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Public Bill Committee

NUCLEAR ENERGY (FINANCING) BILL

Fifth Sitting

Tuesday 23 November 2021

(Afternoon)

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Saturday 27 November 2021

The Committee consisted of the following Members:

Chairs: † Yvonne Fovargue, James Gray

Baker, Duncan *(North Norfolk)* (Con)
† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Brown, Alan *(Kilmarnock and Loudoun)* (SNP)
Browne, Anthony *(South Cambridgeshire)* (Con)
† Cairns, Alun *(Vale of Glamorgan)* (Con)
† Crosbie, Virginia *(Ynys Môn)* (Con)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Duffield, Rosie *(Canterbury)* (Lab)
Fletcher, Mark *(Bolsover)* (Con)
† Hands, Greg *(Minister of State, Department for Business, Energy and Industrial Strategy)*
† Jenkinson, Mark *(Workington)* (Con)
† Owen, Sarah *(Luton North)* (Lab)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Wallis, Dr Jamie *(Bridgend)* (Con)
† Whitehead, Dr Alan *(Southampton, Test)* (Lab)
Whitley, Mick *(Birkenhead)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Sarah Ioannou, Rob Page, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 23 November 2021

[Yvonne Fovargue *in the Chair*]

Nuclear Energy (Financing) Bill

2 pm

The Chair: Before we begin, I have a few preliminary reminders for the Committee. Please switch electronic devices to silent. No food and drink is permitted during sittings of the Committee except for the water that is provided. I encourage Members to wear masks when they are not speaking in line with current Government guidance and that of the House of Commons Commission. Please also give one another and members of staff space when seated and when entering and leaving the room. *Hansard* colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk.

May I have declarations of interest first, please?

Mark Jenkinson (Workington) (Con): I draw the Committee's attention to my entry in the Register of Members' Financial Interests. It is a matter of public record that I was employed in the nuclear sector prior to my election to this place.

The Chair: Thank you.

Clause 15

Regulations about revenue collection contracts

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

The Minister of State, Department for Business, Energy and Industrial Strategy (Greg Hands): Welcome back to the Chair, Ms Fovargue. For the benefit of colleagues, I will speak briefly on the clause, which introduces part 2 of the Bill, and what that is all about. The clause gives a power to the Secretary of State to make regulations about revenue collection contracts, which operate between a revenue collection counterparty and a designated nuclear company, referring back to part 1. Contracts will require the revenue collection counterparty to collect payments from Great Britain electricity suppliers and pass them to the licensee nuclear company so that it can receive its allowed revenue. Subject to consent being given, we expect the Low Carbon Contracts Company to take on the role of the counterparty.

Clauses 16 to 24 set out in further detail what the regulations may cover in relation to the contracts. They could include, for example, the duties of the counterparty, the amounts that electricity suppliers must pay and how the authority will enforce the contract. The legislation will enable payments to flow in the opposite direction if necessary, such as in circumstances where the nuclear company receives more than its allowed revenue. The regulations will ensure that the nuclear company can receive its allowed revenue in a consistent and stable flow. Importantly, the regulations throughout this part are based on existing regulations governing the revenue model under the contracts for difference regime, taking precedent from the Energy Act 2013. Regulations relating to clauses to 16 to 22 and the first regulations made under clauses 23 or 24 will be made using the affirmative procedure. They will therefore be subject to a greater level of scrutiny, as we know, as such statutory instruments must be approved by a resolution of both Houses of Parliament.

Dr Alan Whitehead (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Ms Fovargue. Like the Minister, I would like to spend a moment announcing, as it were, this part of the Bill, which I hope we can get through in an orderly and suitably speedy fashion. It is however important to share an understanding of what we think this part is about. As the Minister said, it concerns the setting-up of revenue collection contracts; the setting-up of a counterparty to hold the revenue collected from suppliers to underpin action by the nuclear company in terms of construction; and, importantly, as he said—he seemed a little concerned when I mentioned this in our previous sitting—revenue collection and distribution during both the construction and production phases of a nuclear project.

My understanding is that during the production phase, the nature of the revenue collection changes. During the construction phase, within the overall allowable costs architecture, the nuclear company is likely to absorb whatever comes its way from the counterparty for the purposes of underpinning the construction costs of the nuclear plant. Obviously, there are debates to be held on that and further regulations to be put in place concerning how the revenue stream for a nuclear company is carried out and the requirements of the construction at various phases.

We have debated to some extent the instance whereby the allowable costs ceiling is breached because of rising costs, particularly during production; whether the regulator would have the opportunity to revisit the allowable costs ceiling; and what effect that would have on the run through the regulated asset base process to customer bills as a result of those recalculations. However, there are issues with what revenue stream goes into the nuclear company, and at what stage during construction, but that is within the overall costs ceiling, or should be, in the first instance.

During the production phase of a nuclear plant, the relationship between collection, distribution and re-disbursement becomes a little more complicated. I would be obliged if the Minister could shed a little light on some of the things that happen during the production process, which are still slightly unclear. That is important because, in the production process, the receipt of funding under the RAB process becomes a comparative issue. The company is making money and producing electricity, and one would expect that, as a result of the RAB model, the money that is being made by the company would sit within the parameters of what has been agreed for the regulated rate of return under the RAB model. If the company is making more money from its production of electricity than is allowed within the overall model's parameters, that money starts coming back to the counterparty or, at least indirectly, through to customers.

Conversely, if the company is making less money from its production than is allowed within the RAB model for production purposes, money continues to come in under the allowable costs ceiling. The best explanation is given on page 21 of the consultation document on a RAB model for nuclear, which suggests:

"Suppliers could pass the cost of the payment obligation onto their consumers, as they do with other regulated costs and could likewise reimburse their consumers (as happens under a CfD) in periods where suppliers receive payments from the project company (e.g. when the Allowed Revenue is lower than the project company's revenue from power sales). The design process would need to consider how these charges could be made in more detail, in consultation with suppliers and consumer representatives."

That is essentially the model during the production phase: it is potentially a two-way process.

That issue reflects, at least to some extent, the amendments that we wish to discuss this afternoon —an understanding of how the money goes into the counterparty, what the counterparty does with the money, what the counterparty does when the money is held, and what the counterparty does if that money may not be needed, or money has been paid back into it by the nuclear company during the production phase. Consideration of how that happens, where that money goes and what sort of requirements one should place on that process are at the heart of some of our amendments.

I thought it important to check whether we have a shared understanding with the Minister of how the process works. Assuming that we do, we can discuss the amendments on the basis of that shared understanding of what this part of the Bill sets out to do. That is essentially a contribution to the clause stand part debate, but I hope that it clarifies how we will proceed with part 2 as a whole, and that it will be helpful to the Committee.

Alan Brown (Kilmarnock and Loudoun) (SNP): It is a pleasure to serve under your chairmanship again, Ms Fovargue. It was interesting that the hon. Member for Southampton, Test spoke about a shared understanding. I wish I had one; I do not think that the Bill is good enough to have any shared understanding of what it is about. Part 1 is clearly all about the definition of designating a nuclear company, and then a blank cheque in terms of defining costs. It seems to me that part 2 is all about how the blank cheque moneys are recouped in revenue collection.

I have one point to put to the Minister. Explanatory note 119 states:

"The terms of a revenue collection contract will be bilaterally negotiated between the Secretary of State and an eligible nuclear company to be designated under Part 1."

Would he enlighten me on what expertise the Secretary of State has in negotiating a revenue collection contract for a new nuclear power station, how that will be undertaken in a transparent manner, and what options are available for scrutiny of that?

Greg Hands: I thank both hon. Gentlemen for their contributions. I will try to be as helpful as I can. Rather than setting any hares running, it is essentially a very similar process to how contracts for difference work under the Energy Act 2013. There is nothing essentially different here, other than the fact that it is about nuclear power generation and has the RAB model. What we are talking about in this part of the Bill is essentially the same process that is being used for contracts for difference under the 2013 Act. I am always slightly reluctant when an Opposition Member asks whether we have a shared understanding. It strikes me as often being slightly dangerous to give a blank cheque on that. My understanding of the process, and I think the Opposition would agree, is that it is essentially the same process that we have been using for contracts for difference through the collection company.

Dr Whitehead: I substantially agree that that is essentially how the process works, except that of course with CfDs the customer contribution does not change at all once the CfD has been implemented because there is a constant price. The difference is in the company getting the difference between the reference and the strike price, not what the customer pays for electricity bills or pays into the process itself.

Greg Hands: Here there will be a frequent resetting, which is likely to be twice yearly, in terms of the amount of money that has been collected, followed by a reconciliation at the end of the period, but a lot of the detail will be set out in the draft regulations. The hon. Member for Kilmarnock and Loudoun asked what expertise the Secretary of State has to negotiate such a deal. As I said, this has been a tried-and-tested methodology over the past eight years. When we say "the Secretary of State", we mean that the individual who is the Secretary of State is the decision maker, but acts with the advice of a group of excellent officials at the Department for Business, Energy and Industrial Strategy. That is the normal way in which any reference to a Secretary of State is made in primary legislation. As I say, the legislation is very much based on the Energy Act 2013 and how it looks at the contracts for difference regime.

2.15 pm

Alan Brown: The other point that I was making was about transparency. What options are available for the likes of me, an opposition MP, to scrutinise and challenge what is being signed off as a good deal?

Greg Hands: The regulations will be subject to the affirmative procedure, which, as the hon. Gentleman knows, will mean a debate in a Committee Room like this, and the potential to take the legislation to the Floor of the House and have a Division of the House of Commons. In that sense, the scrutiny available to Members of Parliament—if that is what he is referring to—is considerable. That is why the regulations will be subject to the affirmative procedure. I think it is reasonable for Parliament to see the regulations when they are made, although we do not envisage that further technical changes to those regulations will be subject to the affirmative procedure. As laid out in later clauses, those changes will be subject to negative procedure. I hope that the Committee will agree to clause stand part.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16

DESIGNATION OF A REVENUE COLLECTION COUNTERPARTY

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

Greg Hands: The power in clause 16 will enable the Secretary of State to designate an eligible and consenting company or public authority to be the revenue collection counterparty for revenue collection contracts. As stated earlier, the Government intend that the Low Carbon Contracts Company should fill that role. The counterparty will be responsible for collecting payments from electricity suppliers and making payments to the relevant licensee nuclear company, as well as collecting any payments from the licensee and making payments back to electricity suppliers.

Unlike contracts for difference, the authority will be solely responsible for determining amounts to be paid to or by the revenue collection counterparty, and would be responsible for communicating that to the counterparty. That responsibility is facilitated by regulations making provision to require information to be shared by the authority, a revenue collection counterparty, and the national system operator under clause 23, on information and advice. The power to designate a counterparty will commence at the point of Royal Assent to support the Government's aim of bringing at least one large-scale nuclear project to the point of final investment decision within this Parliament.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

Duties of a revenue collection counterparty

Dr Whitehead: I beg to move amendment 14, in clause 17, page 14, line 31, leave out "may" and insert "must".

Although I have set out some of the shared understandings that I think necessary for the three amendments that we will move this afternoon, this is not one of them. Amendment 14 addresses the text of the Bill, and puts in place small question marks about what that text means for the Secretary of State's responsibilities, particularly in relation to the duties of a revenue collection counterparty.

At the moment, clause 17(1) states:

"A revenue collection counterparty must act in accordance with…any direction given by the Secretary of State"

and

"any provision included in revenue regulations."

That theme of "must" continues in subsection (4), which states:

"A revenue counterparty must exercise the functions conferred by or by virtue of this Part so as to ensure that it can meet its liabilities under any revenue collection contract".

It is an imperative. And subsection (5) states:

"Revenue regulations must include such provision as the Secretary of State considers necessary so as to ensure that a revenue collection counterparty can meet its liabilities under any revenue collection contract to which it is a party."

Clearly, those "musts" are imperatives for the revenue collection counterparty to undertake. It "must" act in accordance with directions given by the Secretary of State; it "must" ensure that it can meet its liabilities; and it "must" meet its liabilities under any revenue collection contract.

Then we go to subsection (2) and look at the provision for the regulations themselves, which logically should follow on from the imperatives that I have set out, but we see this statement:

"Revenue regulations may make provision".

The regulations that carry out the imperatives of the other provisions of the clause do not appear to have the same imperative applied to them.

I appreciate that the word "may" in legislation is a perfectly reasonable and acceptable term where something can be done as part of a series of powers that perhaps a Secretary of State has. A Secretary of State may decide to do various things under those powers. Indeed, we get some enlightenment on that in subsection (3), which refers to the

"provision that may be made by virtue of subsection (2)".

That is a proper use of the word "may".

However, in this case, what the word "may" appears to suggest is that the regulations that follow from the imperatives do not have to make provision for these particular things; they "may" make provision. There is no direction from the senior Bill to secondary legislation to actually follow the imperatives in the Bill. If the regulations do not happen to make provision, they simply do not, because they "may" make provision; they do not have to do so. That appears to me to be not a very good way of ensuring that the things that should happen under this clause actually do happen.

I know that we are all good Members of the House—I am sure that if legislation suggested that we should do particular things, we would do them—but that is not quite the point. Legislation from this place is supposed to stand the test of time, cope with the vicissitudes of Administrations as they come and go, and ensure that what the legislation intended will actually be done, so either this legislation intends that these regulations do not have to be made or the word "may" is a little less than robust, hence the very modest and small amendment that we have suggested. It would replace the word "may" in subsection (2) with the word "must", so that there was consistency throughout the clause. It would not be a major change to the Bill, but might strengthen it a little and give a little more certainty about its operation.

Greg Hands: As the hon. Gentleman outlined, the amendment addresses what the regulations relating to revenue collection contracts may or must contain. The amendment relates to the duties of the revenue collection counterparty in clause 17. The counterparty will be the body responsible for channelling funds between the designated nuclear company and suppliers. Currently, the Bill gives a discretionary power to make regulations that can ensure that the revenue collection counterparty, first, enters arrangements or offers to contract for the purpose of a revenue collection contract; secondly, must, may or may not do certain actions; and thirdly, undertakes or does not undertake actions specified in the regulations or the direction by the Secretary of State. The legislation further clarifies, for example, that the directions may cover, among other things, the enforcement, variation or exercise of right under a revenue collection contract. Amendment 14, moved by the hon. Member for Southampton, Test, seeks to make it obligatory that the revenue collection contracts will cover these areas whenever

they are made. I welcome the hon. Member's engagement with the detail of the revenue collection regulations, which will play a key role in the functioning of the RAB. However, I do not believe that the approach suggested by the amendment improves our arrangements for the regulations.

First, it is the Government's intention that the regulation made to establish the RAB revenue stream would likely contain all of the topics set out. Obliging them to be included would be unnecessarily restrictive at a point where we are still developing the structure of the regulations, which will be brought forward by the affirmative procedure in due course. It is therefore important that the power remains discretionary, to allow for sufficient flexibility as we progress the policy. Secondly, the amendment seeks to override the original intention of the clause, which was to provide an indicative, non-exhaustive list of what the regulations may cover. That approach is precedented by the Energy Act 2013, particularly in section 21, as well as in other clauses in this Bill. It is entirely regular to use the word "may" for things that we think will be likely to be included.

Finally, as currently drafted, the amendment appears to be in conflict with subsection (3), because the change from "may" to "must" is not reflected there—subsection (3) builds on the subsection that amendment 15 addresses. That leads to an inconsistency in drafting, where subsection (2) would state that the topics "must" be covered, whereas subsection (3) limits it to "may". I welcome the hon. Member's scrutiny of, and engagement with, the detail of the revenue provisions in part 2 of the Bill; I recognise the Opposition's concerns around ensuring that regulation is sufficiently robust. However, I do not believe that the amendment is the way to achieve that, and I hope that hon. Members will withdraw it.

Dr Whitehead: I appreciate that this is a habitual piece of drafting in legislation, found not just in this Bill but in a number of others. One of my hopes with legislation has always been that a group of Members might be courageous enough on one occasion to say, "This is lax writing of legislation and we should not put up with it. We should have what it means included in the Bill." I appreciate that the lax writing of the legislation may not be lax at all—it may be deliberately giving the Secretary of State a lot more leeway where things are not entirely sorted out. When we look at this clause, we can see that there already is, in subsection (2)(c), substantial leeway for the Secretary of State to take

"further powers to direct a revenue collection counterparty to do, or not to do, things specified in the regulations or the direction."

That is pretty wide leeway for the Secretary of State to have in the Bill already.

What the "may" does in this subsection is to cast further uncertainty on what sort of things the Secretary of State may do. I am sure that the Secretary of State will actually want, on this occasion, a "must" for what is conferred on the Secretary of State with further powers. That is very helpful to the Secretary of State for precisely the reasons that the Minister outlined a moment ago. The "may" that is in subsection (3) is a different sense of the word "may". How it would read fully is, "the provision that may well be made by virtue of subsection (2)." It is used in the conditional, whereas the "may" in subsection (2) is a dilution of the imperative. I am sure that the Minister will be pleased to know that that is the case, but I am afraid that it does not accord with what he had to say about the use of "may" and "must" in this provision.

I am not going to press the amendment to a Division, but I think we need to be more careful about how we draft our legislation overall, to make sure that it does what it says on the outside. I am sure this will not be the last opportunity to raise this issue in the Bill. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 17 ordered to stand part of the Bill.

Clause 18

Direction to offer to contract

2.30 pm

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

Greg Hands: Clause 18 builds on clause 17. Subsection (1) explicitly gives the Secretary of State the power to direct a revenue collection counterparty to offer to contract with a designated nuclear company on terms specified in the direction. Those terms will be the outcome of negotiations between the Government and the project company. This power is again replicated from the contract for difference, namely section 10 of the Energy Act 2013, but has been adapted to account for the nature of the revenue collection contracts as a bespoke arrangement.

Regulations can set out the circumstances in which a direction to contract can or must be made, as well as the terms that may or must be attached to the direction. If the Secretary of State does not have the ability to specify when a contract should be offered under the legislation, there could be delays in the offering of a contract to a project company. That could damage investor confidence and slow progress on the project at a crucial time.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

Supplier obligation

Dr Whitehead: I beg to move amendment 15, in clause 19, page 16, line 11, at end insert—

"(4A) Revenue regulations may make provision to prevent electricity suppliers from recovering the costs of paying a revenue collection counterparty from customers who qualify for the Warm Home Discount Scheme."

This amendment would mean that electricity bill payers who qualify for the Warm Homes Discount scheme would not be liable for levies on their bills that pay into the RAB revenue collection fund.

Amendment 15 relates to the latter end of clause 19. Hon. Members will see that the clause suggests that revenue regulations may make provision for electricity suppliers to pay a revenue collection counterparty for a number of purposes, including

"to hold sums in reserve; to cover losses in the case of insolvency or default of an electricity supplier."

[Dr Whitehead]

According to our shared understanding of how the RAB would work, the regulations would require electricity suppliers to pay into a revenue collection counterparty for those purposes. Thereby, as the RAB consultation makes clear, if that company has been required to pay into the revenue collection counterparty, the company could make restitution for the money it had paid into the revenue collection counterparty by adjusting its bills to reflect that fact.

We are in exactly the same territory as contracts for difference, where there is a levy on customers and the supply company recovers the money that it has paid into the levy fund by passing that levy on to customers in their bills. We have a problem with placing additional levies on already sky-high bills, but that is how this arrangement will work. We question how that process will work. As hon. Members will also know, we currently have within our electricity supply arrangements a warm home discount scheme, which provides for a number of bill payers to get £140 off their bills each year if they qualify. There are some issues about the size of the company relating to that obligation but, in principle, pretty much all customers on a low income or a guaranteed credit element of pension credit will, or should, receive that warm home discount.

The energy company has to supply that discount to its customers. It may socialise the costs through its overall bills as a sort of secondary levy, but it gives a proportion of electricity customers a permanent reduction in their bills due to their particular circumstances, such as—as the discount suggests—particular fuel poverty-type issues in heating their homes and meeting their fuel bills.

The effect of a levy—in this instance, quite a substantial levy—to customers under these circumstances, particularly during the construction phase of a regulated asset base operation, would be to put, say, an extra £10 on the bill of someone who is already receiving a warm home discount, so that their fuel bills go up. A number of people would be placed in fuel poverty as a result of that difference, and therefore, ironically, it is quite possible that more people would be eligible for the warm home discount as a result.

When and if this levy comes on stream, we do not think that the process should include the supply company passing on that increase to those people who are already paying their bills but have a warm home discount. Those companies should not be able to recover the cost of payment into the revenue collection counterparty by passing it to those people receiving warm home discount. This would mean a socialisation of that cost to other bill payers, but the warm home discount would nevertheless remain at the right proportion of the bill, not diminish in value because that person was required to pay that levy to the energy company so that it could recoup its costs related to the revenue collection counterparty.

This is quite a simple amendment to try to return that warm home discount to the position that it would have been in before that levy was introduced. I would suggest that it is in line with what the Government intended for that warm home discount in the first place. Although other customers may pay a little more on their bills, it would maintain the relative billing position for the poorest and most vulnerable customers, including those in receipt of a guaranteed credit element of pension credit, helping those who have considerable difficulties in paying bills and are perhaps in fuel poverty as a result. We would like this power to ensure that energy companies do not incorporate those customers into the arrangements for collection and distribution of money coming into the revenue collection counterparty.

Alan Brown: I will just say a couple of things. I was listening to the arguments and if the amendment goes to a vote, I will be happy to support it and do anything I can to try to support the most vulnerable and not create any more fuel poverty. Listening to the arguments, they seem to confirm that the concept as a whole is a costly burden on consumers. As the shadow Minister said, it creates a levy that will put more people into fuel poverty. The levy will not just last for a few years; it starts with a construction period of 10 to 15 years in all likelihood and then a 60-year contract. Rather than tinkering at the edges, protecting some people and pushing other people into fuel poverty, the heart of the matter is that this is a costly white elephant exercise. That said, I would still support the amendment for what it aims to do.

Greg Hands: As has been stated, amendment 15 looks to make provision to exclude from the RAB charge those consumers who are eligible for the warm home discount scheme. I understand the good motive and the effect of what the hon. Member for Southampton, Test is proposing. For background, the warm home discount is a Government initiative to take £140 from the energy bills of consumers who receive the guarantee credit element of pension credit, or who are on a low income and receive certain means-tested benefits. We have already proposed increasing the value of the rebate to £150 per annum in any case.

As we have discussed, if a new project is funded through the RAB model, suppliers will be obliged to pay towards it. It is expected that the suppliers will pass these costs on to consumers. While I do not intend to go back over the arguments in favour of the RAB model, we believe the arrangement will facilitate private investment while also reducing the costs of delivering new nuclear projects. I understand the Opposition's desire to protect consumers on the lowest incomes, which is what the Government are already doing. The Opposition are proposing to increase that element of protection. Of course, these consumers can spend a disproportionate amount of their income on energy costs. As we all know, energy bills are regressive.

However, a large-scale project funded under the scheme will add, at most, a few pounds a year to typical household energy bills during the early stages of construction and less than £1 per month on average during the full construction phase of the project. The Government have taken a number of actions to protect low-income households from energy costs, as laid out in our updated fuel poverty strategy. That includes not only the warm home discount but cold weather payments and the household support fund.

Alan Brown: Isn't the problem with some of the schemes aimed at protecting the most vulnerable that they are paid for by other consumers? By default, the schemes are always creating another cohort to move into fuel poverty, because actual schemes to help people are paid for by other consumers.

Greg Hands: The hon. Gentleman makes an interesting point, but I do not think the amendment in any way answers his question. In fact, if I have understood the amendment correctly, it would probably make those who are not on the warm home discount pay even more, so I am afraid he is making a speech against the amendment, however inadvertently.

As set out in the heat and buildings strategy late last month, we will also publish a fairness and affordability call for evidence to set out the options for energy levies and the obligations to help rebalance electricity and gas prices and to support green choices, with a view to taking decisions in 2022. We are looking at the totality of how these schemes work, then looking at the consultation and then taking decisions on the wider nature of these schemes next year. It is right that broader conversations about how to deal fairly with customers' bills are dealt with as part of this process, rather than by taking a narrower approach for each technology and funding scheme, which the amendment seeks to do.

As we know, the legislation obliges the Secretary of State to have regard to consumer interests and costs when setting up the RAB. As part of that, the Secretary of State will monitor any cumulative impact from multiple RABs being in operation.

2.45 pm

Matthew Pennycook (Greenwich and Woolwich) (Lab): The Minister has just mentioned the obligation on the Secretary of State that is in the Bill. My hon. Friend the Member for Southampton, Test made the point that this levy may be £10 a year on average, or it may be more. Have the Government made any assessment of the number of customers that that increase will potentially tip into a qualifying benefit, therefore making them eligible for the warm home discount? Have they assessed what a nuclear RAB might do to the number of people who are eligible for that discount? The argument we are trying to make is that there is potentially a saving for Government here by socialising the risk among non-warm home discount consumers when it comes to funding these types of projects.

Greg Hands: The hon. Gentleman asks a fair question, which I would answer in a couple of ways. First, this issue is best considered in the round as part of the process we have outlined, with the consultation and decisions to be made next year. Secondly, the actual amount would depend very much on the nuclear project in question. What we have shown is that we believe the RAB model will make bills overall less expensive to the consumer by roughly £10 a year for an average dual-fuel bill payer, as the hon. Gentleman has rightly pointed out. However, that amount will ultimately depend on the size and scope of the nuclear plant that is proposed. I think a better way to deal with this issue is to deal with it in the round, in the way the Government are proposing. I stress that the RAB is designed to save consumers money over the life of the plant; that is one of the key reasons why we are proposing it.

I am grateful to the hon. Member for Southampton, Test for tabling this carefully considered amendment and for raising the important issue of energy costs for low-income households. Nevertheless, I hope that I have shown both that the Government are already taking action to help this group and that this clause forms part of a wider conversation about how we transition our energy system away from fossil fuels in a way that is fair and affordable for all. I therefore hope that the hon. Gentleman will withdraw his amendment.

Dr Whitehead: I am not sure that the Minister quite gets this. The warm home discount was introduced in 2011 and has been at the level of £140 since then, so the Government suggesting that it should be increased to £150 is not an action of unparalleled generosity: it actually just catches up with inflation over the period that the warm home discount has been in place. That discount has been decreasing in value in real terms over the years, so increasing it is simply a matter of reasonable housekeeping, rather than innate generosity.

Kirsty Blackman (Aberdeen North) (SNP): I thank the hon. Gentleman for giving way; apologies to my hon. Friend the Member for Kilmarnock and Loudoun for getting in first. Does the hon. Gentleman agree that, given the massive increases in energy prices that we have seen—way outstripping inflation—this increase does not touch the sides of what is needed?

Dr Whitehead: The hon. Member is absolutely right. I am sure that we could do some back-of-a-fag-packet calculations about what we are going to need from the warm home discount, given the rises that are likely to occur under the fuel price cap in the coming spring and over the next six months, but it will certainly be rather more than £10.

Alan Brown: Does the hon. Gentleman agree that another odd aspect of the Minister's argument is that raising the warm home discount to £150—an extra £10—is really significant and helps people, but an extra £10 on their bill is okay and something we do not need to worry about? The two cannot both be right.

Dr Whitehead: The hon. Member makes a very interesting point, which I was rather slower than him to get to. He is quite right: if this is going to be £1 a month during the construction phase, therefore adding only £10 to £12 to the bill per year, it is contradictory to say that one is insignificant while the other is very significant.

There is also the fact that £12 a year, or £10 a year or whatever, will affect different people's bills in different ways, because the bill for a large family, or someone with a large house, will be higher in total, and the £12 nuclear levy will be a smaller proportion of it than for someone who is eligible for the warm home discount—perhaps a single pensioner living in a small house, with a lower bill but nevertheless without the wherewithal to pay it. That £12 would be a higher imposition on their bill than it would on other people's bills.

I think we all agree that the warm home discount is an important actor in combating fuel poverty and ensuring that the most vulnerable people in our society as far as energy costs are concerned do not have it even worse than they do at the moment and are given some assistance with their bills. We all ought to be very mindful of that when we put levies on people's bills. What the Minister says about who we do and do not put into fuel poverty when we change levies on fuel bills is true, but that is an argument for better indexation, not for continuing with the warm home discount in the way that we are.

[Dr Whitehead]

I am sorry to say that we will have to divide the Committee, because we think that this is an important principle that ought to be upheld. We do not want to the effects of the levies, which of course may be much more than £12, depending on how the allowable costs ceiling goes, to directly affect the warm home discount, which we think is a very important part of the energy landscape and the battle to combat fuel poverty. We would like it to be on the record that we did not simply allow this to be brushed under the carpet, and therefore wish to vote on the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 7.

Division No. 3]

AYES

Blackman, Kirsty	Owen, Sarah
Brown, Alan	Pennycook, Matthew
Duffield, Rosie	Whitehead, Dr Alan

NOES

Cairns, rh Alun	Jenkinson, Mark
Crosbie, Virginia	Wallis, Dr Jamie
Doyle-Price, Jackie	
Hands, rh Greg	Whittaker, Craig

Question accordingly negatived.

Alan Brown: I beg to move amendment 20, in clause 19, page 16, line 25, at end insert—

"(6B) Prior to making provisions by virtual of subsection (4), the Secretary of State must consider—

(a) the number of customers the supplier has;

(b) the level of bad debt from customers;

(c) the liabilities of the electricity supplier including any renewables obligations due and what levels of collateral will risk the supplier's operations as a going concern;

(d) the impact on consumer bills of upfront payments to the revenue collection company; and

(e) the value and extent of forward hedging the supplier has in the market."

This amendment would require the Secretary of State to consider the matters listed before requiring electricity suppliers to provide financial collateral to a revenue collection counterparty.

The other day, the Minister challenged us in the SNP to table amendments, so in that spirit of co-operation—given that I am fundamentally against the Bill but have still tabled amendments to improve it—I look forward to him accepting them.

Clause 19 further confirms the Government's desperation to provide unlimited guarantees and support mechanisms to get nuclear projects—as we know, that means Sizewell C—off the ground. For me, the clause is further proof of how ill-thought through the Bill is, and how loosely many clauses have been drafted. This clause will be blindly accepted by Government MPs without further thought or debate apart from some challenge from this side of the Committee.

Yesterday, energy supplier Bulb Energy, which has 1.7 million customers, effectively went into administration. Given that 23 energy suppliers have gone bust since August of this year, it beggars belief that the UK Government have introduced clause 19, which may require energy suppliers to pay money up front. Cash flow insolvency is a major issue in the energy supply market at the moment, but the Bill could place further demands on suppliers.

The clause will allow the revenue collection counterparty to set the form and terms of the financial collateral that it demands from electricity suppliers. There is no guidance or controls; there is simply the concept of a nuclear project being so important that revenues must be guaranteed for the nuclear company. Subsection (2) is the start of what I have no doubt will be an accountant's field day. Subsection (2)(a) is a typical catch-all, as it states that revenue may be collected under

"such…descriptions of its costs as the Secretary of State considers appropriate".

As an aside, will the Minister tell us whether it is really the Secretary of State who will make those assessments, as the clause states, or will it actually be the regulator?

Subsection (2)(b) and subsection (4) refer to holding sums in reserve and to suppliers providing financial collateral. The kicker with the financial collateral is that subsections (6)(a) and (b) state that the revenue collection counterparty may

"determine the form and terms of any financial collateral"

and may "calculate" the payments that are due. There seems to be no independent scrutiny and no way to challenge those demands. Then, for good measure, subsections (8) and (9) provide for the revenue collection counterparty to make demands on interest, debt collection and further add-ons. That certainly seems very balanced towards the assessments that the revenue collection counterparty makes.

Paragraphs (c) and (d) of subsection (8) mention "references to arbitration" and "appeals", but what will those processes and procedures look like? Yet again, there is too little detail. Without suitable protections and considerations, the clause and its consequences could damage well-run energy suppliers and those that are struggling to get by, and that is if they get through the ongoing crisis.

Why should energy suppliers pay up front to cover RAB payments? It might suit the Government to have clauses to protect funding for new nuclear, but that could lead to massive cash flow issues for the electricity supply companies that I mentioned earlier. As they would be paying in advance of receiving income from customers, they would need to manage that credit issue by servicing debt costs. Those costs would then be passed on to consumers, further raising the cost of our bills.

I have already stated my opposition to the Bill and to a new nuclear power station, but from my perspective as a consumer, the Government want me to tie into the construction costs payments for 10 to 15 years in a 60-year RAB contract, which will go beyond my lifetime. Then, just to be on the safe side, my electricity company, to which I pay money, will possibly have to provide money up front, which will cost me, as a consumer, more money. That is a ridiculous concept; it just does not make sense.

Although I am against the principle and poor drafting of the Bill, it is important that we debate clause 19, which is why I have tabled the amendment. I hope that paragraph (a) of the amendment is self-explanatory:

any collateral or money that is asked for would need to be pro rata based on the energy supplier's ability to pay, which would be based on its customer base. In paragraph (b), I highlight that bad debt needs to be considered, because some companies have much higher numbers of vulnerable customers, which means that they are likely to carry more bad debt. That dynamic could change further with the collapse of so many energy supply companies.

3 pm

Paragraph (c) says that the revenue counterparty needs to look at the other liabilities that companies might be carrying. It is interesting that, when we have been debating the energy retail market and energy supplier crisis, the Secretary of State at the Dispatch Box accepted that companies go bust every year and said that part of that was that suppliers tend to go bust at the time their renewables obligations become due. I thought that that was a very flippant attitude, and that is not right. It also seems bizarre to accept that companies will go bust rather than pay their renewables obligations, when the Bill demands that payments be taken from companies up front to ensure that the RAB payments are secured for the nuclear company.

Paragraph (d) further highlights and forces consideration of the cashflow and credit costs that will be imposed on customers by the demand for any up-front collateral. Finally, paragraph (e) looks at forward hedging. The whole point of hedging forward for, say, a year in advance is to secure energy at a given price so that companies know that they have stability in terms of what they have paid and that they can pass that price certainty on to the customer. If a company is hedging forward and has to use its cashflow and securities to do that, that needs to be taken into account before any other moneys are demanded up front to cover the RAB payments.

I hope that I have again made my concerns about aspects of the Bill clear. There are genuinely unintended consequences that could flow from the operation of clause 19 and demanding collateral up front. As I said in my optimistic opening sentences, I look forward to the Minister accepting the amendment and saying, "Well done and thank you."

Dr Whitehead: I am very sympathetic to the amendment, although I do not think that it will do exactly what the hon. Member for Kilmarnock and Loudoun would like. It would be helpful to have some clarification from the Minister as to exactly how the payments will be organised by the revenue counterparty body.

Although those payments are up front, in that the electricity supply companies would be required to make a payment on behalf of the customer into the counterparty before the power station had been built, that does not mean that the payment would all be up front. It means that the payment would be staggered over a period, which might be the whole of the production period of the nuclear power plant, according to what was required at particular times of the construction, so that the counterparty had sufficient funds to meet those calls from its revenues at any one time, but did not have a large surplus against calls. The counterparty would therefore have to modulate and regulate its calls on the energy supply companies as the process of construction continued.

Presumably, then, a company's health would not be set against an overall up-front payment in that instance. All companies would be required to pay into that levy arrangement regularly, so there would not be a greater demand on one company than another or a large amount of money demanded in one go. That is my understanding of how the system would work, but I appreciate what the hon. Member for Kilmarnock and Loudoun said about the 23 companies that have gone bust recently. As the energy market stabilises, I think there will not be many companies to take a levy from in the first place. Those companies that are able to pay a levy will by and large be those that were in sufficiently robust health in the first instance to weather the storm of high gas prices and high energy costs—there are a number of other reasons why companies may or may not be reasonably robust but that is a debate for another day.

Overall, I do not think that the amendment does exactly what it is intended to do.

Alan Brown: I think I understand the point that the hon. Gentleman is making, but subsection (4) says:

> "Revenue regulations may make provision to require electricity suppliers to provide financial collateral to a revenue collection counterparty (whether in cash, securities or any other form)."

I still read that as meaning that cash could be asked for to be paid up front.

Dr Whitehead: Indeed, and that is why we need better clarification from the Minister. Is there a distinction between cash up front in general—that is, one pays before getting any result from a nuclear plant that is being built—or cash up front in the sense of taking all the stuff in the agreed revenue allowance? Would that be taken either mostly up front, all in one go, or at level that an energy company would find unaffordable during particular elements of the process? There is still some uncertainty about exactly how that process would work.

I have a lot of sympathy with the argument of the hon. Member for Kilmarnock and Loudon. If the revenue counterparty decided that it was going to take a very large amount of levy early in the process to have lots of money in the bank and to be able to cover any eventualities connected with the construction process, that would be a pretty unreasonable imposition on energy companies, particularly in the present circumstances. However, I think there are least implied elements of regulation in the Bill that would prevent that from easily happening, and I would be interested to hear whether the Minister thinks that is the case. If he does, where in the Bill is that, and which arrangements would be preferrable in terms of the revenue collection counterparty operating on a more equitable basis as the construction period progressed?

Greg Hands: I thank the hon. Members for Kilmarnock and Loudoun and for Aberdeen North for tabling their amendment. Of course the Government welcome all Opposition parties tabling amendments; that does not necessarily mean that we will agree with the aforementioned amendments, but it is a useful process to test and probe the Bill, and I think our publics would like to see a

[Greg Hands]

process whereby all Opposition parties tabled amendments to test the Government's proposition. I fully buy into that process, but I do not happen to agree with this amendment.

The amendment addresses how the interests of suppliers and their customers should be considered when making provision in regulations for the supplier to pay the revenue collection counterparty. It would also require the Secretary of State to have regard to the other liabilities of electricity suppliers—the hon. Member for Kilmarnock and Loudoun talked with topicality about that—as well as to the impact that collateral requirements will have on a supplier's operation. I thank the hon. Gentleman and the hon. Lady for ensuring that the Government consider the impact on suppliers and consumers when establishing the RAB revenue stream.

I reassure Members that the Government intend to act in a way that effectively manages the payment obligations on suppliers and, through them, consumers. We do not believe, however, that the amendment is the best way of ensuring that. First, the provision of collateral by electricity suppliers is a form of security that has been administered very successfully in the contract for difference regime. As I said on clause 15, the regime seeks to replicate that tried-and-tested regime, which has functioned effectively to bring investment into new energy projects for the last eight years.

We have been clear that in designing the RAB revenue stream we are seeking to replicate many of the provisions of contracts for difference to help to provide a familiar and workable framework for suppliers, but it is not just about supporting investment. We will protect suppliers from paying unreasonable amounts of collateral and ensure that overpayment of collateral is returned to suppliers.

Alan Brown: What is there in the Bill that protects suppliers from having to pay too much collateral?

Greg Hands: The protection in the Bill is through the regulation of the process and the oversight, for example by the authority, in this case Ofgem, which will ensure that any amounts paid to the generation company are reasonable. The hon. Gentleman is right to ask who will set the parameters, the Secretary of State or the regulator. The Secretary of State sets the initial licence conditions; however, it is the authority, in this case Ofgem or its equivalent, that will ensure that any amounts are reasonable and in the interests of existing and future consumers. That is very much in the Bill.

Kirsty Blackman: Could the Minister provide more information on that, in the form of a letter perhaps? We have raised concerns on how companies, and therefore consumers, will be protected. I appreciate what he says, but that was not obvious to us, so a response in writing would be hugely helpful.

Greg Hands: That is a reasonable request. I am saying that this is a tried-and-tested process that has been there throughout the contract for difference regime. Paying in collateral, and the way that collateral operates, is something that has been around for decades, but if it is helpful I am happy to write to the hon. Lady and copy in members of the Committee to explain in more detail how it works in the CfD regime and the Energy Act 2013. I should also make it clear that the Bill provides a framework for the RAB revenue stream and requires that the detail of suppliers' payment obligations is set out in the secondary regulations that will need approval from both Houses. Ahead of that, and as required by the Bill, we will publish and consult on the draft regulations. We will include British energy suppliers within the consultation, so they will have the opportunity to feed in any views from an energy supplier perspective.

In the context of protecting our most vulnerable energy consumers, which was the subject of the previous amendment, I refer Members to my comments in that debate setting out the numerous actions that the Government are taking to help low-income households, including the warm home discount, cold weather payments and the household support fund. I hope that I have assured the hon. Member for Kilmarnock and Loudoun that the design of the RAB revenue stream will ensure that the interests of consumers are protected and that mechanisms are in place to protect suppliers from disproportionate requirements that would affect their ability to operate. As such, I believe that the amendment is unnecessary, and I hope that he will withdraw it.

Alan Brown: It was no surprise that the Minister did not accept the amendment. It will be no surprise to him that he has not completely satisfied me either with his explanation. We keep hearing the argument that we are trying to replicate the CfD model, which is interesting considering that we are introducing the RAB model. It was said that CfD would not work for nuclear, but now we are trying to replicate certain things. He said that there will be consultation and secondary legislation, but there are no guarantees on what the Government will do or how they will respond to any consultation. Secondary legislation can easily get steamrollered through this place anyway. Given that, I would prefer to press my amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 7.

Division No. 4]

AYES

Blackman, Kirsty	Brown, Alan

NOES

Cairns, rh Alun	Jenkinson, Mark
Crosbie, Virginia	Wallis, Dr Jamie
Doyle-Price, Jackie	
Hands, rh Greg	Whittaker, Craig

Question accordingly negatived.

3.15 pm

Dr Whitehead: I beg to move amendment 16, in clause 19, page 17, line 2, at end insert—

"(10) Persistent non-payment of sums owed to the counterparty by an electricity supplier may be referred to OFGEM, which may in such circumstances place the electricity supplier's licence under review."

This amendment would allow cases of persistent non-payment of sums owed to the counterparty by an electricity supplier to be referred to OFGEM.

The amendment follows on quite well from our previous debate. Although the issue is not entirely certain, the collateral expected to be paid by energy supplier companies would be required in a measured way. The Secretary of State would make sure that the revenue collection counterparty did not try to scoop up huge funds in one go—not that I think that very likely—and would regulate the collateral so that it was more or less allied with the calls on it by the nuclear company at that stage.

If the revenue collection counterparty had a large pot of money sitting in its bank account at any stage, one would expect that money to be redistributed to the supplier companies from which it had been collected, and one would hope that in the end it would be redistributed back to customers. I think that there is still some way to go in deciding how exactly the regulation is to be set up, but I welcome the Minister's statement that that is roughly how the Government assume the process will be undertaken. That being the case, there is then the question of what happens if supplier companies do not pay what the revenue collection counterparty has required of them, assuming that it is a reasonable payment. That leads on to some existing issues with how levies are collected by counterparties.

There has already been some mention of what happens with Ofgem's collection of the renewables obligation, and of the collective obligations of energy companies to supply the right amount in buy-outs, renewables obligation payments or whatever. For those who think that the renewables obligation is done and dusted and that it came to an end in 2017, I should mention that it is still alive in a ghostly fashion and is collecting money until 2027, I think, so the obligations continue.

If one were being very unkind, one might say that a barometer of the health of some of the smaller energy companies that have recently been involved in the struggle to stay afloat has often been whether their renewables obligation payments were outstanding at the time of closure, which I think is the end of each October. There were reports from Ofgem, I think in September, that x number of companies had not paid their renewables obligation levies, and that if they did not do so by the closure date, it is conceivable that action would be taken—which could include, in the end, the removal of the company's licence to operate.

One could say that that is what happened over the recent period, in that companies that knew they were in some difficulty with their renewables obligation payments at the end of October folded pretty soon afterwards because they were not going to pay them. That has had the unfortunate side effect that that non-payment has had to be socialised among other energy companies in order to ensure that the fund is the right amount to meet the renewables obligation certificates going around. Nevertheless, the regime appears to have a sanction relating to an energy company's licence, so that we can ensure that payments are brought in, or that there is fairly swift closure relating to the outstanding amount, so we at least know roughly where we are regarding the payment pool at a future date.

As the Bill stands, that does not appear to be the procedure that will be adopted regarding levies into the revenue collection counterparty. Indeed, the Bill states that if payment is not received, collection will be a civil matter. In the amendment, we suggest that we adopt a similar procedure to that which is in place with Ofgem concerning non-payment of renewables obligation payments. In the case of persistent non-payment, a sanction should be available regarding the continuation of the company's licence. The Minister may say that going through the civil courts is just as good. What concerned me about the arrangements in respect of renewables obligations was that some energy companies were borrowing their payments in order to stay in business. That is not what a healthy energy company should do, long term; it will not result in a secure landscape as regards collateral inputs to a counterparty.

A better way of proceeding would be to have in place the sort of regime that we have for the RO. The amendment would allow the Secretary of State to introduce that kind of arrangement, if he thought it a good idea for the stability of collateral payments. It gives him an extra option, and goes beyond the regime set out in the Bill, so that we can ensure that payments are properly levied, paid on time, and not resisted.

Greg Hands: As the hon. Gentleman outlined, amendment 16 addresses how the obligations of suppliers under revenue collection contracts should be enforced. Clause 19 deals with suppliers' obligations in relation to the RAB. It lays out what the revenue collection regulations may provide for. This includes how the obligations placed on suppliers by RAB revenue collection contracts can be enforced by the revenue collection counterparty. The powers in clause 19 are supported by clause 22, entitled "Enforcement", which states:

"regulations may make provision for"

obligations under revenue collection contracts to be enforced

"by the Authority as if they were relevant requirements…for the purposes of section 25 of the Electricity Act 1989."

This means that a breach of such a contract can be treated as if it were a breach of a licence condition, and this allows the authority to obtain an order to secure compliance and impose financial penalties.

The amendment would set up a different enforcement route, outside the regulations, by allowing the revenue collection counterparty to refer suppliers who persistently fail to meet their obligations to the authority—that is, to Ofgem. Ofgem could then consider whether to remove a supplier's licence. Of course, I welcome the Opposition's focus on ensuring adequate protection from non-compliance. Creating strong enforcement procedures will be vital to give investors confidence that the RAB will function and that the project will receive the funds to which it is entitled. However, the amendment leaves out much of the detail necessary for a clear understanding and the smooth functioning of the enforcement procedure. For example, it does not clarify what should be classed as "Persistent non-payment", or the process for referral. It also does not make clear what Ofgem would take into account when reviewing a supplier's licence, or the process for appeal.

The hon. Gentleman feels that a supplier's failure to make payments to the counterparty should have consequences for their licence, but those concerns are adequately addressed by clause 22, which states that the regulations may make provision to treat non-compliance as if it were a breach of a licence condition, and to allow the imposition of suitable penalties against suppliers

[Greg Hands]

through tried-and-tested, long-standing legislation. This will ensure compliance, and will mean that obligations under revenue collection contracts are met.

I welcome the hon. Gentleman's constructive contributions, his proposing the amendment, and his recognition of the need for strong enforcement provisions, but I hope I have convinced all hon. Members of the appropriateness of the Government's approach, which already treats non-compliance in the way that is suggested in the amendment, but in a far more watertight way, and that the hon. Gentleman therefore feels able to withdraw his amendment.

Dr Whitehead: The Minister talks about taking action in a more watertight way, and suggests that we look at clause 22, which relates to clause 25, which relates to a series of clauses relating to the Electricity Act 1989. It is a sort of Marx brothers' "A Day at the Races" form guide arrangement, whereby in order to understand a guide, a person needs another one, and so on endlessly—and they end up missing the race.

The Minister will be aware that there are a number of instances in which we are asked to go way back, via regulations, into Acts such as the Utilities Act 2000 and the Electricity Act, and we are reluctant to do that. Indeed, there are a couple of quite incomprehensible repeals at the end of the Bill, to which I might draw the Committee's attention; one has to go through four or five stages before one can understand what on earth those are about.

In this instance, it is possibly true that we could, by regulation, apply the provisions of section 25 of the Electricity Act 1989 relating to licence modification or removal; but that provision is not in the Bill, but possibly applied by regulation. In the Bill there is one remedy, and one remedy only. The Minister may say, "Trust us; we may produce regulations that have the effect that I have suggested." However, it probably would have been wiser for some of those things to be in the Bill. Of course, the amendment does not do all those things that the Minister mentioned. I fully accept that it is deficient from that point of view, because it does not mention the four or five other pieces of legislation that have to be taken into account, amended or consequentially changed. It merely allows us to make the point that these things ought to be in the Bill, so it is a probing amendment.

I hope that the Minister will think about whether there are better ways of getting those different forms of regulatory certainty than this extended process of referring to other pieces of legislation, which may become more or less opaque as one reads them. It would be much more straightforward for this provision to be in the Bill and clear for everyone to see. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 19 ordered to stand part of the Bill.

Clause 20

PAYMENTS TO ELECTRICITY SUPPLIERS

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

Greg Hands: Clause 20 seeks to ensure that electricity suppliers can be reimbursed in cases where the counterparty has overcharged suppliers or overpaid a licensee nuclear company. The clause is similar to the approach in section 17 of the Energy Act 2013. It is proposed that suppliers will be charged their share of a RAB payment based on their expected market share. Where their actual market share is less than expected, reconciliation processes will be carried out and the revenue collection counterparty will repay them the difference.

Likewise, when the relevant nuclear licensee company's forecasted market revenue exceeds its allowed revenue over a given period, the counterparty could be required to repay any overpayments to suppliers. Again, that would replicate the approach used in contracts for difference. Subsections (1) and (2) allow regulations to be made requiring the counterparty to make payments to suppliers in such instances. Regulations made will be subject to the affirmative procedure, given the effect they will have on electricity suppliers and other relevant bodies.

Dr Whitehead: I do not oppose the clause, but I want to ask the Minister about what it actually says. At first sight, it appears to say—this was the shared understanding that we established—that there were circumstances where a revenue collection counterparty could pay collateral back to electricity suppliers. We are not clear over how long a period the collateral might be repaid, or at what point it might be considered that there was sufficient additional collateral in the funds of the counterparty to warrant a repayment.

The funds might be held for quite a long time while consideration is given to whether the nuclear company is likely to overperform on its revenue generating activities in the production phase so consistently that the money can be safely restored to the supply company. The counterparty might hold the money over a considerable period, thinking there would be variations or fluctuations in the revenue stream obtained by the nuclear power company, and that the money might therefore need to be called on, if it dipped below the range implied by the overall allowed costs arrangements. There is that question of the likely length of the period over which repayments take place.

However, the second question, which is also quite important, is what would happen to that money once the counterparty had restored it to the electricity supplier. There is nothing in this clause that says anything other than, "That money is restored to the electricity supplier, and the electricity supplier is very pleased about that and puts the money in its bank account."

However, the electricity supplier has collected that money from the customers—albeit at the direction of the counterparty—in the form of an additional levy placed on their bills. If the electricity supply company is getting that money back again, then as night follows day, the company should give that money back to the customers and not just hold it in its bank account. There is nothing in this clause to ensure that that happens. I would be interested to hear whether the Minister thinks that such a requirement ought to be added to the regulatory procedure that will be undertaken. He may want to go away and think about whether he can at least indicate to the Committee that it will be assumed, and probably will happen, that as long as the

surplus funds can be distributed back to suppliers by the counterparty, they should be given back to the customers.

Essentially, we have a couple of questions, but we do not oppose this clause standing part. I am sure that the Minister will be able to reassure us about his intentions with regard to making this clause operate as well as it can.

Greg Hands: I will try to deal with the two questions that the hon. Gentleman raised. First, he asked whether the funds can be held for a long time, and about the period over which they can be held. Obviously, the regulations will be laid before Parliament in due course, and will be subject to the affirmative procedure. However, I point him to how the contract for difference regime works under the 2013 Act. My belief is that in this case, the reconciliation takes place after a period of months—that is probably the best way to describe it. It depends on what the hon. Gentleman means by somebody holding on to funds, or indeed having a shortfall of funds, for "quite a long time", but we always have to strike the balance between what is operationally straightforward and what prevents somebody from holding on to funds, or from having a shortfall of funds over a period of time. However, the workings of the contract for difference regime might give the hon. Gentleman the most likely pointers as to what the regulations may look like; they will obviously be subject to consultation in due course anyway.

The hon. Gentleman also asked what happens to the money, and whether the supplier is obliged to return the money to the customer. He raises a fair point. The difficulty is that there is no obligation on the supplier to take the money for the RAB from the customer in the first place. The assumption is that the supplier will bill the customer for the cost of the RAB, but there is not an obligation to do so, so I am not sure that creating an obligation in this legislation to send back money the other way would be appropriate. Again, I refer the hon. Gentleman to the workings of the contract for difference under the 2013 Act.

Matthew Pennycook: That raises an interesting, and quite concerning, point: what in the legislation prevents a supplier from overcharging its customers on the basis that it is levying the RAB? Is there a limit to which a supplier can levy the customer? On the basis of what the right hon. Gentleman has just said, the supplier could overcharge the customer, make the payment owed to the counterparty and find itself with additional funds raised from those customers.

Greg Hands: First, the whole process will be regulated by the authority—in this case Ofgem—which would have oversight. Secondly, that would also be a matter for the regulations that are to be published in due course. Thirdly, the frequent reconciliations would obviate risk of that happening in the way the hon. Gentleman describes.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

APPLICATION OF SUMS HELD BY A REVENUE COLLECTION COUNTERPARTY

Dr Whitehead: I beg to move amendment 17, in clause 21, page 17, line 34, leave out from 'are' to end of line and insert 'not to be paid into the Consolidated Fund unless there is no other alternative.'

This amendment would require the Government to consider alternatives to the absorption into the consolidated fund of sums held by a revenue collection counterparty on behalf of energy bill payers.

Amendment 17 takes aim at a different part of the undergrowth we are dealing with in the often fairly complex arrangements related to the revenue collection counterparty and all that goes with it. In this instance, we have two subsections in italics because they include a Treasury implication. Clause 21(5) says:

"The provision that may be made by virtue of subsection (4) includes provisions that sums are to be paid, or not to be paid, into the Consolidated Fund."

In that regard, subsection (4) states:

"Revenue regulations may make provision about the application of sums held by a revenue collection counterparty."

Effectively, that subsection allows regulations to be made about the sums held by a revenue collection counterparty. We have already discussed how long they may be held for and the circumstances under which they may be paid back—*[Interruption.]* The Minister and his Whip are discussing when we will finish, I suspect. They must not worry; we will finish on time.

The clause adds a new dimension to the question of where the sums held by the revenue collection counterparty may go and, indeed, suggests where they might go, presumably, after the process outlined by the Minister. At a certain stage, the existence of surplus amounts held by the revenue collection counterparty is established and then there is an issue as to where that money goes. Clause 21(5) says that the money may be paid into the Consolidated Fund, which is the Treasury. It therefore gives rise to the idea that money could have been raised from customers and paid into the revenue collection counterparty by suppliers. Levies are raised on customers and possibly overpaid, as my hon. Friend the Member for Greenwich and Woolwich has just said. The money sits in the account of the revenue collection counterparty for a time and then, when the decision is made about what to do with the money, the Treasury nicks it. That is not right and it is not what should be done. As we have established, if there are surpluses in those funds, they should certainly be returned to the supplier and the supplier should make sure that they are returned to the customer.

As we have said on a number of occasions, the customer is at the heart of the process as they are funding it through their bills. They are not paying free money into the Treasury but paying into the process on a reasonable basis of allowed costs. If those allowed costs prove to be more than is required, the least they should reasonably expect is to get their money back.

There should be no talk of the Consolidated Fund in the Bill; I do not think it is right that it should be in the Bill. We have sought to suggest in the amendment that only if there are no other recourses for the payment of those funds should it even be considered that money go

[Dr Alan Whitehead]

into the Consolidated Fund. I can conceivably imagine circumstances in which nothing else could be done with the money but put it into the Consolidated Fund, but it is a real squeeze for me to think that.

The Secretary of State must be able to think of better purposes for the money than for it to go in that direction. The amendment strengthens the Secretary of State's ability to do that. I hope that the Secretary of State—the Minister; I am promoting him again—will be happy to accept it as a clear understanding of what we want to do with the money unless absolutely pressed to do otherwise.

3.45 pm

Matthew Pennycook: I rise to speak briefly to amendment 17, because it relates to an important matter that builds on our earlier discussions. I listened to the Minister and heard what he said about the revenue collection contracts arrangement seeking to replicate the tried and tested CfD arrangement, as he put it. The thing that makes what we are talking about different is that there has never been a CfD arrangement of the size of the RAB nuclear model. The scale of the capital commitment involved in a nuclear project dwarfs anything that we have seen before. The changes in total nominal amounts that are likely to happen from year to year in the scale of that capital value could mean that we have large fluctuations in the amounts being collected by the counterparty.

The Minister has said that regulations will address that and are forthcoming via the affirmative procedure. He expects that the reconciliation process of attempting to ensure that the revenue stream matches the allowed expenditure will happen twice a year, but there is the possibility that very large sums will sit within the counterparty, even if just for months. The amendment tries to address the possibility of those funds, or a proportion of them, finding their way into the Consolidated Fund.

It surely has to be the case, and I assume that it is the Minister's intention via regulations, that the reconciliation process should be as frequent as possible so that the revenue stream matches the allowed expenditure at any point in the construction. I foresee circumstances in the production phase, however—perhaps not in the construction phase, because it is unlikely that a future nuclear project will come in under budget given their history—in which a company's revenue from power sales might exceed the allowed revenue. There is a chance that we could see large mismatches and, therefore, lots of funds being stored up in the counterparty.

The central thrust of what the Opposition are trying to do with the Bill is to protect consumers and ensure that they pay the lowest possible amount to get a project such as the one that we are talking about onstream. It is therefore really important that we ensure that the Treasury cannot in any circumstances, unless it has exhausted all other options, take part of the funds that may sit with the counterparty for relatively brief periods. The Treasury could decide to take sizeable amounts, and it is important that they flow back to suppliers and, ultimately, to customers. That is the thrust of the amendment.

Greg Hands: As the hon. Members for Southampton, Test and for Greenwich and Woolwich laid out, amendment 17 addresses the situation in which funds held by the counterparty may be paid into the Consolidated Fund, which of course is the Government's general bank account at the Bank of England. Currently, the legislation allows the revenue regulations to provide for sums to be paid into the Consolidated Fund. The intention of the amendment is to narrow the scope of that so that the regulations can provide for sums to be paid into the Consolidated Fund only where there is no alternative.

I thank the hon. Members for the amendment, which they explained well. It certainly echoes my sentiment that consumer funds should not generally go into Government accounts. I reassure Members that we envisage the power to have limited but important uses. For example, it could be used to ensure that the counterparty repays a loan given by the Government—by the taxpayer—to respond to an emergency. That is not a hypothetical situation. We saw the importance of it quite recently in the course of covid, when the Government did indeed have to provide a loan to the counterparty for the contract for difference regime: to the Low Carbon Contracts Company.

The taxpayer should be able to be repaid that loan, but the amendment provides that sums cannot be paid into the Consolidated Fund where there is an alternative. I could see a number of people making an argument that different things that could be done with that money would provide alternatives to what is being envisaged: in this case, repaying the taxpayer. If passed, the amendment would unnecessarily narrow the scope of the power in a way that would limit its use. I hope that my explanation has shown Members the importance of the power, which is in my view unlikely to be used. However, I have given a real example from the last couple of years of where exactly such a situation arose.

Alan Brown: The Minister has given the example of an emergency loan, but surely the regulation is all about

"apportioning sums…received by a revenue collection counterparty from electricity suppliers under provision made by virtue of section 19".

Clause 19 is about collecting money from electricity suppliers; ergo, the example of a loan does not equate to what this is about.

Greg Hands: I disagree with the hon. Gentleman. My understanding is that the loan would not be repayable if an alternative were there. The ambiguity of an alternative would unnecessarily narrow the scope of the power, though I appreciate where he is coming from.

Alan Brown: I ask the Minister to read clause 21(1)(a), which contains the reference I quoted to clause 19, which I do not think covers the emergency loan situation.

Greg Hands: We will just have to agree to disagree. I think the amendment unnecessarily narrows the scope of the power in a way that we would not wish to see in terms of protection of the taxpayer. I therefore ask the hon. Member for Southampton, Test to withdraw it.

Dr Whitehead: I thought that this was the most reasonable amendment by far that we have tabled. I am sorry that the Minister has responded in the way that he has. He made the point that some money that had come from the taxpayer might be sitting in the funds of the

revenue collection counterparty, and should therefore be paid out of it. That would actually be covered by the amendment, which would insert:

"not to be paid into the Consolidated Fund unless there is no other alternative."

If someone were trying to pay back a loan that they effectively got from the Consolidated Fund in the first place, there is no alternative other than to pay it back to the Consolidated Fund, so the amendment would cover that. We want circumstances in which the Treasury—I am sure that the Minister does not particularly want to be a high-ranking Treasury Minister in the future—

Greg Hands: Again!

Dr Whitehead: Again—indeed. I think the Minister will know from his previous experience that the Treasury is not above, shall we say, treating all Government money as essentially its own. In circumstances in which the Treasury thinks that it can get hold of certain amounts of money, it may well do so. Obviously, the purpose of Bills is not to be written to keep the Treasury's hands off money that it really should not have, but it might not be such a bad idea at least to put that in regulation so that it would be fairly hard for that to happen. As the amendment is drafted, however, it is not a prohibition; it just says that there needs to be a pretty good argument—the argument made by the Minister about the loan, for example—for that money to be paid into the Consolidated Fund. That, really, is all the amendment says, and I think that is a wholly better construction than what is in the Bill.

The Chair: Dr Whitehead, are you pressing the amendment to a vote?

Dr Whitehead: Given the circumstances, I think I will.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 7.

Division No. 5]

AYES

Blackman, Kirsty	Owen, Sarah
Brown, Alan	Pennycook, Matthew
Duffield, Rosie	Whitehead, Dr Alan

NOES

Cairns, rh Alun	Jenkinson, Mark
Crosbie, Virginia	Wallis, Dr Jamie
Doyle-Price, Jackie	
Hands, rh Greg	Whittaker, Craig

Question accordingly negatived.

Clause 21 ordered to stand part of the Bill.

Clause 22

ENFORCEMENT

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

The Chair: With this it will be convenient to discuss clauses 23 to 30 stand part.

Dr Whitehead: The Labour party accepts that the clauses cover important technical matters relating to how the rest of this part of the Bill holds together, and we therefore have no objection to their being taken together.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clauses 23 to 30 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Craig Whittaker.)*

3.59 pm

Adjourned till Thursday 25 November at half-past Eleven o'clock.