton (Sir Edward Davey), with whom the Minister previously served in Government, albeit he was a yellow Tory, rather than a blue one; my hon. Friend the Member for Brentford and Isleworth (Ruth Cadbury), who I would never suggest was anything other than independent, otherwise I would feel the physical force of her independence around the back of my ear; and the right hon. Member for Hemel Hempstead (Sir Mike Penning), who is widely respected on the Conservative Benches and was respected across the House as a Minister. The group also has widespread support from more than 200 MPs on both sides of the House, including the former leader of the Conservative party, the right hon. Member for Chingford and Woodford Green (Sir Iain Duncan Smith). It is important to distinguish between that and the lobby group, which is perfectly entitled to its views, and is not always wrong, by the way.

That brings me to my second point. The Minister would have more of a leg to stand on in robustly criticising the all-party parliamentary group or the Loan Charge Action Group if they had not found the Government banged to rights. I did not labour the point during our previous exchange, but it is embarrassing for the Government and HMRC to have been landed with a report such as the report by Sir Amyas. We were told several times by Ministers at the Dispatch Box, and by HMRC in Select Committee hearings, that, "There is nothing to see here. There is no problem. HMRC is exercising its functions and discharging its responsibilities appropriately." Yet, through Sir Amyas's report, we have found that that was not the case.

We are now having to legislate for changes, and the Government are making changes that do not require changes to primary legislation, because the Government and HMRC were found not to have their affairs properly in order in relation to the application of the loan charge and the way the policy has panned out. The Government ought to be a bit more humble about some of those issues.

On the Government amendments, the Chartered Institute of Taxation thinks that the 30 September 2020 deadline for making an election to spread the loan charge should be amended. It considers that an extended deadline of 31 January 2021, which is the normal deadline for amending 2019 self-assessment tax returns, should apply. We are all aware of the impact of the current covid-19 pandemic, and the chartered institute recently pointed out that some taxpayers will require additional time in some cases because the records and documents that taxpayers need to access are not currently or readily available to them. With businesses in lockdown, it might not even be possible for them to access offices, particularly shared offices, even if they wish to do so. Will the Minister address that point, and might the Government consider a change along the lines requested by the chartered institute at a later stage? Also, why is it not possible to revoke an election to spread the loan charge or to be able to amend the election up until 30 September 2020 by submitting an amended return? Will the Minister address that point, too?

Jesse Norman: I thank the hon. Member for Ilford North for his remarks. To be clear, I am not suggesting for a second that the APPG's members are in any sense dependent. Let me put that on the record. There is no impeachment or attempt of any such kind from me in relation to individual Members of Parliament. I was making a different point, which is that the APPG itself has come under an enormous body of concentrated and often extremely forceful pressure from people affected by the measure. There is therefore a contrast between their position and the position of Sir Amyas Morse, who is able to take a view that is independent in the sense that it is not aggressively constrained by one side or the other, but with the capacity to make a decision based on expert guidance and advice.

On whether the Government are always right, I would not suggest that for a second. We commissioned the review because the Government recognised that there was widespread public concern. Far from seeking to ignore that or brush it under the carpet, they retained a very high quality person and fully supported an independent process, thoroughly influenced and infused with both consultation and expert advice, to address the concerns. They were also suitably humble in accepting all but one of the recommendations, with the exception that I have indicated. It is absolutely not the case that it has been the view of the Government that any party to the dispute has a monopoly on correctness or rightness, and certainly the Government do not see themselves in those terms.

On the core thrust of the policy, Sir Amyas was clear. He accepted the principle of the policy and the validity of the loan charge as an approach to the concern about disguised remuneration, which takes enormous amounts of money out of the potential support of our public services. It is important to recognise that that was his position.

The hon. Member for Ilford North mentioned the Chartered Institute of Taxation and its call for an extended deadline. The deadline at the moment is the end of September and there is a period still to run before that. We understand the concern and of course we continue to reflect on the position, but that is the deadline and there is no overwhelming case at the moment for moving it. Therefore, it is important to give certainty to people who are in this position that that is the deadline for the submission of information and settlement of the loan charge. There can be no movement on that front, and it is important to be clear about what the status is at the moment. With that said, I commend the clause to the Committee.

Amendment 1 agreed to.

Amendment made: 2, in clause 15, page 10, line 14, at end insert—

'(3F) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that sub-paragraph (3B)(a) applies to a specified class of persons as if the reference to 1 October 2020 were to such later date as is specified.

(3G) In sub-paragraph (3F) "specified" means specified in the regulations.' *—(Jesse Norman.)*

This amendment will allow HMRC to extend the deadline for making an election to split the loan charge over three years for particular classes of person liable to the loan charge by virtue of Schedule 12 to the Finance (No.2) Act 2017.

Clause 15, as amended, ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 16

LOAN CHARGE REDUCED WHERE UNDERLYING LIABILITY DISCLOSED BUT UNENFORCEABLE

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

Jesse Norman: The clause implements recommendations 3, 4 and 5 of Sir Amyas Morse's independent review. It sets out that the loan charge will not apply to loans outstanding at 5 April 2019 and made in the tax year 2015-16 or earlier, whwwen the avoidance scheme was disclosed to HM Revenue and Customs, and HMRC had not taken action by 6 April 2019 to protect the year, for example, by opening an inquiry. The clause sets out how a reasonable disclosure is made, when a loan charge reduction applies and how that reduction is calculated. It also sets out what is meant by a qualifying tax year and a qualifying tax return.

Reasonable disclosure is defined as a disclosure made in either an income tax self-assessment return or a corporation tax self-assessment return, where a person is chargeable to tax on employment income, or an income tax self-assessment return where a person is chargeable to tax on trading income. The term "return" includes any accompanying accounts, statements or documents. Reasonable disclosure may be made in one or more returns of the same type relating to qualifying tax years either by an individual or, in the case of employment income, an employer. That builds on HMRC's existing compliance approach.

A qualifying tax year is the tax year 2015-16 or earlier, or for corporation tax accounting periods commencing before 6 April 2016. Information must be included to identify the loan, the person the loan was made to, if not the taxpayer, the arrangements the loan was made under and other information to make it clear that the loan should be chargeable to income tax. In the case of employment income, this does not include the declaration that a loan was taxed as a benefit of a "cheap loan" where the benefit declared is the loan paid at a reduced interest rate, or indeed a zero interest rate.

The clause does not apply where there was no reasonable disclosure made for years 2015-16 and earlier, nor does it apply for 2016-17 onwards, regardless of whether a reasonable disclosure has been made or HMRC has taken steps to recover the tax. The clause thus ensures that the Government can implement three of Sir Amyas Morse's recommendations from his independent review of the loan charge. I commend it to the Committee.

Wes Streeting: There is not much for me to add to what the Financial Secretary set out. Will he confirm that HMRC will be able to adopt a practical approach to interpreting what is a reasonable disclosure? For example, in some cases a taxpayer will not have had to file a self-assessment tax return for a tax year, but their employer or their business will have disclosed the loans and so on in a return of their own, in which case we consider that that would be an adequate disclosure by the taxpayer. Is that the Minister's understanding? It was pointed out to us by the Chartered Institute of Taxation that

"amendments to paragraphs 1B…of Schedule 11 to F(No.2)A 2017 included in the Finance Bill legislation, as compared to the original draft legislation, appears to permit disclosures in tax returns other than the taxpayer's to be taken into account."

I would be grateful if the Minister confirmed whether that is indeed the case.

3 pm

Jesse Norman: I thank the hon. Gentleman for his question. The principle is as laid out in the legislation and it should be recognised as wider than might originally have been contemplated, as concerns were raised during the consultation process on the draft legislation about the definition of reasonable disclosure, and the Government responded to those. The definition of reasonable disclosure in the legislation introduced in the Finance Bill has thus been widened to include disclosure in either an income tax self-assessment return or a corporation tax self-assessment return. The effect of that is to enable disclosure by either an individual or an employer to meet the definition of reasonable disclosure.

Disclosure can be made in more than one tax return of the same type and, as I have said, a tax return includes any accompanying accounts, statements or documents and has therefore been widely specified. How that is to apply in a specific context is, of course, a limitlessly varied matter, and limitless ingenuity will doubtless be deployed in showing that it can be applied to whatever the circumstances are, but that is the standard that the legislation lays down.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

RELIEF FROM INTEREST ON TAX PAYABLE BY A PERSON SUBJECT TO THE LOAN CHARGE

Amendment made: 3, in clause 17, page 13, line 36, at end insert—

"(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that this section applies to a specified class of persons as if—

(a) the references in this section to the end of September 2020 were to such later time as is specified, and

(b) the reference in subsection (3)(b) to 1 October 2020 were to such later date as is specified.

(6) In subsection (5) "specified" means specified in the regulations."—*(Jesse Norman.)*

This amendment will allow HMRC to extend, for particular classes of person subject to the loan charge, the period within which liability to income tax and capital gains tax for the tax year 2018-19 may be discharged without incurring interest on those liabilities.

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

Jesse Norman: Clause 17 makes a technical amendment to remove the charge of late payment interest for customers and taxpayers who are liable to the loan charge for the period 1 February 2020 to 30 September 2020 on any self-assessment liability. The effect of that is that taxpayers will not be disadvantaged by the extension to the deadline given to them to submit their 2018-19 self-assessment

[Jesse Norman]

return and to pay the tax due. Late payment interest will accrue from 1 February 2020, if this revised deadline of 30 September 2020 is not met.

The clause also provides that no late payment interest will be due on payments on account for 2019-20, where the payments are made by 31 January 2021 or are included in a payment arrangement by that date. Again, if the payment deadline of 31 January 2021 is not met or there is no payment arrangement in place by that date, the changes will not apply. Interest would then accrue from the statutory due dates for the relevant payments on account, which are 1 February 2020 and 1 August 2020.

While the clause will operate prospectively for the vast majority of affected payments, it will have limited but, I should emphasise, wholly positive retrospective application. There are cases where the Government are minded or have to act retrospectively, in part to do justice, and this is one of those. Any affected payments made before the date this Bill receives Royal Assent will be included, so that taxpayers who made their returns and payments before Royal Assent are no worse off than others who make their returns and payments later, but before the extended deadline.

Wes Streeting: As the Minister outlined, the measure is a technical one, so I do not have much to say about it, except to say as I did on clause 15 that I wonder whether he could outline, particularly for people who follow our proceedings closely, the reason for setting the deadline for filing the 2019 self-assessment return as 19 September 2021. The same issues that I raised previously may present themselves to taxpayers in the light of the lockdown measures that are currently in effect.

Jesse Norman: I must say that I am not quite sure I understand the question, but what has happened so far is that the loan charge deadline has been extended to 30 September this year. The clause allows relief from interest payable by those who are subject to the loan charge in that context; but if the hon. Gentleman would like to clarify his question I will try to answer it.

Wes Streeting: It is simply the case that some people who may need to access relevant documentation to provide to the tax authorities might struggle to do so in light of the lockdown measures that are in place. So, just as I raised in the previous discussion on clause 15, I am asking what flexibility can be made available. That is what I am getting at.

Jesse Norman: I understand. I think the hon. Gentleman said the date is 19 September 2021, and that is what threw me, because I do not think that that date applies to the issue that he has raised. As I have described, Revenue and Customs is, in the middle of the covid pandemic, exercising an extraordinarily careful sensitivity to personal circumstances. If there are personal circumstances that, because of the coronavirus, may have made it impossible to make a payment of the kind in question, I have no doubt that Revenue and Customs will take account of that in its consideration, before reaching a judgment.

Question put and agreed to.

Clause 17, as amended, accordingly ordered to stand part of the Bill.

Clause 18

MINOR AMENDMENTS RELATING TO THE LOAN CHARGE

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

Jesse Norman: Again, this is a minor and technical measure that makes minor legislative adjustments to implement changes to the loan charge, including changing the date by which loan charge information must be provided to HMRC from 1 October 2019 to 1 October 2020.

When the loan charge was introduced in the Finance (No. 2) Act 2017 there was a legal requirement that those who had an outstanding disguised remuneration liability on 5 April 2019 would be required to submit information on their disguised remuneration loans before 1 October 2019 through an e-form. When the Government accepted Sir Amyas's recommendation that there should be an option to spread the loan charge balance over three tax years, through an election, it was decided that the best way to do this was via an online form. The Government also used this opportunity to encourage those who had not already submitted information on their disguised remuneration loans to do so, by changing the statutory date from 1 October 2019 to 1 October 2020. I should say that clause 18 also corrects a minor drafting error in the original legislation.

Wes Streeting: It would take a wit beyond my imagination to find something interesting to say about this provision, so I shall resume my place.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

REPAYING SUMS PAID TO HMRC UNDER AGREEMENTS RELATING TO CERTAIN LOANS ETC

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

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

Clause 20 stand part.

New clause 7—*Loan charge: report on effect of the scheme—*

'(1) The Chancellor of the Exchequer must commission a review, to be carried out by an independent panel, of the impact in parts of the United Kingdom and regions of England of the scheme established under sections 19 and 20 and lay the report of that review before the House of Commons within six months of the passing of this Act.

(2) A review under this section must consider the effects of the provisions on—

(a) business investment,

(b) employment,

(c) productivity, and

(d) company solvency.

(3) A review under this section must consider the fairness with which HMRC has implemented the policy, including whether HMRC has provided reasonable flexibility around repayment plans with the aim of avoiding business failures and individual bankruptcies.

In this section "parts of the United Kingdom" means—
(a) England,
(b) Scotland,
(c) Wales, and
(d) Northern Ireland;
and "regions of England" has the same meaning as that used by the Office for National Statistics.'

This new clause would require a review of the impact of the scheme to be established under Clauses 19 and 20.

Jesse Norman: It must be a tedious amendment indeed that has not excited the imagination or genius of the hon. Member for Ilford North, so I am grateful to him for clarifying that.

Clauses 19 to 20 implement recommendation 6 of Sir Amyas Morse's independent review, ensuring that Her Majesty's Revenue and Customs can refund the elements of settlements that were made since 2016, paid to settle unprotected years either before 9 December 2010 or between 9 December 2010 and the start of the 2016-17 tax year, where the taxpayer had made a reasonable disclosure of their scheme usage in their tax return.

Clause 19 requires HMRC to set up a scheme under which it may refund qualifying amounts of certain voluntary payments. Such refunds can be made only where the qualifying amount was paid under a settlement agreement made with HMRC on or after 16 March 2016 and before Budget day on the 11 March 2020. Additionally, the qualifying amount must have been paid in relation to a loan made before 9 December 2010 where HMRC did not have power to recover the amount due at the time the agreement was made, or it must have been paid in relation to a loan made after 9 December 2010 and before 6 April 2016 where a reasonable disclosure of the use of the loan scheme was made to HMRC at a time when HMRC had the power to recover the amount due, but did not take any action.

Clause 20 sets out the details that may be contained in the refund scheme. This may include who is eligible to apply for a refund, how an application should be made and the factors that will be taken into account by HMRC in calculating the refund due.

I now move to new clause 7, an SNP new clause, which would require the Chancellor of the Exchequer to commission an independent review of the impacts of the repayment scheme established under sections 19 and 20, and to lay the report of that review before the House of Commons within six months of the passing of this Act. Of course, it is very important that we should consider the impact of all tax policy on individuals and, in this case, of the repayment scheme on the approximately 2,000 taxpayers, including companies, the self-employed and employees, who may be entitled to claim a refund under the scheme.

Although that is the case, the Government do not think there is any cause to undertake an additional report. The Government have already accepted Sir Amyas Morse's recommendation in his independent, thorough and expert report that the Government should report to Parliament on all aspects of our implementation of the loan charge changes before the end of 2020. This was recommendation 14 of the independent review into the loan charge. It was accepted by the Government at the time, and it already adequately fulfils the requirement put forward in new clause 7. For that reason, I commend clauses 19 and 20 to the Committee, but I ask that the Committee reject new clause 7 if it is put to a vote.

Alison Thewliss: I thank the Minister for his remarks. He recognises the importance of the schemes, but I think it is also important to recognise whether the effect of the policy is sound. We need to review and keep under review how this is actually working, and we need to understand the impact of the scheme.

This is why we have asked for a review to consider the effects of the provisions on business investment, employment, productivity and company solvency. We want to look at parts of the United Kingdom—Scotland, Wales, England and Northern Ireland—to see if there is any differential impact as well. It may be the case that some aspects impact on different sectors in different areas more so than others. I know that colleagues in the north-east of Scotland may want to highlight the impact on the oil and gas industry, whose employees have been in touch as part of their constituency business.

It is important to understand what the impact has been, and I think we are guilty, and the Government are certainly guilty—all Governments are guilty—of bringing things forward in the Finance Bill and making proposals, then not really following up and not really understanding the impact. That is often how we arrive at difficult situations such as the ones we are seeing today. I would certainly encourage the Government to consider this again. It is important that what they do is correct, and if it is not correct, it is important to understand that as it rolls out. On the refund scheme, I just want to ask how exactly it will work, when people can expect to obtain any refunds and, indeed, if there is any timescale in place for that.

Wes Streeting: I will come on to address new clause 7, proposed by the hon. Member for Glasgow Central, shortly because that opens up a broader range of issues worthy of review, such as the scrutiny of HMRC's implementation of all this.

Clauses 19 and 20 legislate for the proposed disguised remuneration repayment scheme 2020—in broad terms—only. The clauses provide HMRC with considerable discretion as to how to operate the scheme. For example, while there is a right to a review of a repayment decision refusing repayment, that is only by way of representations to HMRC within two months of the decision. There is no independent review of the process. Given what I saw on the Treasury Committee of HMRC's conduct on the loan charge, that is a serious oversight and mistake. People should have recourse to an independent process, and I am concerned that that is not the case as proposed.

3.15 pm

The London Society of Chartered Accountants wrote:

"Following the Morse review, this provides for repayment of tax already paid by some taxpayers under the earlier loan charge provisions. In addition, interest should be paid at a preferential rate and there should be restitution of loss of income."

The society firmly believes that

"if a taxpayer has been wrongfully taxed, he should be returned in full to his starting position, so that he has not suffered any loss",

and it notes that, in loan charge cases, tragically,

"the consequences have been much more severe for some people, including bankruptcy, loss of home, broken marriage and, in a few tragic cases, death by suicide",

which I will come on to say more about shortly.

Why is there no independent review process or right to appeal for HMRC's customers? Will the Minister also explain how the Government will ensure that the scheme is operated by HMRC in the manner intended by the Government, given that the Bill leaves HMRC such broad discretion in the operation of the scheme?

We have heard representations from the all-party parliamentary loan charge group, notwithstanding the Minister's critique of the all-party parliamentary group, if I may put it that way. The APPG described HMRC's behaviour as "unacceptable", stating that it

"at times represents clear misconduct and bullying."

That is a serious charge for the APPG to level at HMRC, and I am curious to know the Minister's views. Certainly, in my experience of taking evidence from HMRC at Select Committees, its approach to the loan charge, broadly speaking, warrants some degree of independence and right of appeal.

Finally on the points made by the London Society of Chartered Accountants, we need to consider the impact on individuals. For example, if an individual were forced to sell their home, but subsequently liable for a refund, what would the Minister envisage as reasonable in terms of putting the situation right in such circumstances?

Turning to clause 20, the Chartered Institute of Taxation notes that clause 20(5)(a) and (b) refer to "any other person". The provision authorises HMRC to make repayment conditional on the applicant and "any other person" agreeing to the termination or variation of a qualifying agreement, or making a new agreement. Will the Minister provide some clarification as to whom "any other person" might be? What was the thinking behind that particular part of the Bill?

Clause 20(6)(a) allows the repayment scheme to make provision for the effect that the settlement agreement has had on an applicant or "any other person". Further to that, subsection (7) allows provision to be made to ignore repayment for the purposes of whether a person is subject to any other liability. Typically, more recent settlement agreements included a provision for the writing off or waiving of a loan as part of a settlement agreement with HMRC. Will the Minister confirm that that means that a loan write-off, for example arising from or in relation to the settlement agreement, will not cause a tax charge to be triggered where repayment is made in respect of the tax year now dropping out of the loan charge?

If that is correct, those concerned will not have paid income tax on the making of the original loan under the loan charge on the subsequent waiving of the loan, and so indeed would be fortunate relative to other individuals in different circumstances. If that is the case, will the Minister provide a justification for that, and an explanation for the discrepancy in how different groups of taxpayers will be impacted by the new legislation?

Is it correct that post 11 March this year, settlement proposals, including those that HMRC deferred while the independent review was conducted, do not include a provision for the writing off or waiving of any part of a loan that falls within a qualifying year—that is, loans made before 9 December 2010 and those made since then, but before 6 April 2016, where reasonable disclosure has been made? If that is correct, these individuals would seem to be rather less fortunate, so again, an explanation for the discrepancy in how different groups of taxpayers will be impacted by the new legislation would only be reasonable.

I will now turn to the SNP's new clause 7, and make some broader observations in relation to the implementation of this scheme. As we have heard from the hon. Member for Glasgow Central, new clause 7 effectively institutes a review that must be carried out by an independent panel to look at the implementation of the scheme. I was particularly struck by the reference in the new clause to that review including a consideration of

"whether HMRC has provided reasonable flexibility around repayment plans with the aim of avoiding business failures and individual bankruptcies."

This is important, for two reasons. First, as I have said, there is a great deal of anxiety across the House that HMRC has not always acted fairly; from the evidence we took on the Treasury Committee, that is my own view. Knowing that an independent review is in the offing might concentrate the minds of tax inspectors and the management of HMRC on ensuring that the broad discretionary powers this Bill affords them are exercised responsibly. If the Minister is not content to listen to our representations and those of others that there should be a right of independent appeal, which would be unfortunate, there should be at least some checks and balances in place to scrutinise the work of HMRC and make sure that this scheme has been effectively implemented.

Of course, the Treasury Committee in the Commons and the Committees in the House of Lords might want to undertake some of this work in any event. However, with respect to the Treasury Committee—for which I, as a former member, have a great amount of respect and affection—I do not think that it would pretend that the scrutiny work we were doing on the loan charge was in any way a substitute for the really in-depth work undertaken by Sir Amyas Morse when he conducted the independent review. He had the ability to go into HMRC, to look behind the cupboards and underneath the floorboards, and grill and interrogate how things have been managed. Select Committees have a place, but we are talking about something that is far more focused and technical, and I hope that consideration is given to that fact.

I think that knowing the review is coming will affect behaviour in a positive way. Hopefully that review will be straightforward, and HMRC customers—our constituents—will find themselves treated more fairly than they might otherwise have been. That would certainly give me and, I am sure, other Members across the House a bit more reassurance that the broad powers being given to HMRC will be exercised in a responsible way, and that some degree of oversight is coming down the track.

The other reason why I think this part of new clause 7 is really important is the reference to

"avoiding business failures and individual bankruptcies."

I do not think anyone—including, by the way, our constituents who have been caught up in this loan charge fiasco—would resent the idea that people who have not paid their fair share ought to do so. Certainly, the constituents whom I have seen at my advice surgeries have given explanations as to how they ended up in this mess in the first place. In the case of my constituents—I am sure I am speaking for other Members across the

House—it is hard to overstate the extent of the shame and embarrassment that some of them have shared with me at those surgeries, in quite a distressing way. Lots of people have been caught up in this who no doubt deliberately sought to avoid paying their fair share of tax, and I do not have very much sympathy with those people. However, there are other people who ended up in this mess inadvertently.

I tend to go by the adage, as others do, that if it looks too good to be true, it is too good to be true. I think there are lots of people who are feeling pretty foolish, and who have acknowledged their embarrassment when talking to their MPs. I am worried because when we look at some of the liabilities people are now facing and their individual circumstances, we know that some people have been driven to sell their homes, been forced into real financial hardship, and have seen the collapse of their businesses. I do not think any fair-minded person would imagine that the outcome we all want from this process is people forced into bankruptcy, with their lives in ruins. We want them to pay their fair share, to be held to account where they have done wrong, and to make sure that they are paying their tax in a way that others do, but surely there is a fairer way to go about some of this than simply ruining people. In some cases, HMRC will not end up recouping all the losses to the Exchequer in any case if people are forced over the edge.

That has to be taken seriously. The last figures I saw showed that, to date, there had been seven suicides of people facing the loan charge, and that should weigh heavily on all of us. No one wants to see such a tragic end to this horrible mess. When we look at the size of some of the liabilities people are facing, we see that it is incredibly daunting for them and it places a huge burden on them and their families. Some people feel it is a burden they can longer face, and we ought to make sure that is not the outcome faced by anyone affected by the loan charge.

I want to return to the recommendation of the Morse review that those with incomes under £30,000 should have outstanding balances written off after 10 years of making reasonable payments. The Minister has given his account of why the Government have not accepted that recommendations, but I wish to make two points. First, the threshold that Sir Amyas identified of incomes of less than £30,000 tells us that lots of people who are not incredibly wealthy have been caught up in the loan charge. When we think about tax avoidance generally and about this scheme, it may be that we are talking about people working for one of the big four whose bonuses could happily write off their liability to HMRC, their luxury holiday, other extravagances that they had planned—the money they were planning to put down on that third holiday getaway somewhere nice in the world. We are not going to cry any tears for those people, are we?

However, lots of people involved in this are on much lower incomes. Some of them felt compelled to sign up to the loan scheme because that is what they were encouraged to do by the company or service provider contracting them—this applies in both the public and private sectors. A huge outstanding balance is a much higher burden for someone on a lower income. That is the first point to make, and it relates to financial hardship and individual circumstances.

Secondly, it does not sit well with me that the Government rightly pay tribute to Sir Amyas Morse and the work he has done, recognising his independence and expertise, and the extent to which he has dealt with the issues, but then say, at the end of the process, "We are accepting all your recommendations, bar this one, which we don't like." The Government would have a far stronger case if they said that they accepted the recommendations of the review in full. Otherwise, what is the point of independent reviews? This would not be the only Government in the history of the UK Parliament who have commissioned a review, sent a national treasure away to do some work, which they have done thoroughly, and then allowed it to end up gathering dust on the shelf. I recognise and welcome the fact that Sir Amyas can sleep easily at night knowing that his report is being enacted, but it is not right, and it does not sit well with me, that the Government have dismissed this one recommendation.

I also recognise what the Minister said about allowing greater flexibility for the repayment period, including a period of up to seven years. Again, however, I will just make this point: from looking at some of my own constituency casework, I know there are people who face tax liabilities of well over £100,000 whose combined household income would not make it possible for them both to repay that debt, even over that period, and pay their mortgage and look after their children; in one case I know of, there are two children involved, and in other cases there will be a different number of children involved.

3.30 pm

That is a burden that people would find pretty hard to bear, and I wonder whether greater flexibility could be provided to give people a longer period of repayment if necessary. What consideration have the Government given to this issue and what discussions they have had with HMRC about it?

There is another issue that I will address by way of review, or mopping up these issues, as we come to the end of our deliberations around the loan charge. I wonder how familiar the Minister is with the issue of loans being recalled. Obviously HMRC is going after people and we are now hearing of cases of some people who face loans being recalled by parties who claim to have been assigned the rights to those loans, because in some cases loan books appear to have been sold on.

This situation just gets messier and messier, but it seems that some of those people, who are now locked into doing what they think is the right thing for HMRC, are being chased to repay their loans by debt collectors. I would be interested to know what representations the Treasury has had on that issue and whether the Government are planning further action on it.

Jesse Norman: I thank the hon. Gentleman for his thorough and wide-ranging remarks. He is right that it is a kind of principle of tax policy in a way, or the typical reaction of an individual, and one wishes that the general instinct shared by 98% or 99% of the tax-paying population that he articulated well —namely, that if it looks too good to be true, it almost certainly is too good to be true—was shared by the whole of the population. However, for different reasons, that is not the case. The hon. Gentleman is right to articulate the principle that if it looks too good to be true, it is, and I

[Jesse Norman]

thank him for doing so. I also thank him and his colleagues for the nuanced interrogation they have given this policy, but not diverging from us on its core thrust.

I want to make it clear that I am not remotely downplaying, undervaluing or minimising the personal feelings of people, or the impact or hardship that they have experienced as a result of this situation. Clearly, there have been cases that have been felt across the House and raised by different MPs, and Revenue and Customs understands that as well. It has made it very clear that it will not force people to sell their main home; that it will not, except in the most unusual circumstances, put people into bankruptcy; and that it will exercise, by adhering to a series of principles, a judicious approach to people's settlement processes. That includes a principle that no more than half of someone's disposable income should go to settle a tax dispute, so that families have not only their non-disposable income but at least half of their disposable income to support themselves.

Those principles also include, as I have indicated, a set of basic time periods to make a settlement—of five years in the case of someone earning under £50,000 a year, and of seven years in the case of someone earning under £30,000 a year—and that is part of the practice of Revenue and Customs, and a well-embedded principle.

Furthermore, if people have concerns that they are being badly handled in this process—this also relates to the point that the hon. Gentleman made about an independent review—they can appeal to tax commissioners for, as it were, an investigation and review. Of course, they also have the ability to go to their MP, and Members are very effective in raising tax-related issues on behalf of their constituents.

Alison Thewliss: On the point about MPs intervening on constituents' issues, I would challenge the question around disposable income. A constituent of mine had been asked to pay money back, and the definition that HMRC gave of his disposable income was incredibly tight compared with the definition of it that he had, which included his finding difficulty in giving his children money for school meals. That seemed to be treated as part of his disposable income. His children have to eat; that is not disposable income as such. I ask the Minister to be very careful about how that is described and how HMRC acts on those kinds of things, because it takes a very strict line on disposable income.

Jesse Norman: Of course, the approach taken needs to have foundational principles aligned to it, and those can be questioned in specific contexts and by the mechanisms that I have described.

The distributional impact of the way the loan charge disguised remuneration population breaks down has been put into the public domain and analysed by HM Revenue and Customs. For example, a relatively small number of people work in caring professions, contrary to the impression that colleagues may have been given. That is the context in which the final recommendation by Sir Amyas Morse, which is that these debts should be written off after 10 years, has been rejected by the Government. It is a recognition of Sir Amyas's expertise and independence that 19 of his recommendations were accepted, and the Government have given a full account of the reason why they have rejected the 20th.

In line with Sir Amyas's recommendations on voluntary restitution, HMRC will refund voluntary restitution already paid for years now out of scope of the loan charge, but will not refund settlements for the underlying tax liability where HMRC had protected its position. That is so that the treatment remains in line with the existing legal framework for HMRC to recover tax. Sir Amyas also recommended that for disguised remuneration loans taken out on or after 9 December 2010, HMRC should only refund voluntary restitution where the scheme user had reasonably disclosed their scheme use. We have discussed that already at some length.

Regarding some of the impact of the different pressures that may be on taxpayers, HMRC will not as a matter of course meet professional costs incurred by taxpayers in reaching their original settlement or claiming refunds, but it may meet professional costs where they have been incurred as a direct result of a mistake or an unreasonable delay in its own dealings with a taxpayer's affairs. That was not the position when HMRC was applying legislation in place at the time.

Refunding fees to those who have used avoidance schemes would send the thoroughly troubling message that taxpayers who had not used those schemes might not do as well as those who had, which is not one that this House should be particularly encouraging. Of course, if a taxpayer feels they have grounds for making a complaint, the usual mechanisms are available for them to do so.

In his recommendation 14, Sir Amyas called for the Government to report to Parliament on all aspects of their implementation of the loan charge changes,

"before the end of 2020".

We will do that. I am grateful to the hon. Lady for laying out her concerns in that regard in this debate, and I will ensure that the officials understand and reflect on them when they start to frame this report.

As per Sir Amyas's recommendations, the report will draw on input from the HMRC customer experience committee. It is very important to realise that the committee includes not only the non-executive directors of Revenue and Customs, but highly experienced independent people in positions of authority and expertise who are specifically customer experience experts in the private sector. The effect of the committee is to support but also challenge the HMRC executive on customer experience-related issues, and to help the Department deliver on its strategic objectives. In other words, part of its point is to ensure that HMRC treats taxpayers with a proper degree of courtesy and service levels, but in no sense becomes oppressive to them.

Let me pick up another important point, which I meant to mention earlier but have not yet: the very strong approach that HMRC is taking on promoters and enablers of tax avoidance. Certainly since I have been Financial Secretary to the Treasury, we have significantly enhanced the already substantial work being done in that area. That includes work that builds collaboration across Government, including with bodies such as the Advertising Standards Authority or the Insolvency Service. It involves proactive communications to help taxpayers to steer clear of avoidance.

HMRC has launched a consultation on ways to combat the promotion and enabling of tax avoidance; colleagues from different parties are welcome to make contributions

to that if they wish. The areas it is looking at include tackling promoters and their supply chains, looking at the economics of tax avoidance, disrupting business models and improving compliance and enforcement in other ways. I would like the Committee to understand that HMRC is in no sense minimising the importance of going after promoters and enablers where it can—subject to law, and with new powers if it should be so decided after the process of consultation.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20 ordered to stand part of the Bill.

Alison Thewliss: What about the new clause?

The Chair: That comes later, at the end. We do not vote on that now.

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

3.44 pm

Adjourned till Tuesday 9 June at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

FB01 Society of Trust and Estate Practitioners (STEP)

FB02 Dr Graham Walker

FB04 Jonathan Kidd

FB05 Martin Barber

FB06 Peter Aveyard, Director of Lead BA Limited

FB07 Chartered Institute of Taxation Clauses 7-21 Employment Tax

FB08 Chartered Institute of Taxation Clause 22 Entrepreneurs' Relief

FB09 Chartered Institute of Taxation Clause 23 Private Residence Relief

FB10 Chartered Institute of Taxation Clauses 27-30 Business Reliefs

FB11 Chartered Institute of Taxation Clause 36 Top Slicing Relief

FB12 Chartered Institute of Taxation Part 2 Digital Services Tax

FB13 Andrew Stokes