



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Dame Angela Eagle MP and Sir Gary Streeter MP
Chairs of the Finance Bill Public Bill Committee
House of Commons
London
SW1A 0AA

22 April 2021

Dear Angela and Gary

POWERS CONTAINED IN THE FINANCE BILL

This letter provides information on secondary legislation under this year's Bill and sets out detail on each power being taken.

A summary is given on the powers that are contained in clauses 7, 17-19, 26, 29, 30, 33, 36, 47-49, 51-53, 56, 58, 60, 61, 63, 65, 66, 68, 69, 74, 75, 80, 84, 85, 88, 93-95, 97, 98, 109-114, 116-118, 121, 125, 127-130, and Schedules 9, 10 and 13.

Where available, draft regulations are attached.

I am copying this letter to the other members of the Public Bill Committee and am depositing a copy of this letter in the Library of the House.

As ever,

A handwritten signature in black ink, appearing to read "Jesse".

RT HON JESSE NORMAN MP

Annex

Finance (No. 2) Bill: Clauses with powers to make secondary legislation

Contents

Glossary of statutory references and other terms:	4
PART 1: INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX.....	5
Clause 7: Small profits rate chargeable on companies from 1 April 2023 and Schedule 1: Small profits rate for non-ring fence profits	5
Clause 17: Extensions of plant or machinery leases for reasons related to coronavirus	6
Clause 18 and Schedule 2: Temporary extension of periods to which trade losses may be carried back.....	7
Clause 19 and Schedule 3: R & D tax credits for SMEs	8
Clause 26: Exemption for coronavirus tests	9
Clause 29: Collective money purchase benefits and Schedule 5: Pension schemes: collective money purchase benefits	10
Clause 30: Construction industry scheme and Schedule 6: Construction industry scheme: amendments.....	11
Clause 33: Deduction where business rates etc repaid	12
Clause 36 and Schedule 7: Hybrids and other mismatches	13
PART 2: PLASTIC PACKAGING TAX.....	14
Clause 47: Chargeable plastic packaging components.....	14
Clause 48: Meaning of “plastic packaging component”	15
Clause 49: Meaning of “plastic” and “recycled plastic”	16
Clause 51: Plastic packaging components intended for export.....	17
Clause 52: Exempt plastic packaging components.....	18
Clause 53: Tax Credits.....	19
Clause 56: Notification of liability and registration	21
Clause 58: Correction of the register	22
Clause 60: Measurement of weight etc	23
Clause 61: Payment, collection and recovery	24
Clause 63: Records	25
Clause 65: Security for tax	26
Clause 66: Unincorporated bodies	27
Clause 68: Statements for business customers	28
Clause 69: Tax representatives of non-resident taxpayers.....	29
Clause 74: Death, incapacity or insolvency of person carrying on a business: regulations.....	30

Clause 75: Transfer of business as a going concern: regulations	31
Clause 80: Penalty for contravening relevant requirements	33
Clause 84: Regulations	34
Clause 85: Commencement etc	36
Schedule 9: Plastic Packaging Tax: Secondary liability and assessment notices and joint and several liability notices.....	37
Schedule 10: Recovery and Overpayments	39
Schedule 13: Groups of companies.....	41
PART 3: OTHER TAXES	42
Clause 88: Increased rates for non-resident transactions and Schedule 16: SDLT: increased rates for non-resident transactions	42
Clause 93: Temporary 12.5% reduced rate for hospitality and tourism sectors.....	43
Clause 94: Extending digital record-keeping for VAT purposes to all businesses	44
Clause 95 and Schedule 18: Deferring VAT payment by reason of the coronavirus emergency	45
Clause 97: Steel removed to Northern Ireland and Schedule 19: Customs duties steel products	46
Clause 98 and Schedule 20: Restriction on use of rebated diesel and biofuels.....	47
PART 4: MISCELLANEOUS AND FINAL.....	48
Clause 109: Designation of freeport tax sites.....	48
Clause 110 and Schedule 21: Capital allowances for freeport tax sites	49
Clause 111 and Schedule 22: Relief from stamp duty land tax for freeport tax sites .	50
Clause 112 and Schedule 23: Penalties for failure to make returns etc and Schedule 24: Penalties for deliberately withholding information.....	51
Clause 113 and Schedule 25: Penalties for failure to pay	52
Clause 114: Penalties for failure to make returns or pay tax etc: consequential provision and Schedule 26: Schedules 23 to 25: consequential provision.....	53
Clause 116 and Schedule 28: Late payment interest and repayment interest: VAT ...	54
Clause 117: Promoters of tax avoidance schemes and Schedule 29: Amendments of Part 5 of FA 2014.....	55
Clause 118 and Schedule 30: Disclosure of tax avoidance schemes.....	56
Clause 121 and Schedule 32: Licensing authorities: requirements to give or obtain tax information	57
Clause 125: International arrangements for exchange of information on the gig economy	58
Clause 127: Temporary approvals etc pending review or appeal	59

Clause 128: Replacement of LIBOR with incremental borrowing rate	60
Clause 129: Tax consequences of reform etc of LIBOR and other reference rates.....	61
Clause 130: Powers of the Treasury to amend legislation relating to banks	62

Glossary of statutory references and other terms:

Statutory references

CAA 2001	Capital Allowances Act 2001
CTA 2009	Corporation Tax Act 2009
CTA 2010	Corporation Tax Act 2010
FA, followed by year	Finance Act of that year
F(No.2)A, followed by year	Finance (No. 2) Act of that year
HODA 1979	Hydrocarbon Oil Duties Act 1979
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
PCTA 1968	Provisional Collection of Taxes Act 1968
PSA 2021	Pension Schemes Act 2021
TCTA 2018	Taxation (Cross-border Trade) Act 2018
TIOPA 2010	Taxation (International and Other Provisions) Act 2010
VATA 1994	Value Added Tax Act 1994

Other terms

CIS	Construction Industry Scheme
EU	European Union
FCA	Financial Conduct Authority
HMRC	Her Majesty's Revenue and Customs
ITSA	Income Tax Self-Assessment
LIBOR	London Inter-Bank Offered Rate
MTD	Making Tax Digital
NICs	National Insurance contributions
OECD	Organisation for Economic Co-operation and Development
PAYE	Pay As You Earn
POTAS	Promoters of Tax Avoidance Schemes
R & D	Research and Development
SDLT	Stamp Duty Land Tax
UK	United Kingdom
VAT	Value Added Tax

PART 1: INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Clause 7: Small profits rate chargeable on companies from 1 April 2023 and Schedule 1: Small profits rate for non-ring fence profits

Clause 7 introduces Schedule 1 and makes provision for Corporation Tax to be charged at the standard small profits rate on non-ring fence profits. Schedule 1 inserts new Part 3A (Companies with small profits) into CTA 2010, which introduces a small profits rate for non-ring fence profits that will take effect from 1 April 2023. Part 3A includes new section 18G.

Section 18G(3) allows the Treasury by regulations to prescribe factors that are to be taken into account in determining whether a relationship between two companies amounts to substantial commercial interdependence. Where such a relationship exists, the rules which attribute the rights and interests of other persons in determining whether two or more companies are under common control are more extensive. Where there is no substantial commercial interdependence between two companies, by contrast, the test of common control is narrower. The Treasury plans to exercise this power before April 2023. The regulations will be in substantially the same form as the [Corporation Tax Act 2010 \(Factors Determining Substantial Commercial Interdependence\) Order 2011](#) (SI 2011/1784). The regulations are subject to negative procedure.

Paragraph 35(1) of Schedule 1 allows the Treasury by regulations to make consequential amendments to any provision of the Corporation Tax Acts as required in respect of the Schedule. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 17: Extensions of plant or machinery leases for reasons related to coronavirus

Clause 17 inserts new sections 70YCA and 70YCB into CAA 2001. Section 70YCA disapplies sections 70YB(1) and 70YC(1) when leases are extended for reasons related to coronavirus. This has the effect of 'turning off' legislation designed to prevent leases being extended for avoidance purposes, but only where there are no other changes to the lease and the lease was extended only due to coronavirus. Section 70YCB allows an election for either party to disapply section 70YCA for those who would have benefitted from the application of section 70YB or section 70YC.

Section 70YCA(2)(a) applies where on or after 1 January 2020, there is (or was) a change in the payments under the lease that would have been payable on or before 30 June 2021. Section 70YCA(4) allows the Treasury by regulations to substitute for 30 June 2021 (as specified in section 70YCA(2)(a)) such other date as they consider appropriate. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 18 and Schedule 2: Temporary extension of periods to which trade losses may be carried back

Clause 18 introduces Schedule 2, which provides for a temporary extension of the periods to which trade losses may be carried back for companies and unincorporated businesses.

Paragraph 11(1) of Schedule 2 requires the Commissioners for HMRC by regulations make provision to:

- require a '2020 loss carry back allocation statement' to be submitted by a '2020 group' for the purposes of establishing the amount of non-de minimis claims that a group make within the £2 million cap, and
- require a '2021 loss carry back allocation statement' to be submitted by a '2021 group' for the purposes of establishing the amount of non-de minimis claims that a group make within the £2 million cap.

The regulations made under this power will permit companies which are members of relevant groups to make non-de minimis claims. The regulations will set out the administrative framework by which those groups can allocate the £2 million cap (which applies to the extended loss carry back in respect of each of financial years 2020 and 2021) amongst their members. In the absence of these regulations, group companies would only be able to make de minimis claims which are limited to £200,000 and subject to other conditions which would significantly limit the availability of the relief to loss-making taxpayers. Paragraph 11(2) makes further provision about what may be included in the regulations.

The Commissioners for HMRC intend to exercise the power once the Finance (No. 2) Bill has received Royal Assent. The regulations are subject to negative procedure.

Paragraph 14 of the Schedule allows the Commissioners for HMRC to amend or modify certain provisions of the Schedule. There are no plans to exercise this power and it may not be exercised after 31 March 2023. Any regulations would be subject to negative procedure.

Clause 19 and Schedule 3: R & D tax credits for SMEs

Clause 19 introduces Schedule 3, which amends section 1058 of CTA 2009 to limit (“cap”) the amount of payable credit under the R & D tax relief for a company which is small or medium-sized, based on its PAYE and NICs liability for a period. New section 1058(2) allows the Treasury by regulations to alter the parameters which define the level of the cap. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 26: Exemption for coronavirus tests

Clause 26 has effect as if it were contained in Part 4 (employment income: exceptions) of ITEPA 2003. It introduces a new income tax exemption to ensure that employees who are provided with, or paid or reimbursed for the cost of, a coronavirus antigen test by their employer, will not be liable to an income tax charge. The exemption will only have effect for the tax years 2020-21 and 2021-22.

Subsection (5) allows the Treasury by regulations to extend the exemption beyond 2021-22. The power would be used if it were considered necessary in circumstances related to coronavirus. Any regulations would be subject to negative procedure.

Clause 29: Collective money purchase benefits and Schedule 5: Pension schemes: collective money purchase benefits

Clause 29 introduces Schedule 5 which makes changes to enable pension schemes providing collective money purchase benefits to operate as registered pension schemes. PSA 2021 introduced collective money purchase schemes as a new kind of pension scheme. The provisions in Schedule 5 are dependent on the corresponding provisions in PSA 2021, which have not yet come into effect.

Paragraph 25 of Schedule 5 allows the Treasury by regulations to appoint a day for the entry into force of the amendments set out in the Schedule and to make any related transitional or savings provisions. The Treasury intend to exercise this power to commence these provisions once all legislation in relation to the regulation and supervision of collective money purchase pension schemes under PSA 2021 has been brought into force (anticipated to be between 1 October 2021 and 5 April 2022). The regulations are not subject to parliamentary procedure.

Clause 30: Construction industry scheme and Schedule 6: Construction industry scheme: amendments

Clause 30 introduces Schedule 6, which makes four amendments to the CIS legislation set out in Chapter 3 of Part 3 of FA 2004. The changes tackle abuse of the CIS rules. Paragraph 8 of Schedule 6 provides that the Schedule will have effect for the tax year 2021-22 and subsequent tax years.

Paragraph 1 of Schedule 6 provides that Schedule 6 amends the provisions of Chapter 3 of Part 3 of FA 2004. Paragraph 6 of Schedule 6 inserts new subsections 62(3A), 62(3B) and 62(3C) into FA 2004.

New subsection (3A) allows the Commissioners for HMRC by regulations to authorise an officer of HMRC to amend the set-off claims made by sub-contractors on their Employer Payment Summary returns. Section 62(3C) defines what is meant by a "set-off claim".

New subsection (3A) allows the Commissioners to authorise an officer of Revenue and Customs to correct an error or omission relating to a set-off claim, remove a set-off claim or prohibit a person from making a further set-off claim, whether for a specified period or indefinitely. This enables an officer of HMRC to take certain steps in relation to set-off claims which have been made incorrectly by PAYE employers in order to set off CIS deductions made from their contract payments against relevant liabilities.

New subsection (3B) allows the Commissioners to include provision of the kind mentioned in subsection (3A) enabling claims to be corrected or removed by amending a return or otherwise; for a set-off claim to be removed where the claimant is not eligible to make the claim; and to require information to be given to the Commissioners at such times as may be specified in the regulations.

In reliance on a resolution in accordance with PCTA 1968 the [Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2021](#) (SI 2021/321) were laid before the House of Commons on 16 March 2021. The regulations are subject to negative procedure.

Clause 33: Deduction where business rates etc repaid

Clause 33 provides that payments made to a public authority in respect of coronavirus support arrangements are allowable expenses for income tax and Corporation Tax purposes. Coronavirus support arrangements include the waiver or reduction of a liability to pay non-domestic rates.

Subsection (4)(b) of the clause allows the Treasury by regulations to extend the application of the section to other coronavirus support arrangements where a charge was previously imposed and subsequently relieved as a result of coronavirus. The Treasury do not intend to immediately exercise this power, which is precautionary and is to enable a quick response to coronavirus support arrangements. Any regulations would be subject to negative procedure.

Clause 36 and Schedule 7: Hybrids and other mismatches

Clause 36 introduces Schedule 7, which amends the legislation for hybrids and other mismatches in Part 6A of TIOPA 2010. Paragraph 17 of the Schedule provides mechanical rules that facilitate claims being made as part of a new, limited set of group matching rules being introduced. As part of those rules, a new paragraph 77L is being inserted into Schedule 18 to FA 1998, which allows the Treasury by regulations to make provision to simplify the process for making claims, including allowing one company to make a return on behalf of other group companies. The power would be used if, once the changes have bedded in, there is a case for introducing a simplified procedure. Any regulations would be subject to negative procedure.

PART 2: PLASTIC PACKAGING TAX

Clause 47: Chargeable plastic packaging components

Clause 47 sets out the conditions under which a plastic packaging component is subject to Plastic Packaging Tax. These conditions are that less than 30% of the plastic in the component is recycled and that the component is finished.

Clause 47(5)(a) allows the Commissioners for HMRC by regulations to set out the methodology to be used, and the evidence which will be required, to show that a particular component is not subject to Plastic Packaging Tax as at least 30% of the plastic it contains is recycled.

Clause 47(5)(b) allows the Commissioners for HMRC by regulations to set out what is meant by “substantial modification” for the purposes of this clause, as it is after the last substantial modification that the plastic and recycled plastic content is considered as finished for the purpose of determining liability to Plastic Packaging Tax.

The regulations are subject to negative procedure.

The power in clause 47(5)(a) will be used to offer businesses several options to show that a component is not subject to Plastic Packaging Tax:

- the mass balance formula will be recommended as this is a commonly used recycled plastic calculation both domestically and internationally;
- evidence already held which adheres to ISO (International Organization for Standardization) 14021:2016 rules for self-declared environmental claims;
- any other valid calculating methodology if fully documented.

The power in clause 47(5)(b) will be used to set out that the last substantial modification is the last process applied to the component to ensure it is finished and chargeable. For packaging manufactured in the UK, this will always be before the packaging is filled.¹ This will include setting out processes that will be treated by the Commissioners as a substantial modification (for example, extruding and laminating) and the processes that can happen after the last substantial modification and be disregarded (for example, printing and sealing).

¹ For imported plastic packaging, clause 50 also needs to be considered when determining when a component is chargeable.

Clause 48: Meaning of “plastic packaging component”

Clause 48 defines a plastic packaging component for the purposes of Plastic Packaging Tax.

A “packaging component” is defined as a product that is designed to be suitable for use, whether alone or in combination with other products, in the containment, protection, handling, delivery or presentation of goods, at any stage in the supply chain of the goods from the producer to the user or consumer. It does not matter why a component that meets the definition is produced or imported (for example, whether it is produced or imported for use in the supply chain of the goods or by a user or consumer).

A “plastic packaging component” is a packaging component that contains more plastic by weight than any other substance set out in regulations.

Clause 48(5) and (6) allow the Treasury by regulations to amend the meaning of “packaging component” by adding or removing descriptions of products. The power will be used to clarify what is and what is not in the scope of the tax. The regulations are subject to affirmative procedure.

Clause 48(7) allows the Commissioners for HMRC by regulations (a) to list substances for comparison when determining whether plastic is the largest constituent material in a component by weight, and (b) to set out methodology and evidence required to prove that a component is not a plastic packaging component under the definitions in this clause. The regulations are subject to negative procedure.

The power in clause 48(7)(a) will be used to list substances aligning with the [Producer Responsibility Obligations \(Packaging Waste\) Regulations 2007](#) (SI 2007/871) (for example, cardboard, steel, aluminium). This list will be used to differentiate different materials from plastic when deciding if a component is predominantly plastic when it is composed of plastic mixed with other substances.

The power in clause 48(7)(b) will be used to set out the methodology to be used and evidence to be provided in demonstrating that a component is not plastic for the purposes of Plastic Packaging Tax. The regulations will not mandate a specific method or record, but will require that the evidence provided shows the calculations used to reach a determination on a specific product. This could be by using one document or a combination of documents held by the business and can be used in conjunction with the list of substances under clause 48(7)(a).

Clause 49: Meaning of “plastic” and “recycled plastic”

Clause defines what “plastic” and “recycled plastic” mean for the purposes of Plastic Packaging Tax.

“Plastic” is defined as a material consisting of a polymer to which additives or other substances may have been added. The definition specifically excludes cellulose-based polymers that have not been chemically modified. “Recycled plastic” is defined as recovered plastic that has been reprocessed by a chemical or manufacturing process which can then be used for its original or other purposes.

Clause 49(8) and (9) allow the Treasury by regulations to amend these definitions, including by amending this clause. There are no plans to use this power. It is included so that the Government can make necessary adjustments to the definitions where or if technological or scientific developments require it. Any regulations would be subject to affirmative procedure.

Clause 49(10) allows the Commissioners for HMRC by regulations to set out the methodology to be used and evidence which will be required to demonstrate that plastic is recycled plastic. The power will be used to prescribe the use of evidence required by ISO 14021:2016. This could be by using one or a combination of documents held by the business to show recyclate used, specifications of raw materials used in manufacture, the amount of pre/post-consumer waste, or external audit reports. The regulations are subject to negative procedure.

Clause 51: Plastic packaging components intended for export

Clause 51 sets out the provisions for plastic packaging components that are intended for export. Clause 51(1) allows for liability for Plastic Packaging Tax to be deferred for as long as the direct export condition is met and then cancelled if the component is exported before the end of the deferral period.

Clause 51(1)(b) allows the Commissioners for HMRC by regulations to specify conditions that must be met in respect of the export for the liability to be cancelled.

Clause 51(2)(c) allows the Commissioners for HMRC by regulations to set additional requirements for the direct export condition to be met alongside those set out in the clause of being within the deferral period (of 12 months) and the component always having been intended for export.

The regulations are subject to negative procedure.

The power in clause 51(1)(b) will be used to require the business to hold evidence that the product was destined for export from manufacture, and require that records of the product(s) must be kept showing weight, recycled content and that they are liable to the tax. All supply chain and export documentation to prove the export was made within the deferral period (12 months), and that this matched the tax return where the packaging was accounted for as exported and the relief was claimed, will also be required to be held.

The power in clause 51(2)(c) will be used to set out the process to be used to ensure the direct export is recorded as such, has taken place and remained in the direct exporting business's control the whole time until eventual export.

Clause 52: Exempt plastic packaging components

Clause 52 provides for exemptions from Plastic Packaging Tax for certain plastic packaging components. These are:

- transport and tertiary packaging used on imported products;
- immediate packaging for medicinal products;
- packaging used in aircraft, ship and train 'stores'.

Clause 52(7) allows the Treasury by regulations to provide for further exemptions from Plastic Packaging Tax. There are no plans to use this power. It is included in case further exemptions are needed in the future, for example, to cover items such as protective equipment or medical devices in the event of a pandemic. Any regulations would be subject to affirmative procedure.

Clause 53: Tax Credits

Clause 53(1) allows the Commissioners for HMRC by regulations to make provision for tax credits or, in prescribed cases, repayment of Plastic Packaging Tax, to be available. This is in circumstances where a person has become liable to account for Plastic Packaging Tax on a component which is later exported from the UK or subsequently converted into a different packaging component.

Clause 53(2) sets out the areas that may be covered by such regulations. These are:

- allowing a tax credit to the person who had become liable to account for Plastic Packaging Tax on the packaging
- offsetting the credit against Plastic Packaging Tax payable for an accounting period or periods;
- allowing a repayment in certain cases.

Clause 53(3) sets out that regulations under the clause may include provision for the administration of tax credits, including:

- requiring a claim for a tax credit to be made, how and when a claim should be made, and requirements to be met to claim a credit;
- setting minimum and maximum credit amounts, and periods of entitlement;
- information required to substantiate a claim, and record and information keeping;
- withdrawal of a tax credit if the requirements are not met.

The regulations may also provide for amendments to liability for Plastic Packaging Tax if a tax credit entitlement is changed or withdrawn, the treatment of a tax credit where a person is no longer in business or liable to the tax, and the meaning of "converted" in Clause 53(1). Anything to be determined by regulations may be determined by general or specific directions by the Commissioners consistent with regulations.

The power will be used to give business access to claim a tax credit or, in prescribed cases, repayment of Plastic Packaging Tax, if the product is exported after the tax has been accounted for. All evidence of the manufacture, supply chain and export will be needed with a request in writing for a tax credit. Tax credits will also be available to businesses if they account for a packaging component which is then converted into a new component by a subsequent owner. Evidence will be required to prove that the first and

second conversion happened along with all records showing weight and recycled content.

The regulations will allow for tax credits that become payable to be used against liability for Plastic Packaging Tax in a subsequent accounting period. They will require a tax credit to be claimed within two years of the chargeable event (that is, export or subsequent conversion of an already accounted for packaging component). The business liable for the tax must keep evidence to prove the plastic packaging is due to the relief, export documents, and all 'standard' evidence for conversion of plastic packaging.

The regulations are subject to negative procedure.

Clause 56: Notification of liability and registration

Clause 56 requires a liable person to be registered for Plastic Packaging Tax with the Commissioners for HMRC within 30 days of the liability arising.

Clause 56(5) allows the Commissioners for HMRC by regulations to make further provision with regards to how and what information will be required to notify of a liability to Plastic Packaging Tax. This may also include requiring further information in connection with a person's registration, and provision for notification and related communication, to be made electronically.

The power will be used to require notification of liability to Plastic Packaging Tax to be in the form of a registration to HMRC on the portal. This must include name and contact details for the responsible person, business address, VAT or Corporation Tax number, tonnage in last 12 months or next 30 days (for the backward and forward look tests in relation to the de minimis), any additional address for the business and bank details for the payment of Plastic Packaging Tax. Alternative provision will also be made to register businesses who cannot use the portal and are not digital by default. The regulations are subject to negative procedure.

Clause 58: Correction of the register

Clause 58 provides for the correction of entries in the Plastic Packaging Tax register.

Clause 58(1) allows the Commissioners for HMRC by regulations to make provision about corrections of the register.

Clause 58(2) provides that these regulations may include provision to require persons registered, or liable to be registered, for Plastic Packaging Tax to notify the Commissioners of relevant changes in circumstances.

The power will be used to require changes in circumstances that HMRC hold on account, including where a taxpayer is no longer liable to be registered for Plastic Packaging Tax, to be notified to HMRC electronically in the first instance within 30 days of the change. This can be completed by the responsible person or HMRC. The regulations are subject to negative procedure.

Clause 60: Measurement of weight etc

Clause 60(1) allows the Commissioners for HMRC by regulations to set out how the weight of a plastic packaging component is measured and assessed for the purpose of Plastic Packaging Tax.

Clause 60(2) sets out that these regulations may include provision for such things as:

- how weight is to be measured, and in what time period;
- the evidence requirements to support any measurements;
- the Commissioners to be empowered to reach agreements with specific persons about the method, or type of evidence, used to measure or determine weight, and certain circumstances when the Commissioners can disregard these agreements;
- the Commissioners to make their own assessments or best judgments of the weight of plastic packaging components, which may be based on estimates and assumptions, and for this assessment or judgment to be used in place of a previous assessment made by anyone else;
- the Commissioners to weigh and inspect plastic packaging components or samples themselves and base their assessments on estimates or assumptions.

The power will be used to require the weight of components to be measured by using an average weight of a production run of a single product (the time of this could be different for different specifications of products). The measurement used must be agreed with HMRC before it is applied to the accounting process. There will be a provision for HMRC to override the agreement if they suspect wrongdoing on the records held by the business. Evidence required will be production records and calculations made before and after the production run to determine the weight of each specification. Businesses will be required to allow the inspection and weighing of samples by HMRC and regulations will enable a determination to be made by HMRC based on estimation or assumptions based on like for like packaging components. The regulations are subject to the negative procedure.

Clause 61: Payment, collection and recovery

Clause 61(1) allows the Commissioners for HMRC by regulations to set out the arrangements for payment, collection and recovery of Plastic Packaging Tax.

Clause 61(2) sets out that these regulations may include provisions for:

- determining the accounting period for payments,
- requirements for keeping accounts and making returns,
- the timing and method of payment,
- requirements for the amounts payable by reference to tax periods to be determined by or under regulations,
- the payment, collection and recovery of amounts payable by a person as a result of a secondary liability and assessment notice or a joint and several liability notice, and
- the correction of errors in accounting for the tax.

Clause 61(3) gives more detail on what the regulations in respect of returns can cover, how and when returns should be made, what information returns should include, and the period to which each return should relate.

These powers will be used to set out accounting periods as quarterly periods ending March, June, September, and December. Regulations will require a return to be submitted electronically by the last working day of the month immediately following the end of the quarterly accounting period. The regulations will also set out the details needed to be included in the return. The regulations are subject to negative procedure.

Clause 63: Records

Clause 63(1) allows the Commissioners for HMRC by regulations to require people to keep specified records and to preserve records for specified periods in connection with Plastic Packaging Tax.

Clause 63(2) allows the obligation to keep records under regulations made under clause 63(1) to be met by keeping the records in any form unless conditions or exceptions are set out in those regulations.

Clause 63(3) sets out that the period specified in regulations for retention of records may not exceed 6 years beginning with the end of the accounting period to which the records relate.

These powers will be used to set out that businesses will need to retain records relating to the manufacture and import of plastic packaging for a period of 6 years in a digital format as default, but with other ways of record keeping also being acceptable. The regulations are subject to negative procedure.

Clause 65: Security for tax

Clause 65(1) allows the Commissioners for HMRC by regulations to set out when and how a person liable to be registered for Plastic Packaging Tax may be required to provide security against their current or future liability. Clause 65(2) specifies that the Commissioners may only use this power for the protection of the revenue.

There are no plans to use this power. It is included in case such provisions are needed to protect the revenue in the future if there is evidence of a risk in this area. Any regulations would be subject to negative procedure.

Clause 66: Unincorporated bodies

Clause 66 allows the Commissioners for HMRC by regulations to set out which person in a partnership or another unincorporated body is responsible for meeting Plastic Packaging Tax obligations.

The power may be used to make all partners in a partnership jointly and severally responsible for all obligations of the partnership (payment, making returns, registering etc.), but that if the obligations are met by one partner that will be sufficient to comply. Similar provisions may be made for unincorporated bodies, but in this case it will be those who hold offices such as president or chairman, committees that manage the affairs of the body, or, failing these, all the members, who will be jointly and severally responsible for meeting the obligations. The regulations are subject to the negative procedure.

Clause 68: Statements for business customers

Clause 68(1) requires suppliers of plastic packaging components upon which a charge to Plastic Packaging Tax has arisen to include a statement of the amount of Plastic Packaging Tax associated with those components on invoices issued to business customers. This is known as a “PPT statement”.

Clause 68(3) allows the Commissioners for HMRC by regulations to specify the information that the PPT statement must contain.

The power will be used to specify the information that this statement should contain. The regulations are subject to negative procedure.

Clause 69: Tax representatives of non-resident taxpayers

Clause 69(1) allows the Commissioners for HMRC by regulations to require every non-resident taxpayer to appoint a UK resident tax representative for the purposes of Plastic Packaging Tax.

Clause 69(2) sets out a range of administrative matters that the Commissioners may use these regulations to prescribe for tax representatives, including:

- provisions on the notification of being a non-resident taxpayer,
- notification of appointment of a tax representative,
- approval of tax representatives being required before the appointment takes effect,
- direction for a tax representative to be replaced,
- circumstances when a tax representative ceases to act for a taxpayer and withdrawal of approval to act as a tax representative,
- use of agents by tax representatives, and
- the procedures and time limits for all these matters.

Clause 69(3) sets out that a tax representative may act on behalf of a taxpayer for all matters in respect of Plastic Packaging Tax and places a duty on them to ensure compliance with the requirements of the tax by the taxpayer (including any obligations which arose before they were appointed).

Exceptions to this duty of tax representatives may be specified in regulations.

Clause 69(5) allows the Commissioners for HMRC by regulations to require the names of tax representatives to be registered against the names of the non-resident taxpayers who they represent, and for the names of those who are no longer tax representatives to be removed from this list.

There are no plans to use these powers. They are included in case a risk of revenue loss from overseas taxpayers develops and needs to be addressed by using these provisions. Any regulations would be subject to negative procedure.

Clause 74: Death, incapacity or insolvency of person carrying on a business: regulations

Clause 74(1) allows the Commissioners for HMRC by regulations to make provisions in respect of cases where a person carries on a business formerly undertaken by a person who has died, has become incapacitated or is subject to an insolvency procedure.

Clause 74(2) prescribes the types of provisions for the purposes of Plastic Packaging Tax that may be made by, or under, these regulations. These may include:

- requiring the person who has taken over a business to notify the Commissioners of this, including the reason for taking over the business;
- for a person taking over the business to be treated as being the same person from whom they have taken it over (for the purposes of Plastic Packaging Tax) for a limited time;
- anything else the Commissioners see fit to ensure continuity in application of the tax.

The power will be used to require notification to be made to HMRC within 21 days of a person taking on the liable taxpayer's business activity. The notification should include the registered taxpayer, the date of death, incapacity or when the insolvency was first applied and the capacity of the person carrying on the business. The regulations are subject to negative procedure.

Clause 75: Transfer of business as a going concern: regulations

Clause 75(1) allows the Commissioners for HMRC by regulations to make provision in respect of cases where a business that is registered for Plastic Packaging Tax is transferred as a going concern from one person to another.

Clause 75(2) prescribes the types of provisions for the purposes of Plastic Packaging Tax that may be made by, or under, the regulations. These may include:

- requiring the person who has transferred the business to another person (the transferor) to notify the Commissioners of the transfer;
- that the liabilities and duties on transfer become the transferee's liabilities and duties, to the extent specified;
- the right of either person to a tax credit or repayment to be satisfied by the credit or repayment being paid to either person;
- requiring records from periods before the date of transfer to be retained by the transferee after the transfer as required by regulations under Clause 63; and
- that regulations may also include anything else the Commissioners see fit to ensure continuity in application of the tax.

Clause 75(3) provides that regulations under this clause may require an application for the transfer to be made in order for obligations and entitlements on liabilities and duties, and tax credits or repayments, to be effective.

The power will be used to require the transferee to apply in writing asking HMRC to transfer the business into their name and cancelling the transferor's previous registration. HMRC can decline an application and this is appealable. The effect of the transfer will be that:

- any liability to make a return or account for, or pay, Plastic Packaging Tax,
- any entitlement to a tax credit or repayment,
- any other provision by or under Plastic Packaging Tax legislation that applied to the transferor (before or after cancellation of previous registration)

will apply to the transferee.

Transitional provisions for the transfer should be included where the date of the cancellation of the transferor's registration and registration of the transferee is earlier than the accounting period of the transfer. The following actions falling on or after that date but before the start of the accounting period will be treated as having been done by the transferee:

- making a return;
- accounting for Plastic Packaging Tax,
- claiming a relevant tax credit

The regulations are subject to negative procedure.

Clause 80: Penalty for contravening relevant requirements

Clause 80 provides for penalties for contravening specified obligations or requirements in respect of Plastic Packaging Tax.

Clause 80(8) allows the Treasury by regulations to amend clause 80(1) to change the amounts of the penalties due to inflation.

Clause 80(9) allows the Commissioners for HMRC by regulations to amend clause 80(7) as to what falls under a “relevant requirement” in respect of Plastic Packaging Tax (these being the requirements subject to a penalty under the clause when not met).

There are no plans to use these powers. They are included to allow the Government to account for any future need to increase penalty amounts or add to the list of “relevant requirements”. Any regulations would be subject to affirmative procedure.

Clause 84: Regulations

Clause 84 sets out general provisions about the regulations.

Clause 84(1) sets out that regulations made elsewhere in this Part under the powers in this Part may make different provision for different purposes and that these can be incidental, consequential, supplementary or transitional in nature.

Clause 84(2) provides powers to make provision in regulations by reference to things specified in a notice that is published in line with regulations and not withdrawn by a subsequent notice.

Clause 84(3) provides that powers in this Part for the Commissioners for HMRC to make regulations may be exercised by the Treasury.

Clause 84(4) provides that regulations made under the powers in this clause are to be made by statutory instrument.

Clause 84(5) and (6) specify that statutory instruments made under the powers listed in the following clauses are subject to the made affirmative procedure:

- clause 48(5) – the meaning of “packaging component”;
- clause 49(8) – the meaning of “plastic” and “recycled plastic”;
- clause 52 – exempt plastic packaging components;
- clause 80(8) or (9) – amounts relating to the general regulatory penalty

Clause 84(6) provides that any other statutory instrument made under this Part are subject to the negative procedure. Clause 84(7) sets out that clause 84(6) does not apply to a statutory instrument containing only regulations under clause 85 (commencement of Part 2).

Clause 84(8) sets out that Plastic Packaging Tax statutory instruments subject to the made affirmative procedure must be laid before the House of Commons after being made, and cease to have effect at the end of 28 days beginning with the day the instrument is made, unless the instrument is approved by a resolution of the House of Commons within that period. The 28 days must be sitting days, defined in clause 84(11).

Clause 84(9) provides that if regulations cease to have effect as a result of clause 80(8) (that is, they are not approved by a resolution of the House of Commons within 28 sitting days), this does not affect anything previously done under those regulations or prevent the making of new regulations.

Clause 84(10) sets out that Plastic Packaging Tax provisions which can be made in regulations subject to the negative procedure may also be made by regulations subject to the made affirmative procedure.

Clause 84(11) defines “sitting day” as a day on which the House of Commons is sitting, and is only considered a day if the House begins to sit on that day.

The powers in clauses 84(1) and (2) will be used to commence some powers and issue notices ahead of the introduction of Plastic Packaging Tax (as permitted by clause 85) to allow preparations to be made, such as registering businesses for the tax before the implementation date.

The remaining powers in this clause are concerned with administrative matters in respect of regulations.

Clause 85: Commencement etc

Clause 85 provides for regulations to be made for Plastic Packaging Tax in relation to the commencement of the tax.

Clause 85(1) allows the Treasury by regulations to appoint the commencement date of the provisions in Part 2 in relation to packaging components that are manufactured in the UK, or imported into the UK, on or after 1 April 2022.

Clause 85(2) provides that regulations made under this clause may specify different commencement dates for different purposes. This can include commencing some provisions of the legislation at different times from others.

The power will be used to commence some aspects of the tax ahead of implementation to enable preparations to be made, for example to allow some businesses to register before 1 April 2022 to test the systems for doing so. Some of the measures in respect of the Isle of Man will not be commenced unless the Isle of Man authorities also introduce a tax on plastic packaging. The regulations are not subject to parliamentary procedure.

Schedule 9: Plastic Packaging Tax: Secondary liability and assessment notices and joint and several liability notices

Schedule 9 sets out provisions to impose secondary liability and assessment notices in respect of amounts of Plastic Packaging Tax that another person has not paid, and joint and several liability notices in respect of some or all of another person's liability to pay Plastic Packaging Tax for a period of time in the future.

Paragraph 2(4) allows the Commissioners for HMRC by regulations to make provision about the factors they will consider when deciding whether to issue a secondary liability and assessment notice.

Paragraph 5(2) allows the Commissioners for HMRC by regulations to make provision on the steps considered reasonable to apply for revoking a secondary liability and assessment notice and about applications for revocation or reducing the amount due.

Paragraph 5(3) states that the provision to make regulations under sub-paragraph (2) may include the information that must be supplied as part of an application.

Paragraph 10(4) allows the Commissioners for HMRC by regulations to make provision about the factors they will consider when deciding whether to give a joint and several liability notice, and issue directions about those factors.

Paragraph 15(1) allows the Commissioners for HMRC by regulations to make provisions relating to notifications for the purposes of paragraph 13(1) and applications for the purposes of paragraph 14(1) (revocations).

Paragraph 15(2) states that the regulations under sub-paragraph (1) may include provision about the information that must be supplied as part of a notification or application.

Paragraph 22(3) allows the Commissioners for HMRC by regulations to set out the specific circumstances that are or are not to be treated as sale through an online marketplace or a fulfilment business, and alter the definitions of "fulfilment business", "online marketplace" and "operator".

The powers in paragraph 2(4) and paragraph 10(4) will be used to set out the types of evidence that the Commissioners will take into account in determining whether to issue a secondary liability and assessment notice, such as correspondence between the parties involved.

The powers in paragraph 5(2) and (3) will be used to set out the reasonable steps in applying for a secondary liability notice to be revoked or reduced, such as proof that due diligence was conducted, invoices showing the tax has been accounted for and payment records that show the amount paid was not

below the expected amount for packaging with the specified level of recycled content. Applications will need to be made in writing (including electronically) and within a set time limit, and will need to set out how they did not and could not know that the tax had not been paid.

The powers in paragraph 15(1) and (2) will be used to require the notification to be in writing (email or letter), to a specified address and within a specified time period, and to include details such as the date the relationship between R and P ceased and the names and addresses of R and P (R is a person held jointly and severally liable for Plastic Packaging Tax for which another person, P, is liable).

There are no plans to use the power in paragraph 22(3). It is included to allow the Commissioners to deal with scenarios where business practices develop and the legislation needs amending to include or exclude products or businesses from the definitions of "online marketplace", "operator" and "fulfilment business".

Any regulations are, or would be, subject to negative procedure.

Schedule 10: Recovery and Overpayments

Schedule 10 makes provision relating to the recovery and overpayments of amounts due or owing of Plastic Packaging Tax.

Paragraph 7(3) allows the Commissioners for HMRC by regulations to set out how claims for repayments of overpaid Plastic Packaging Tax are to be made and the information required to support such claims.

Paragraph 10(1) allows the Commissioners for HMRC by regulations to set out that reimbursement arrangements can be disregarded when considering unjust enrichment, unless those reimbursement arrangements comply with provisions required by regulations and are supported by undertakings to comply with the arrangements set out in regulations.

Paragraph 10(2) sets out what “reimbursement arrangements” means with regards to this paragraph; namely that they are arrangements to make reimbursement by a person claiming a repayment of Plastic Packaging Tax, to another person who has for practical purposes borne the whole or part of cost of the tax to the Commissioners. This is to ensure that the person claiming the repayment has not been unjustly enriched.

Paragraph 10(3) provides that the regulations may include:

- requiring reimbursement to be made within a time limit after repayment,
- repayment to the Commissioners of amounts which have not been reimbursed,
- interest payments,
- records to substantiate payments,
- and imposing obligations on certain persons for the purposes of provisions made above.

Paragraph 10(4) provides that regulations under this paragraph may make provision in relation to how the administration of undertakings given to the Commissioners under the regulations will be made, the timing of these undertakings, and for those matters to be determined by the Commissioners according to the regulations.

The power in paragraph 7(3) will be used to set out administrative requirements in respect of claims for repayment of Plastic Packaging Tax. The powers in paragraph 10 will be used to ensure that a refund made to a person who was not ultimately responsible for payment of the tax and would

be unjustly enriched by such a refund passes it on to those who did pay the tax. The regulations are subject to negative procedure.

Schedule 13: Groups of companies

Schedule 13 sets out when and how two or more corporate bodies are to be treated as a group in respect of Plastic Packaging Tax.

Paragraph 12(1) allows the Commissioners for HMRC by regulations to make provision in respect of when applications under the Schedule should be made (including when time limits may be extended), in what form they should be made, and what information needs to be supplied as part of the application.

Paragraph 12(2) allows the Commissioners for HMRC by regulations to make provision requiring applicants to inform the Commissioners if any information supplied is incorrect or changes.

Paragraph 12(3) extends the regulation-making powers in subparagraph (1) to also cover the form, timing and content of notifications required to be given by the Commissioners.

The powers will be used to make administrative arrangements in respect of the grouping of companies. The regulations are subject to negative procedure.

PART 3: OTHER TAXES

Clause 88: Increased rates for non-resident transactions and Schedule 16: SDLT: increased rates for non-resident transactions

Clause 88 and Schedule 16 insert new section 75ZA and new Schedule 9A into FA 2003. These provisions provide for higher rates of tax to be charged on transactions in residential property (dwellings) made by non-UK residents (“non-resident transactions”).

New section 75ZA specifies the rate of additional tax payable for non-resident transactions and sets how that applies to existing rate specifying provisions. New Schedule 9A contains the detailed provisions for determining whether a chargeable transaction is a non-resident transaction, including rules for determining whether a purchaser is non-resident and what counts as a dwelling.

Paragraph 22 of new Schedule 9A allows the Treasury by regulations to prevent certain transactions from being non-resident transactions. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 93: Temporary 12.5% reduced rate for hospitality and tourism sectors

Clause 93 introduces a temporary 12.5% reduced rate of VAT for certain supplies related to the hospitality and tourism sectors. It will be effective from 1 October 2021 through to 31 March 2022 and will apply to the same supplies that were covered by the temporary 5% reduced rate for hospitality and tourism.

Subsections (1) to (5) of the clause introduce the new temporary reduced rate of VAT of 12.5% and provide for consequential changes to the percentage rates for the relevant categories of business entitled to use the flat rate scheme in regulation 55K of the Value Added Tax Regulations 1995 (SI 1995/2518). The subsections also provide for commencement and end dates (1 October 2021 to 31 March 2022).

Subsection (6) allows the Treasury by regulations to repeal subsections (1) to (5) or amend the commencement and end dates of the new temporary reduced rate. There are no plans to use this power. Any regulations increasing the rate of VAT would be subject to affirmative procedure; otherwise, any regulations would be subject to negative procedure.

Clause 94: Extending digital record-keeping for VAT purposes to all businesses

Clause 94 repeals sub-paragraphs (7) to (9) of paragraph 6 of Schedule 11 VATA 1994. Sub-paragraphs (7) to (9) provide that if the Commissioners for HMRC exercise their regulation-making powers to provide for digital record keeping by VAT registered businesses, those regulations must provide for an exemption for businesses with a taxable turnover below the VAT registration threshold.

The effect of this repeal therefore is to allow the Commissioners for HMRC by regulations to extend MTD to all VAT registered businesses regardless of taxable turnover. The Government confirmed at Budget 2021 its policy intent to extend MTD to VAT registered businesses below the VAT threshold from 1 April 2022.

Regulations made under the powers which are amended by this clause are subject to negative procedure. A copy of the draft regulations is attached.

Clause 95 and Schedule 18: Deferring VAT payment by reason of the coronavirus emergency

Clause 95 introduces Schedule 18 which makes provision about the powers of the Commissioners for HMRC to agree that payment of sums to meet liabilities described in article 5 of the Finance Act 2008, Section 135 (Coronavirus) Order 2020 (SI 2020/934) may be further deferred. The liabilities described in article 5 relate to sums payable in respect of VAT during the period beginning on 20 March 2020 and ending on 30 June 2020 which have been deferred until 31 March 2021. Paragraph 4 of the Schedule provides for a person who is liable to pay a sum in respect of such liabilities to be liable to a penalty if the person fails to pay the sum on or before 30 June 2021 and fails to enter into a payment arrangement with HMRC in respect of the sum on or before that day.

Subsection (3) of the clause allows the Treasury by regulations to repeal paragraphs 4 to 11 of the Schedule relating to the penalty, where they consider it appropriate to do so by reason of circumstances arising as a result of the emergency specified in article 2 of the Order. The emergency specified in the article is the incidence of severe acute respiratory syndrome coronavirus 2 in the UK. Under subsection (4) of the clause the regulations must make provision for the repayment of amounts paid in respect of penalties and may make other transitional provision. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 97: Steel removed to Northern Ireland and Schedule 19: Customs duties steel products

Clause 97 introduces Schedule 19 which contains amendments to the Customs (Northern Ireland) (EU Exit) Regulations 2020 (SI 2000/1605) in connection with the movement of certain steel products to Northern Ireland, to ensure that businesses which move steel which originates from countries outside of the EU and the UK into Northern Ireland are not subject to safeguard tariffs which would otherwise uniquely disadvantage Northern Ireland compared to Great Britain and the EU.

Paragraph 7 of the Schedule provides that existing powers to make secondary legislation, contained in Sections 30B and 40B of TCTA 2018, can be used to make similar provision relating to other goods in a way that is retrospective (provided that it does not impose or increase taxation). The power has been included to allow the flexibility to make secondary legislation to address goods that are in a similar position to steel and allow this legislation to take effect retrospectively if necessary. Any regulations would be subject to negative procedure.

Clause 98 and Schedule 20: Restriction on use of rebated diesel and biofuels

Clause 98 and Schedule 20 amend HODA 1979 to restrict entitlement to use red diesel and rebated biofuels to a number of qualifying uses. They will also extend fuel duty to biofuels and fuel substitutes used in heating, applying lower rebated rates when used for non-commercial heating. The changes will take effect from 1 April 2022.

Subsections (3) to (6) of the clause allow the Treasury by regulations to prescribe consequential, supplementary, transitional or saving provisions in connection with the coming into force of the Schedule. This power will be used early in 2022 when regulations making consequential changes to various provisions of secondary legislation will be laid in advance of the changes to entitlement to use red diesel and to liability of biofuels/fuel substitutes in April 2022. The regulations are subject to negative procedure.

Schedule 11 to FA 2020 provided for amendments to HODA 1979 relating to private pleasure craft and provided for the changes to be commenced by secondary legislation. These changes cover some of the same sections and paragraphs that are being amended by Schedule 20. The Government announced at Budget 2021 that the FA 2020 changes will come into force in Northern Ireland later in 2021, but it is not certain whether they will enter into force before or after the Finance (No. 2) Bill receives Royal Assent. Clause 98 and Schedule 20 therefore provide for two sets of amendments to HODA 1979, with only one coming into force depending on the circumstances. The first set cover the possibility that the private pleasure craft changes in FA 2020 come into force after the FA 2021 becomes law and the second set cover the possibility that they take effect before the changes in the Finance (No. 2) Bill receive Royal Assent.

Subsection (4) of the clause provides that regulations may amend, repeal or revoke provisions made by or under an Act (specifically FA 2020) that is passed before this Act and make different provisions for different purposes or areas. Regulations can therefore be made after Royal Assent to enable any issues to be addressed arising from the interactions of the FA 2020 changes (once commenced) and Finance (No. 2) Bill changes.

PART 4: MISCELLANEOUS AND FINAL

Clause 109: Designation of freeport tax sites

Clause 109 allows the Treasury by regulations to designate areas in Great Britain as “freeport tax sites” for the purposes of Parts 2 and 2A of CAA 2001, (see clause 110 and Schedule 21) and, where the area is in England, Part 4 of FA 2003 (SDLT: see clause 111 and Schedule 22). Those provisions contain enhanced capital allowances for plant and machinery, enhanced structures and buildings allowances and SDLT relief in relation to freeport tax sites. The power may be used to designate a freeport tax site for areas which are situated in a freeport or where Treasury consider the area is being used, or is likely to be used, for purposes connected with activities carried on, or likely to be carried on, in a freeport. Any regulations would be subject to the negative procedure.

Clause 110 and Schedule 21: Capital allowances for freeport tax sites

Clause 110 and Schedule 21 introduce legislation for enhanced capital allowances for plant and machinery and for an enhanced rate of structures and buildings allowances for qualifying expenditure incurred in freeport tax sites.

New Section 45P is inserted into Part 2 of CAA 2001 and allows the Treasury by regulations to change the conditions that must be met for the enhanced capital allowances for plant and machinery in freeport tax sites to be available. The power may be used to add, remove or alter the conditions for expenditure to be qualifying expenditure in respect of the enhanced capital allowances. The power may be used to make incidental, supplementary, consequential, transitional or transitory provisions in respect of the CAA 2001 and other Acts. The power cannot be used to remove the requirement for the plant and machinery to be for use primarily in a freeport tax site. There are no plans to use this power. Any regulations would be subject to affirmative procedure.

New Section 270BNC is inserted into Part 2A of CAA 2001 and allows the Treasury by regulations to change the conditions that must be met for the enhanced structures and buildings allowances in freeport tax sites to be available. The power may be used to add, remove or alter the conditions for expenditure to be qualifying expenditure in respect of the enhanced structures and buildings allowances. The power may be used to make incidental, supplementary, consequential, transitional or transitory provisions in respect of CAA 2001 and other Acts. The power cannot be used to remove the requirement for the building or structure to be situated in a freeport tax site. There are no plans to use this power. Any regulations would be subject to affirmative procedure.

Clause 111 and Schedule 22: Relief from stamp duty land tax for freeport tax sites

Clause 111 introduces Schedule 22 which inserts new section 61A and new Schedule 6C into FA 2003. The new section and Schedule provide for relief from SDLT for qualifying purchases of land in freeport tax sites.

Paragraph 11 of new Schedule 6C allows the Treasury by regulations to change the conditions for SDLT relief for land in freeport tax sites. The power may be used to amend the definition of the land that qualifies for the relief, to add other conditions that must be met for the relief to be available, and to amend or remove any such added conditions. The power may be used to amend, repeal or modify the provisions of Schedule 6C. It can also be used to make incidental, consequential or transitional changes to FA 2003. The power cannot be used to remove the requirement for the land to be within a freeport tax site. There are no plans to use this power. Any regulations would be subject to affirmative procedure.

Clause 112 and Schedule 23: Penalties for failure to make returns etc and Schedule 24: Penalties for deliberately withholding information

Clause 112 introduces Schedules 23 and 24, which replace Schedule 55 to FA 2009. Schedule 23 provides for a new penalty regime for late submission of VAT and ITSA tax returns and MTD digital quarterly updates. This replaces existing late submission penalties with a points-based system. Schedule 24 provides for minor changes to the penalty for deliberately withholding information from HMRC that would prevent an assessment to tax for ITSA.

Subsections (3) to (6) of the clause allow the Treasury by regulations to appoint a day for Schedules 23 and 24 to come into force and to make provisions in connection with the coming into force of the Schedules. The Treasury intend to exercise this power so that the new late submission and deliberate withholding penalty regime comes into effect for:

- VAT taxpayers for accounting periods beginning on or after 1 April 2022,
- ITSA taxpayers with business or property income over £10,000 a year (who are required to submit digital quarterly updates through MTD for ITSA) for tax years beginning on or after 6 April 2023, and
- all other ITSA taxpayers for tax years beginning on or after 6 April 2024.

The regulations are not subject to parliamentary procedure.

Paragraph 18 of Schedule 23 allows the Commissioners for HMRC by regulations to change the penalty threshold; the period of compliance required to reset points; the period for which outstanding returns are required in order to reset points, and the amount of the penalty. There are no plans to use this power. Any regulations would be subject to affirmative procedure.

Paragraph 5 of Schedule 24 allows the Treasury by regulations to amend the categories of information or the relevant percentage (which is used for calculating the amount of the penalty). There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 113 and Schedule 25: Penalties for failure to pay

Clause 113 introduces Schedule 25, which replaces schedule 56 to FA 2009. Schedule 25 provides for a new penalty regime for late payment penalties in relation to VAT and ITSA.

Subsections (2) to (5) of the clause allow the Treasury by regulations to appoint a day for Schedule 25 to come into force and to make provisions in connection with the coming into force of the Schedule. The Treasury intend to exercise this power so that the new late payment penalties come into effect for:

- VAT taxpayers for accounting periods beginning on or after 1 April 2022,
- ITSA taxpayers with business or property income over £10,000 a year (who are required to submit digital quarterly updates through MTD for ITSA) for tax years beginning on or after 6 April 2023, and
- all other ITSA taxpayers for tax years beginning on or after 6 April 2024.

The regulations are not subject to parliamentary procedure.

Paragraph 11 of Schedule 25 allows the Commissioners for HMRC by regulations to change the period after which the penalties apply and the percentage values of the penalties. There are no plans to use this power. Any regulations would be subject to affirmative procedure.

Paragraph 16 of Schedule 25 allows the Commissioners for HMRC by regulations to make provision for assessing a penalty before the end of the further penalty period, including making interim assessments of the penalty. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 114: Penalties for failure to make returns or pay tax etc: consequential provision and Schedule 26: Schedules 23 to 25: consequential provision

Clause 114 introduces Schedule 26.

Subsections (2) and (3) of the clause allow the Treasury by regulations to appoint a day on which Schedule 26 is to come into force. The Treasury intend to exercise this power so that the various provisions of the Schedule come into force at a time that is appropriate for:

- VAT taxpayers for accounting periods beginning on or after 1 April 2022,
- ITSA taxpayers with business or property income over £10,000 a year (who are required to submit digital quarterly updates through MTD for ITSA) for tax years beginning on or after 6 April 2023, and
- for all other ITSA taxpayers for tax years beginning on or after 6 April 2024

The regulations are not subject to parliamentary procedure.

Subsection (4) of the clause allows the Treasury by regulations to make transitory, transitional or saving provision in connection with the coming into force of Schedule 26. There are no plans to use this power. Any regulations would not be subject to parliamentary procedure.

Subsections (5) to (8) of the clause allow the Treasury by regulations to make provision that is consequential on Schedules 23 to 25. There are no plans to use this power. Any regulations that amend or repeal a provision made by Act of Parliament would be subject to negative procedure.

Clause 116 and Schedule 28: Late payment interest and repayment interest: VAT

Clause 116 introduces Schedule 28, which amends FA 2009 in relation to late payment and repayment interest for VAT.

Subsections (2) and (3) of the clause allow the Treasury by regulations to appoint a day on which Schedule 28 is to come into force. The Treasury intends to exercise this power so that Schedule 28 will apply to all VAT accounting periods beginning on or after 1 April 2022. The regulations are not subject to parliamentary procedure.

Subsection (4) of the clause allows the Treasury by regulations to make transitory, transitional or saving provision in connection with the coming into force of Schedule 28. There are no plans to use this power. Any regulations would not be subject to parliamentary procedure.

Subsections (5) and (6) of the clause allow the Treasury by regulations to make provision that is consequential on Schedule 28. There are no plans to use this power. Any regulations that amend or repeal a provision made by Act of Parliament would be subject to negative procedure.

Clause 117: Promoters of tax avoidance schemes and Schedule 29: Amendments of Part 5 of FA 2014

Clause 117 introduces Schedule 29 which make changes to the POTAS regime in Part 5 of FA 2014. The changes allow HMRC to issue stop notices prohibiting the promotion of tax avoidance schemes. This makes it more difficult for promoters to sidestep the rules by re-arranging the structures through which they operate. The legislation also makes other amendments to ensure the continued effectiveness of the POTAS regime.

Paragraph 1 of the Schedule inserts new section 236A into FA 2014, which allows authorised HMRC officers to give a stop notice to a person whom they suspect promotes proposals or arrangements of a description specified in the notice. New section 236A(3)(d) allows the Commissioners for HMRC by regulations to specify a description of arrangements that may be subject to a stop notice.

There are no plans to use this power, but it will allow the Commissioners to make regulations specifying new descriptions of arrangements that may be subject to a stop notice when they become aware of new avoidance schemes. Any regulations would be subject to negative procedure.

Clause 118 and Schedule 30: Disclosure of tax avoidance schemes

Clause 118 and Schedule 30 make changes to the disclosure of tax avoidance schemes regime (DOTAS) in Part 7 of FA 2004 and to the disclosure of tax avoidance schemes: VAT and other indirect taxes regime (DASVOIT) at Schedule 17 to F(No.2)A 2017, which require promoters of notifiable arrangements and proposals to disclose them to HMRC.

The changes make it possible for HMRC to allocate scheme reference numbers (SRN) to arrangements or proposals which have not been disclosed where HMRC reasonably suspects they should have been disclosed. Where an SRN is allocated under the new pathway in section 311(3) of FA 2004 (DOTAS), or paragraph 22(3) of Schedule 17 to F(No.2)A 2017 (DASVOIT), as well as being required to notify the number to suspected promoters of the arrangements or proposal, HMRC must also notify it to other persons they suspect of being involved in the supply of the arrangements or proposed arrangements.

Certain provisions allow the Commissioners for HMRC by regulations to prescribe information that may be required and the deadline for providing that information and to create exemptions from duties to provide information where SRNs are allocated under the new DOTAS and DASVOIT pathways. Other provisions allow the Commissioners for HMRC to amend existing regulations governing the information that must be provided, etc, where an SRN is allocated under the existing pathway, now found in section 311(2) of FA 2004 (DOTAS), or paragraph 22(2) Schedule 17 to F(No.2) A 2017 (DASVOIT).

Sections 312ZA(2), 312A(2) and (2A), 312B(2), 313(1) and (3), 313ZA(3), 313ZB(2) and (3)(a) and 313ZC(5) of FA 2004 allow the Commissioners for HMRC by regulations to prescribe information that must be provided by specified persons where a SRN has been allocated under section 311(2) or 311(3) of FA 2004, deadlines for providing such information, or exemptions from the duty to provide such information. The Commissioners intend to exercise these powers after Royal Assent. The regulations are subject to negative procedure.

Paragraphs 23A(2), 25(2), 26(1) and (3), 27(3) and (4) and 28(2) of Schedule 17 to F(No.2)A 2017 allow the Commissioners for HMRC by regulations to prescribe information that must be provided by specified persons where a SRN has been allocated under paragraph 22(2) or 22(3) of Schedule 17, deadlines for providing such information, or exemptions from the duty to provide such information. The Commissioners intend to exercise these powers after Royal Assent. The regulations are subject to negative procedure.

Clause 121 and Schedule 32: Licensing authorities: requirements to give or obtain tax information

Clause 121 introduces Schedule 32, which sets out the actions licensing bodies must take before considering applications for certain licences in England and Wales from 4 April 2022. Licensing bodies will have to signpost first-time applicants to HMRC guidance about their potential tax obligations. An applicant who is not a first-time applicant will have to carry out a tax check, which involves HMRC verifying that they are registered for tax where they should be. The licensing body will have to obtain confirmation from HMRC that the applicant has completed the check before being able to consider their application.

Paragraph 8(1) of the Schedule allows the Commissioners for HMRC by regulations to set out administrative provisions. The Commissioners intend to exercise this power before 4 April 2022. The regulations will specify:

- the time when the confirmation from a first-time applicant is taken as having been obtained by a licensing body;
- how an applicant should carry out a tax check;
- how HMRC must inform an applicant that it is satisfied with the information received during the course of a tax check;
- how a licensing body should request and HMRC should give confirmation of completion of a tax check; and
- the time when that HMRC confirmation is taken as having been requested and given.

The regulations are subject to negative procedure. A copy of the draft regulations is attached. HMRC intend to carry out a technical consultation on them later in 2021 and may develop the regulations further before then.

Paragraph 8(4) of the Schedule allows the Commissioners for HMRC by regulations to amend the number of days specified at paragraphs 3(4), 6(2)(b) and 6(3)(a) of the Schedule. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 125: International arrangements for exchange of information on the gig economy

Clause 125 introduces a power to make regulations to implement the OECD Model Rules for reporting by platform operators. The rules will require certain UK digital platforms to report information about the income of sellers of services on their platforms.

Subsection (1) of the clause allows the Treasury by regulations to implement the OECD Model Rules or any similar international agreement or arrangements to which the UK is a party. Subsection (2) allows the Treasury to make further regulations if the Model Rules, or similar agreements, are modified or extended in the future. Subsection (3) allows the regulations to make provision for penalties, ambulatory references, and to make consequential and supplementary provision, including amendments to primary legislation.

The Treasury intend to exercise this power before 1 January 2023. However, the regulations will be subject to consultation and are not expected to come into force before 1 January 2023, with platforms not expected to report the information until January 2024. The regulations are subject to negative procedure.

Clause 127: Temporary approvals etc pending review or appeal

Clause 127 inserts new sections 16A, 16B and 16C into Chapter 2 of Part 1 of FA 1994. These sections introduce a new power to grant temporary approval to a business appealing against a decision to remove, or reject, a trading approval, so that its appeal right is safeguarded.

Section 16A(3) allows the Commissioners for HMRC by regulations to amend the list of schemes to which the legislation applies. There are no plans to use this power. Any regulations would be subject to negative procedure.

Section 16C(1) allows the Commissioners for HMRC by regulations to amend, as is appropriate, any legislation affected by the introduction of the clause or any use of the power in section 16A(3). This would be to ensure the relevant regime continues to function effectively in light of the new temporary approval process, which was not originally envisaged when the regime was first created. There are no plans to use this power. Regulations amending any Act of Parliament would be subject to affirmative procedure. Any other regulations would be subject to negative procedure.

Subsection (3) of the clause allows the Commissioners for HMRC by regulations to appoint a day for the commencement of the section. The Commissioners intend to exercise this power in summer 2021, to bring the section into force. The regulations are not subject to parliamentary procedure.

Clause 128: Replacement of LIBOR with incremental borrowing rate

Clause 128 inserts new subsection (6) into 700 of CAA 2001, new subsection (5) into 228MB of CAA 2001, and new subsection (7A) into section 437C of CTA 2010. The new subsections allow the Treasury by regulations to amend sections 700, 228MB, and 437C, respectively, for the purpose of replacing references to incremental borrowing rate with a different rate. There are no plans to use this power. Any regulations would be subject to negative procedure.

Clause 129: Tax consequences of reform etc of LIBOR and other reference rates

Clause 129 allows the Treasury by regulations to make provision for the purpose of dealing with any unforeseen issues in anticipation of or in connection with the discontinuance of LIBOR or other reference rate reform which may surface as individuals and businesses transition away from these rates. The power is time limited to 31 December 2023. There are no plans to use this power. Any regulations may have a retrospective effect and would be subject to affirmative procedure.

Clause 130: Powers of the Treasury to amend legislation relating to banks

Clause 130 amends section 133N of CTA 2009, section 269BE of CTA 2010, and paragraph 81 of Schedule 19 to FA 2011. These amendments will allow the Treasury by regulations to amend the definitions of entities that are taxed as banks. This is necessary in consequence of the FCA's proposed new UK Investment Firm Prudential Regime, which will involve the withdrawal of certain regulatory rules referred to in the existing definitions.

Section 133N of CTA 2009 allows the Treasury by regulations to make amendments to the bank compensation restriction. New section 133N(3A) allows these amendments to have retrospective effect from 1 January 2022, if the regulations are made on or before 30 June 2022. Regulations under section 133N(1) or (2)(b), which relate to consequential amendments made due to changes in regulatory or accountancy rules, are subject to negative procedure. Regulations for other purposes under section 133N are subject to affirmative procedure.

Section 269BE of CTA 2010 allows the Treasury by regulations to make amendments to the bank loss restriction and bank surcharge in consequence of certain regulatory or accounting changes. This clause amends this power to allow changes to the definitions, in sections 269B to 269BD, for any reason.

New subsection 269BE(1A) allows the Treasury by regulations to make amendments to the definitions used in the surcharge and bank loss restriction, and consequential amendments to other provisions as necessitated by the changes to the definitions. New section 269BE(1B) allows these regulations to include transitional provisions. New section 269BE(1C) allows these amendments to have retrospective effect from 1 January 2022, if the regulations are made on or before 30 June 2022. Regulations under new section 269BE(1A) are subject to affirmative procedure.

Paragraph 81 of Schedule 19 to FA 2011 allows the Treasury by order to make amendments to the bank levy in consequence of certain regulatory or accounting changes. This clause amends this power to allow changes to the definitions in Part 8 of Schedule 19 for any reason.

New paragraph 81(1A) allows the Treasury by regulations to make amendments to definitions used in the bank levy, and consequential amendments to other provisions as necessitated by the changes to the definitions. New paragraph 81(1B) allows these regulations to include transitional provisions.

Paragraph 81(2) is amended to remove references to retrospective powers that expired in 2011 and allow consequential amendments under the original power in paragraph 81(1) to have retrospective effect from 1 January 2022, if

the order is made on or before 30 June 2022. New paragraph 81(2A) allows amendments introduced under the new power in (1A) to have retrospective effect from 1 January 2022, if the regulations are made on or before 30 June 2022.

An order made under the original power in paragraph 81(1) is subject to negative procedure. Regulations under new paragraph 81(1A) are subject to affirmative procedure.

The Treasury intend to exercise these powers before 1 January 2022 to amend the definitions across the tax rules applicable to banks. If there are delays to the introduction of the new prudential regime, the Treasury will be able to make these amendments retrospectively, so that they apply from 1 January 2022, if the regulations are made on or before 30 June 2022. These amendments will not be retrospectively charging. The regulations have not been drafted yet. The regulations that the Treasury intend to make in consequence of the introduction of the new Investment Firm Prudential Regime will be subject to affirmative procedure.