

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CORPORATION TAX (NORTHERN IRELAND) BILL

Third Sitting

Thursday 5 February 2015

(Afternoon)

CONTENTS

CLAUSES 1 and 2 agreed to.
SCHEDULE 1 agreed to.
CLAUSE 3 agreed to.
SCHEDULE 2 agreed to.
CLAUSES 4 to 6 agreed to, one with an amendment.
Bill, as amended, to be reported.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6.00

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Monday 9 February 2015

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
FACILITATE THE PROMPT PUBLICATION OF
THE BOUND VOLUMES OF PROCEEDINGS
IN GENERAL COMMITTEES

© Parliamentary Copyright House of Commons 2015

*This publication may be reproduced under the terms of the Open Parliament licence,
which is published at www.parliament.uk/site-information/copyright/.*

The Committee consisted of the following Members:

Chairs: SIR DAVID AMESS, †SANDRA OSBORNE

† Barwell, Gavin (*Lord Commissioner of Her Majesty's Treasury*)

† Dakin, Nic (*Scunthorpe*) (Lab)

† Durkan, Mark (*Foyle*) (SDLP)

† Evans, Chris (*Islwyn*) (Lab/Co-op)

† Gauke, Mr David (*Financial Secretary to the Treasury*)

† Johnson, Gareth (*Dartford*) (Con)

† Jones, Andrew (*Harrogate and Knaresborough*) (Con)

Lopresti, Jack (*Filton and Bradley Stoke*) (Con)

† McDonald, Andy (*Middlesbrough*) (Lab)

† Mahmood, Shabana (*Birmingham, Ladywood*) (Lab)

† Menzies, Mark (*Fylde*) (Con)

† Mills, Nigel (*Amber Valley*) (Con)

† Pound, Stephen (*Ealing North*) (Lab)

† Rutley, David (*Macclesfield*) (Con)

† Swales, Ian (*Redcar*) (LD)

† Wilson, Sammy (*East Antrim*) (DUP)

Marek Kubala, *Committee Clerk*

† **attended the Committee**

Public Bill Committee

Thursday 5 February 2015

(Afternoon)

[SANDRA OSBORNE *in the Chair*]

Corporation Tax (Northern Ireland) Bill

Clause 1

TRADING PROFITS TAXABLE AT THE NORTHERN
IRELAND RATE

2 pm

Mark Durkan (Foyle) (SDLP): I beg to move amendment 6, in clause 1, page 66, line 18, at end add—

“(c) must be made publicly available; and

(d) must be provided to the Northern Ireland Assembly.”

The Chair: With this it will be convenient to discuss amendment 7, in clause 1, page 66, line 29, at end add—

“(c) must be made publicly available; and

(d) must be provided to the Northern Ireland Assembly.”

Mark Durkan: It is a pleasure to serve under your chairmanship, Mrs Osborne. Amendments 6 and 7 point to the need to ensure that changes of interpretation and definition made by either the Treasury or Her Majesty's Revenue and Customs under the Bill are made publicly available, as well as any new regulations or standards. No one will then be surprised by any such changes or think that anything capricious has happened. As I understand it from previous Bills, “made publicly available” usually means that that information will be made available on a website and through other means, as is seen fit. That is the best way to ensure that people who need to know these things do indeed know them. The amendments also make specific provision in relation to the Northern Ireland Assembly's being notified.

The amendments relate to excluded activity and back-office activities in particular. However, starred amendments 8, 9 and 10 make the same point for other parts of the Bill that provide for regulations to be made by HMRC and the Treasury. Those amendments would ensure that where regulations are made—possibly in the light of adjustments to reflect some of the behavioural issues that we discussed this morning—people are properly notified of them.

I would like people to be discretely notified about the Northern Ireland guidance, which I have touched upon in new clause 1. There should be clear, bespoke guidance on the provisions applying to Northern Ireland, so that people do not have to devil away to find them in all sorts of places. I believe that that is the right approach, for a number of reasons. It will ensure that the Assembly, in discharging its new devolved role in relation to corporation tax, can never claim that it was blind to interpretative changes affecting which businesses come under the corporation tax set by the devolved Assembly, or that the conditions were changed unknown to the Assembly.

If the Assembly is setting the rate, it is right that all other rules applying to the rate should be fully known to the Assembly. It must be properly notified. If we are going to have dual powers or functions, one needs to operate in the full light of the other so that the Assembly cannot complain that it was not properly notified or say, “We only found out about this because some accountants raised the issue and came to one of the Assembly's committees and because some firms now say they're running foul of this.”

Due notice must be given, and there needs to be propriety in the different roles that will continue to be discharged by the Treasury on the one hand, which will very much control the rules, and the Assembly on the other hand, which will determine the rate for firms that qualify for the devolved rate. The amendments would simply ensure that that happened.

I will not stray into the wider issue of guidance because that is the subject of new clause 1. I know you will say that I am straying from the strict spirit of the amendment, Mrs Osborne, although we were given wide freedom earlier when discussing credit unions to discuss much else. Touching on credit unions, I note that the amendments relate to the power to amend the definition of “excluded trade” or “excluded activity”. That can, of course, encompass credit unions and the issues we talked about this morning. If the Financial Secretary does not allow changes at further stages of the Bill, I hope he will at least allow the power on page 66 of the Bill, addressed in amendment 6, to be used, among other things, to deal with credit unions and to ensure there are no anomalies.

My reason for tabling the amendments was not an assumption on my part that any or all changes made by the Treasury or HMRC would always be adverse. That is why I make the point about credit unions. It could be that the timing, terms and sequence of changes give rise to concerns, suspicions or grumbles. We do not want anything like that; we want this to work smoothly. We do not want people to look for one thing for the Assembly and find it undermined by changes made at the Treasury. We do not want the Assembly then to say that it did not know and was not told anything about it. That would affect the credibility of the arrangements.

It is also important to ensure that these arrangements are fully public and transparent, because we want to avoid any suggestion that devolving corporation tax is about creating new twilight zones. We want to ensure that the reputation of the region is not affected by claims of anything untoward, unclear or obscure in how the provisions operate. Ministers told us in the evidence session that the Bill is in this form to offer the clearest and cleanest way to provide for the devolution of an important power, while at the same time mitigating abuse, complication and year on year variations, with people not knowing where they stand, falling in and out of different rules and regimes. That is, of course, important.

Ian Swales (Redcar) (LD): I am following the hon. Gentleman with interest. I am surprised that he feels the amendments are necessary. Does he have any examples of where the UK Government have done things that have not been communicated to the north-east assembly—I am sorry, the Northern Ireland Assembly?

Mark Durkan: I do not wish to come here with a litany of complaints. I am trying to look at this with a legislator's eye. If there are going to be these changes, let us ensure there is due notice. It is quite common in other legislation. I have sat on other Bill Committees on financial services, banking reform, small charitable donations and so on, and in all of those cases, where provision for regulation powers was given to the Minister, the Treasury or another Department such as Revenue and Customs, the issue of guidance and publicly available information has always been identified. That is so far missing in this Bill.

I know the Financial Secretary will tell us that because the Bill is mainly amending other legislation, all the normal requirements and obligations around notification are there. Given that we are creating discrete arrangements in relation to Northern Ireland, we should include that point in the changes to any rules, whether they come from the Treasury, as provided for in some parts of the Bill, or from Revenue and Customs, which is provided for in others. We must ensure good practice and good legislation. Unlike the other bits of legislation, there is a specific interest in terms of the Northern Ireland Assembly, and its particular locus needs to be respected.

We do not want the Assembly to find its own reputation impugned because it was setting rates without knowing what else was going on with changes in the rules. Nor do we want the Assembly in turn complaining about, or being asked to complain about, the way in which the Treasury or Revenue and Customs have gone about their lawful business of responding to issues and practices that arise, which they may feel they need to deal with under the terms of the Bill.

There have been issues before where matters of interpretation from the Treasury and Revenue and Customs have caught businesses out—not always in relation to the Treasury's own determinations, but sometimes because of how the Treasury interprets rulings from Europe and how that has affected businesses as well. In some of those cases, there has even been the risk at times of some of those changes having retrospective effect. I know that that was the case for a firm in my constituency that produces wonderful cream liqueurs. If Members buy branded cream liqueurs in any of the main chains, the chances are they are made in my constituency.

A firm looked likely to be caught badly because of changes in European understandings, which, surprisingly to me, were being readily taken on board by the Treasury. The changes related to the duty band for the products in terms of their median alcohol rate. They were going to be put into a higher duty band, and the implication was that it was going to be retrospective as well. We were able to resolve that, but I want to make sure that we do not get anything like that arising under the Bill. I am sure that no one intends it, but we need to take care in the legislation to ensure that changes will be duly notified to all who need to know them, and we need to ensure that the locus of the Assembly is recognised.

The Financial Secretary to the Treasury (Mr David Gauke): I welcome you back to the Chair this afternoon, Mrs Osborne.

Amendments 6 and 7 seek to ensure that any regulations made by the Treasury exercising its powers to amend the definitions of excluded trades or activities, or back-office

functions, are made publicly available and provided to the Northern Ireland Assembly. The hon. Member for Foyle mentioned that he tabled additional amendments that were not included in today's debate. Those are similar to amendments 6 and 7 in that they also seek to ensure that information relating to further powers used by the Government is made public.

Given that the amendments seek to address many of the same issues as the ones included in today's debate, I hope that my response will suffice for all of them. Although I appreciate that the intent behind the amendments is to ensure that any changes to definitions are communicated publicly and in particular to the Assembly, I do not believe them to be necessary.

The powers within clause 1 give the Treasury scope to provide more clarity over excluded trades, activities and back-office functions. HMRC will publish detailed guidance to help businesses understand the definitions of these. In addition, companies with customer relationship managers will be able to discuss any issues or concerns directly with HMRC. If we feel that more clarity is needed, or if we need to deal with changing circumstances, then this power allows us to clarify or change the definitions in legislation. If it is deemed necessary to use the powers to update or change definitions within the regime, then the regulations will be made by statutory instrument.

2.15 pm

As hon. Members will be aware, the Statutory Instruments Act 1946 sets out the requirements for publication of statutory instruments. Therefore, if these powers were to be used, the relevant statutory instrument would be published both online and in hard copy by the Stationery Office, as per all legislation. It is also likely that the legislation would be published in draft first for consultation, so stakeholders would get a chance to comment on any changes being made. On that basis, a requirement in law for regulations to be made publicly available becomes rather redundant, as they already will be.

Turning to the second aspect of the amendments, the communication with the Northern Ireland Assembly, here I have sympathy with the intent behind the amendments, but again I do not believe that they are ultimately necessary. I agree that the Assembly should and indeed must be kept fully abreast of any changes to definitions within the regime, not least given the Assembly's legislative duty conferred by this Bill for setting the Northern Ireland rate. Members of the Assembly and the Executive will need the most up-to-date information on the regime as they consider whatever rate will be appropriate for Northern Ireland. However, the Assembly will already have that information.

First, as I have set out, any legislative proposals are likely to be published in draft and will be published again once finalised. The Assembly—and indeed anyone else—will have access to them. Secondly, and possibly more helpfully, there will exist a number of channels for these issues to be discussed. The exact nature of governance arrangements between the Government and the Executive is yet to be agreed, but I can reassure the Committee, and the hon. Member for Foyle in particular, that they will be of a form that ensures full Executive visibility when using such a power; and that should also be communicated to the Assembly.

To use the example of Scotland, arrangements are set up via a memorandum of understanding to manage governance of the Scotland Act, and in particular the Scottish rate of income tax, between the Government and the Scottish Government. That is at both ministerial and official level. For example, the uses of powers—similar to those subject to the amendment—under the Scotland Act have been shared in draft with the Scottish Government and have been the subject of public consultation prior to laying before Parliament.

In addition, the memorandum of understanding sets out further reporting arrangements, including for the laying of accounts with the Scottish Parliament by HMRC, and reporting and evidence from the HMRC additional accounting officer, who at present is Edward Troup, HMRC second permanent secretary and tax commissioner, to the Scottish Parliament.

Although there are, of course, differences in terms of the constitutional arrangements and the taxes involved, which will need to be considered carefully, I see no reason why the Scottish model should not provide at least the starting point for governance arrangements on Northern Ireland corporation tax, including the communications with the Assembly. For the Committee's information, I expect that discussions on the governance arrangements will commence soon, to be agreed in plenty of time before 2017.

Even though ultimately my argument would be that these amendments are unnecessary, the thrust of them raises an important issue of ensuring that governance arrangements for Northern Ireland corporation tax are robust and sensible, for both sides. If the hon. Member for Foyle agrees to withdraw the amendment, which I urge him to do, I can assure him that my officials will take full account of the need to keep the Assembly informed of any changes as they develop the governance arrangements in discussions with the Executive.

Mark Durkan: I thank the Minister. He has addressed the issues and I appreciate the commitments that he has given to ensuring that all the future machinery of intra-governmental communication between the Treasury and the devolved Administration will ensure that there is, in the terms that he used, "full Executive visibility." Of course, my amendment does not just address the issue of Executive visibility but is intended to ensure that the Assembly can never feel that it was left behind the pillar when important changes that affected the scope, or the relevance, of its powers were made. It is clear from what the Minister has said that he hopes that that Executive visibility does extend to the Assembly being duly sighted of things. I am certainly content with that. I prefer legislation to include a bit more in terms of laying down good practice and building good "Highway Code" standards. There will be difficult traffic and arguments about how clear the lines were at junctions when it comes to some decisions, so I prefer things to be clearer, but that would not lead me to press the amendments to a vote. I look forward to the Minister being able to work with the devolved Ministers and others to ensure that, as more of the scheme is developed, people are content with not just how it starts, but how it will continue to operate—I hope, successfully—over many years. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Mr Gauke: Clause 1 makes the main changes needed to allow Northern Ireland to set its own rate of corporation tax for specified activities and adapts the rules in a number of areas of the corporation tax regime to allow for the existence of a different rate of corporation tax in Northern Ireland from that of the rest of the UK. Since 2010, the Government have cut the UK main rate of corporation tax from 28% to 21%, and it will fall further later this year to 20%, giving the UK the joint lowest corporation tax rate in the G20. The small profits rate has been cut to 20%. The cuts are an essential part of the Government's successful long-term economic plan to make the UK more competitive, supporting business investment and job creation.

However, Northern Ireland has a unique economic position in the UK. I will start by reminding the Committee, briefly, about the arguments in favour of Northern Ireland having its own rate of corporation tax. They were first set out in the consultation "Rebalancing the Northern Ireland economy" in 2011, which highlighted the unique economic challenges that Northern Ireland faces: namely, its demographic and location—uniquely in the UK, it has a land border with another country; its reliance on the public sector; and its legacy of 30 years of the troubles.

Those challenges are no less acute now, as the statistics bear out. Not only is public sector employment around 10% higher than the UK average, but economic prosperity—gross value added per capita—in Northern Ireland is persistently some 20% below the UK average, as it has been for a number of decades. However, Northern Ireland has strong growth potential, which both sides of the House want to unlock. The Northern Ireland business community is convinced that the measure will boost the indigenous private sector, both large and small. A devolved and lower rate of corporation tax in Northern Ireland would be a key tool to attract foreign direct investment. Alongside the efforts being made to put the Northern Irish public finances on a sustainable footing, the measure will provide a means to rebalance the economy for the long term.

On Second Reading, we discussed the objective of working towards a more balanced and prosperous economy in Northern Ireland, which I know is an objective that we all share. That was confirmed by our helpful discussions at Tuesday's evidence session. The Bill is one of the key ways that we can start to achieve that objective.

I will set out the changes made in clause 1 in a little bit of detail. Clause 1 inserts part 8B into the Corporation Tax Act 2010, which makes a number of changes. First, it allows the Northern Ireland Assembly to set the rate of Northern Ireland corporation tax by way of a resolution. The regime is designed to give the Assembly similar rate-setting flexibility to that of the UK Parliament. Being able to set the Northern Ireland rate by resolution means that it will be able to act speedily if it wishes to change its rate. In operation, the rate or rates will be proposed by the Executive, with the Minister of Finance and Personnel making the recommendation to the Assembly. The clause also allows the Assembly to set any rate that it sees fit.

I know that hon. Members have a strong interest in issues relating to the interaction between the rate, the impact on the block grant and the EU state aid rules in this area, particularly the Azores judgment and the so-called Azores criteria. As we covered those points in

some detail in our evidence session, I shall not labour them now. However, with your permission, Mrs Osborne, I shall briefly reiterate a few core points that hon. Members might find useful.

The Azores criteria require that an area receiving devolved fiscal powers is shown to be institutionally, politically and economically autonomous from central Government. In effect, that translates to autonomy to set the tax and collect it without interference or influence, with the region paying the costs of devolution rather than continuing to receive the same or similar levels of funding as before, which would implicitly impose costs on other parts of the country.

That last point is where the block grant comes in. As set out in the Stormont House agreement, the block grant will be reduced to reflect tax revenues forgone by the UK Government as a result of devolution, plus the additional tax revenue forgone due to the behavioural effects resulting from a lower corporation tax rate in Northern Ireland. The Executive will then retain all Northern Ireland corporation tax revenues.

I stress again that the arrangements for calculating the block grant need to be agreed between the Treasury and the Executive, so I cannot provide more details here. Nor does the Azores judgment prescribe how the adjustment should be made, recognising the very different fiscal models in EU member states. However, our current estimate, assuming rates of 12.5% in Northern Ireland and 20% in the UK, is an adjustment of £325 million in 2019-20, assuming that that is the first steady-state year when compared to existing arrangements. As discussed on Tuesday, there will also be a process of reconciliation to compare forecasts with actual results once Northern Ireland corporation tax receipts are known.

My final point on that is to repeat that there is upside as well as downside risk. If a lower rate of corporation tax in Northern Ireland is, as we hope and expect, successful in growing the economy and thus corporation tax receipts, the Northern Ireland budget will see the benefits.

Mark Durkan: Will the Minister clarify whether the block grant, when it is set in future years, might include an assumed amount that will come from corporation tax, or whether it will be minus all corporation tax, meaning that just as with the regional rate, the Assembly will have to raise that amount in addition to the block grant?

Mr Gauke: The final details will need to be worked out in terms of adjustments and the block grant, but my understanding of the position is that first, as I mentioned earlier, there is more than one element to the adjustment that needs to be made. It is not simply a case of a reduction in the block grant reflecting the reduction in the rate made by the Northern Ireland Executive and Assembly; we must also take into account the behavioural effects. That is the first point.

Of the two circumstances described, the latter circumstance will be the case. In other words, the reduction of the block grant will reflect the entirety of the corporation tax base, and then the revenues raised can, to a greater or lesser extent, replace the amounts that would otherwise have been raised from corporation tax. Perhaps I have not made myself entirely clear to the hon. Gentleman: there will be a full reduction in the block grant, so the

whole 20% will be reduced from the block grant and additional sums will be raised by the Northern Ireland Executive through corporation tax at the rate that they determine.

2.30 pm

Mark Durkan: I thank the Minister for that. I am not sure that that is what was understood by all the parties at Stormont House, because when I asked this question, I was told that all that would come off the block grant was the differential created by the lower rate. What does he envisage happening year on year if corporation tax yields become very high? Will that be a windfall benefit to the Assembly and the Executive? If yields are lower, will the block grant be adjusted in future years to take account of that? Or is it entirely a case of, "You have it devolved and you take your chance."?

Mr Gauke: I return to the point I made a moment ago. If the policy is successful in growing corporation tax receipts, the Northern Ireland budget will see the benefits, but the finer details of the block grant adjustments are still to be agreed, obviously within the parameters set out in the Stormont House agreement.

Let me return to the clause. The clause also determines which trades and which profits and losses qualify for the Northern Ireland rate. The new rules aim to target genuine economic activity in Northern Ireland, while limiting the risk of profit shifting. Those two issues came up on Second Reading and in the Committee's evidence session, and I know many Members of the House, understandably, feel strongly about them. They formed a core part of our guiding principles for the design of the new regime. The new rules will apply to trading profits only, which will more effectively target activity that encourages genuine economic growth and employment; profits from, for example, property income will not be included. That principle was agreed in the joint ministerial talks on the design of the regime between the Government and the Northern Ireland Executive following the 2011 consultation.

Although the rate will apply to most Northern Irish trading activities, certain trades and activities are excluded. First, certain activities of the financial services industry are excluded, to reduce the risk of profit shifting into the new regime. The excluded trades and activities are highly mobile and therefore pose a greater risk of profit shifting from the rest of the UK. Including them in the regime might result in a limited increase in employment in Northern Ireland and could have a significant impact on the cut to the block grant. In line with encouraging employment, however, back-office functions relating to those activities will be allowed within the new rules. Back-office functions have been raised a number of times in our debates, so let me spend a minute or so clarifying the legislation on them.

On Second Reading, it was suggested that back-office functions would be excluded from the Northern Ireland corporation tax rate, and interested parties have made similar comments. I am pleased to confirm that that is not the case and that back-office functions for excluded activities will be allowed within the new rules. Such activities do not pose the same risk of profit shifting as the activities specified in clause 1, and provide a fertile area of employment in Northern Ireland—something we are keen to encourage, as are hon. Members.

[Mr Gauke]

Several hon. Members asked about the definition of back-office functions, and the question was also raised in stakeholder meetings my officials held in London and Belfast. The term will take its normal commercial meaning, and HMRC will provide detailed guidance for those less familiar with the term. Chapter 17 of new part 8B of the Corporation Tax Act 2010, inserted by the clause, gives the Treasury a power to specify by regulation what constitutes a back-office function. That will allow the Treasury to provide clarity to companies if necessary, but I hope HMRC's guidance will answer any questions that may arise. In operation, the clause will allow excluded companies a one-off election to bring back-office functions into the Northern Ireland regime. That removes the need for the fragmentation of the company—something the Executive expressed concerns about.

The clause also excludes the profits of oil and gas extraction, as those are ring-fenced for corporation tax purposes and have their own discrete rules and corporation tax rate. I noted the lively discussion on Second Reading, led by the hon. Member for East Antrim, about the potential for development of oil and gas extraction in Northern Ireland, and I await further developments with interest.

The clause sets out the rules for small and medium-sized enterprises, partnerships and large companies. For large companies, the Northern Ireland rate will apply to profits attributable to activity carried out in Northern Ireland through a permanent fixed place of business or by an agent acting on the company's authority. That presence in Northern Ireland is termed a Northern Ireland regional establishment, and where appropriate follows OECD principles. Those are widely recognised and should make it easier for companies to comply with the new rules. For SMEs, the rate will apply to all their UK trading profits if they have at least 75% of their UK employment time and costs in Northern Ireland. We discussed that in great detail in the debate on the amendment tabled by my hon. Friend the Member for Amber Valley, so I will not go into great detail now. However, as was mentioned, the test reduces the burden for SMEs and enables them to follow a simplified set of rules.

The clause amends the rules for various tax reliefs to cater for the introduction of the Northern Ireland rate to ensure that companies feel a similar benefit from the reliefs, regardless of which corporation tax rate applies to them. For example, reliefs associated with research and development, creatives, patents and remediation of contaminated or derelict land are modified so that the benefit is broadly the same regardless of the corporation tax rate applying to the companies. In addition, the rules set out that a Northern Ireland loss is to be first relieved against Northern Ireland profits. If the relief is given against mainstream profits it is to be revalued based on a formula so that Northern Ireland losses, in tax terms, are worth the same wherever they are used.

Finally, the clause sets out how intangible fixed assets will be treated where a company has Northern Ireland profits or losses. The aim is to encourage the development of new intangibles—for example, intellectual property—in Northern Ireland, while not opening up the regime to profit shifting.

Taken together, the changes will provide Northern Ireland with the flexibility it needs to set its own rate of corporation tax, while ensuring that profit shifting and manipulation of the new rules is strongly discouraged. The clause allows Northern Ireland to set its own rate of corporation tax, providing a much needed way to help it rebalance the economy and encourage growth in the private sector.

Ian Swales: The rules about intangible fixed assets are quite complicated and it would be helpful if the Minister confirmed that it will not be possible, for example, simply to move a business's intellectual property to a Northern Ireland regime, as happens with other companies, to Bermuda for example. How will the regulations prevent that?

Mr Gauke: First, the regime will be available only for intellectual property created after commencement, so it will not be possible to move existing intellectual property to Northern Ireland; it is forward-looking only. It will then be a case of examining these matters and ensuring that any relevant intellectual property is created in Northern Ireland. The forward-looking nature of the provision makes it much easier to address that concern.

I have taken a little time to talk about clause 1, which is at the heart of the Bill.

Mark Durkan: It is the whole of the Bill.

Mr Gauke: Well, it is the Bill. I hope that the Committee will forgive me for taking a little time to run through it. I dare say that there will be questions about some of the detail, and I will be happy to take the Committee through the clause in much greater detail, if that is desired, although the published explanatory notes cover it.

Shabana Mahmood (Birmingham, Ladywood) (Lab): I was rather surprised that the Minister did not go on a bit longer. I hope he will forgive me some detailed questions about clause 1 and in particular the 17 chapters of new part 8B of the Corporation Tax Act 2010 that it introduces. The Committee will be pleased to know that I do not intend to go individually through each of the chapters.

As the Financial Secretary explained, clause 1 and enables the Northern Ireland Assembly to set the main rate of corporation tax in respect of certain trading profits, to be called the Northern Ireland rate. The rate in general will apply to all of the trading profits of a company if that company is a micro, small or medium-sized enterprise, and the company's employees' time and costs fall largely in Northern Ireland. The rate will also apply to trading profits attributable to certain operations of large companies using the usual internationally recognised principles of attribution, and to an appropriate share of a corporate partner's share of the profits of a partnership.

We are committed, as I believe are hon. Members across the House, to supporting measures that would increase inward investment in Northern Ireland and support the much-needed rebalancing of Northern Ireland's economy. For decades, Northern Ireland has lagged behind the rest of the UK in terms of productivity and prosperity. Various measures have been tried to boost the Northern Ireland economy, including increased levels of investment and job-creation programmes but few have had long-term success. In contrast, for many years

the Republic of Ireland has had a low corporation tax rate of 12.5%, specifically designed to attract direct foreign investment, stimulate internal investment and therefore stimulate the whole economy. As we have discussed, it has long been argued that a similar or lower rate would have similar benefits for the Northern Ireland economy. The need for such a change is more pressing, given the land border between the two countries.

The starting point is to acknowledge that the case for devolution of corporation tax to Northern Ireland is unique. Compared with the rest of the UK, Northern Ireland has underperformed economically. The Financial Secretary mentioned the impact of 30 years of the troubles, which deterred inward investment and prompted many highly skilled workers to leave Northern Ireland and seek employment elsewhere. As I said, the sharing of the land border with the Republic of Ireland is what makes the case for Northern Ireland and for this change different from arguments that may be made by other parties elsewhere.

Mr Gauke: I agree with the hon. Lady's points about the specific circumstances in Northern Ireland and the general case for devolution. Will she give us her views on the case that lower corporation tax rates can result in higher levels of investment and productivity? As a general matter, does she accept that argument?

Shabana Mahmood: I can see where the Financial Secretary is trying to take the debate, so let me tackle the underlying political point head on. Of course it is the case that the headline rate of corporation tax has an impact on the matters he raises, but he will know—I am sure that the businesses that tell me this tell him, too—that the headline rate of corporation tax is not the only factor that companies consider when deciding in which country to locate; it is one of a range of factors. I will make that point in relation to the changes envisaged for Northern Ireland. That is an important aspect of the policy-making framework, it does have an impact on the decisions companies make about the relocation of their businesses, but it is not the only factor and it would be a mistake to think that that alone it is a magic bullet, either for the UK as a whole or Northern Ireland in particular.

If the Financial Secretary is referring to our manifesto commitment for an increase in the headline rate of corporation tax from 20% to 21%, he will know, because I have told him on many occasions, that we are making that change in order to support small and medium-sized enterprises in relation to business rates. All the money raised from the change will be spent on cutting and freezing business rates. Business rates policy is also an important aspect of the cost of doing business. I am sure that he would agree, though we may differ on the things that should happen to alleviate the pressure of business rates.

2.45 pm

I return to the specific challenges faced by Northern Ireland. As I said, there are unique reasons why this change makes sense for Northern Ireland and not for other parts of the United Kingdom—I am thinking in particular of the arguments made by the SNP in relation to Scotland, which we heard a little about on Second Reading. However, it would be a mistake to think that changes to corporation tax rates alone will succeed in turning the

Northern Ireland economy around. It can certainly provide a huge boost to the efforts needed to achieve that, but I fear that it may not succeed on its own.

There are a number of other drivers of economic growth: in particular, labour costs, skills availability and infrastructure are incredibly important. When looking at why the Republic has been so successful, many commentators would say that the broader policy framework is just as important as the very low rate of corporation tax. Many Members have already alluded to the importance of other policy drivers in achieving the economic growth in Northern Ireland that we all want to see. However, we did not hear much from either the Secretary of State or the Financial Secretary about the Government's view on what further policy changes might be needed. I hope that I can persuade the Financial Secretary to say what he thinks the rest of Northern Ireland's policy environment will need to look like for the full benefits of this change to be felt by its people. In addition to discussions about the headline rate and what must be done to achieve its devolution, are there any discussions going on now between the Treasury and the Northern Ireland Executive about the rest of the policy framework?

The Financial Secretary may well say that some of those matters are already wholly or partly devolved to the Northern Ireland Assembly, but when considering a move that might have a negative impact on other parts of the UK, I would think that the UK Government would have at least given some thought to what else should be done within Northern Ireland to ensure that the measure is successful for both the people there and the UK as a whole. I would welcome his comments on that. Has the Treasury made an official assessment of other policy changes needed to make this measure the success we all want it to be?

The Financial Secretary will be aware that the Republic of Ireland's economy has had some well-publicised problems in the past few years, despite its low corporation tax rate. This measure is partly about enabling Northern Ireland to compete better with the Republic when it comes to investment. How confident is he that the measure will provide the anticipated stimulus to Northern Ireland's economy, particularly given what has been happening to the economy in the Republic of Ireland?

The Financial Secretary is right that we have already had a fair bit of discussion about issues in relation to the Azores judgment, the block grant and the formula, but he will not be surprised to hear that I want to press him further on those. As he confirmed in his opening remarks this afternoon, the block grant reduction is currently estimated to be in the region of £325 million. That is a significant element of Northern Ireland's budget and will require some significant changes. I suspect that the Members from Northern Ireland have a better idea than me of what that will mean for people and communities on the ground, but I imagine that the impact will be significant. The issue of how the formula is calculated and how it will work will therefore be incredibly important.

I take on board the Financial Secretary's point that these matters still have to be nailed down. They are subject to further discussion and, I hope, large areas of agreement between the Northern Ireland Executive and the Government, although it would only be fair to point out that they might be an issue of some contention and a stumbling block to progress.

I listened to what the Minister said about the Azores judgment and how it does not set out any formula that should be applied. In the oral evidence session, he also said that there is no element of standardisation, because each formula would have to be worked out on the basis of individual fiscal constraints within different countries. Post-Azores, however, are there any other constraints in EU law or arising from other judgments that might help give us an idea of the parameters in which the formula will operate? Or is everything left to the rather more broad-brush comments in the Azores judgment?

What discussions has the Minister had with the European Commission about the devolution of corporation tax to Northern Ireland? Are discussions already under way to mitigate the potential risk of legal challenge? It would be helpful to know that.

We touched on this in questions when looking at when the reduction to the block grant will happen. The Minister said that both things would have to happen, because of cash flow, at “broadly the same time”—those were the words he used when I asked him a question in the oral evidence session. I want to press him on whether, realistically, there are therefore any EU state aid constraints to that part of the measure.

Again this comes back to the formula, but for the Treasury to make an assessment of behavioural changes in connection with corporation tax is not something new to it—we have often discussed behavioural change. Is standard methodology used by the Treasury when it looks at the behavioural changes of companies due to changes in taxation laws, whether nationally or under international taxation rules? Will that form the basis of discussions with the Northern Ireland Executive on nailing down the formula, because the behavioural changes bit will probably be the most difficult to nail down? It would be helpful to know whether there is a standard methodology and, if so, what it is.

Much of the debate on tax avoidance and the scope for profit shifting took place earlier in connection with the amendments tabled by the hon. Member for Amber Valley, but I want to pick up on the point about the pressure on the Northern Ireland Executive to ensure that profit shifting is not occurring. It is in no one’s interest to see the rest of the UK lose business to Northern Ireland because of profit shifting. It is not in Northern Ireland’s interests either, as the financial burden will fall on the Northern Ireland Executive because they will have to pay back more money and suffer greater losses to the block grant. We cannot yet envisage policy measures to head off potential profit shifting, apart from the standard areas of risk, because companies might come up with ingenious things that we have not yet thought about or been able to turn our minds to. Who will have policy responsibility for coming up with regulations or other legal changes to head off future types of profit shifting?

In oral evidence, the Minister’s official, Mike Williams, made a good point about the joint role of HMRC in the risk assessment of possible profit shifting and tax avoidance. HMRC is sitting on both sides of the fence, so it will see early what is going on and, we hope, it will be able to take remedial action to eliminate such activities. Nevertheless, might that joint role cause a problem when it comes to policy responsibility on profit shifting?

I am sure that as soon as the Northern Ireland Executive clock that profit shifting is occurring and is damaging to them—they will have to pay back more money to the Treasury—they will want to take action quickly. Will a HMRC team be working specifically with the Northern Ireland Executive on these issues? Will there be a named contact and a named official working together to look at this policy area? Is there potential for a conflict of interest? If there is a disagreement between the Northern Ireland Executive and the Treasury about the extent of behavioural change and what is counted as profit shifting, where does the resolution of that conflict lie and would HMRC’s role be somewhat constrained in a potential conflict, given that it sits on both sides of the fence, as Mike Williams said? It would be helpful if the Minister could give some indication of what might happen in a scenario such as that.

We learned from the oral evidence session that the resourcing cost of the measures, particularly that relating to profit shifting and other avoidance activity, will be paid for by the Northern Ireland Executive. I do not believe that we have heard any numbers on what that cost might be. Forgive me if I have missed something, but it would be helpful if the Minister could tell us the projected costs.

On the broader issue of tax avoidance and the UK’s role on the international stage, the Minister has already discussed the base erosion and profit shifting, or BEPS, process in previous debates on the Bill. That process is incredibly important and we support the Government’s work on the matter. Some in the international tax justice community might unfairly refer to the measure as an onshore tax haven. We would all dispute that; it would be an unfair and incorrect characterisation of what is happening. The Minister will know better than me, because he is closer to the discussions, that perception is important in the world of international tax fairness, especially bearing in mind the OECD processes, particularly BEPS. It would be helpful to hear some detail about the reaction of our international partners and whether concerns have been expressed and dealt with.

What is the Minister’s most recent assessment of the extent of tax-motivated incorporation? In the last figures that I saw, HMRC estimated that the cost would be £10 million in year one, £25 million in year two, £35 million in year three, £45 million in year four and £50 million in year five. Is there any more recent assessment of that?

We have already discussed conditionality, but I do not feel that we have received a detailed answer. I do not think that the Minister will go further than what he said when I pressed him previously, but I raise the matter again because it will be a significant issue for the Northern Ireland Executive if ultimately they are to receive the powers in April 2017. Alongside the calculation of the formula for the repayment of moneys from the block grant, it is a potential area of dispute that could have the power to derail the process.

The condition that the Northern Ireland Executive have to get their finances on to a stable footing is a significant hurdle for them to clear, but that has not really made it into the coverage of the change. As the hon. Member for East Antrim mentioned previously, the devolution of these powers is by no means a done deal; there is a significant amount of work still to do. I was less surprised that the conditionality criteria that must be met have not yet been finalised between the

Government and the Northern Ireland Executive; I was more surprised that we do not yet have a timetable for the staging posts of the discussions leading to the decisions on what the criteria will be.

3 pm

Can the Minister tell us today, or at least by the time the Bill completes all its stages in both this House and the other place, whether the Government can give an indication of some timetabling over the next year or two, so that, for example, we know when the decision about the formula will be made, and when the decision about the criteria to meet the condition around sustainable finances will be made? Then at least the Northern Ireland Executive will know what timetable they need to work to, in order to jump through the hoops that are still to be decided on; at least the timetable would give us some idea of what we need to consider moving forward.

I turn to some of the detail of the clause. There is a point that I raised with the Minister in the oral evidence session. Some of the tax commentators and tax professionals that he and I are very familiar with are concerned about the complexity of the legislation. This Bill is both very straightforward and quite complex. It is short, and clause 1 contains most of the measures. Nevertheless, the Bill runs to 90 pages and contains cross-references, both to other provisions within the Bill and to external provisions in other statutory measures, and even an EU definition. The Bill has 20 algebraic formulae, and in its final three pages a listing of more than 50 defined expressions.

For people in the tax community, such as accountants, lawyers and other professionals, I suppose it is usually the case that there are long-running technical consultations wherein they can raise points that only they, rather than MPs in Bill Committees, are in a position to spot. That is not necessarily the process that has occurred with this Bill. The Minister has helpfully said that he will keep an open mind as to whether further changes of clarification and so on might be needed in future Bills. However, will he consider the case for a fuller and lengthier technical consultation, to make sure that there are not straightforward things in the Bill that, with a bit more time, the professionals would have been able to examine, which could have eased some of these potential issues?

Finally, I will touch on chapters 4 and 5 of the new part 8 of the Corporation Tax Act 2010. Because of the amendment tabled by the hon. Member for Amber Valley, we have had already had some discussion about the opting-in capacity of small and medium-sized enterprises into the large business rules and how there is, in theory, the potential for SMEs not to be well served by the inability to opt in to those rules.

The Chartered Institute of Taxation has raised a couple of more practical issues for SMEs that particularly relate to the SME work force test. It notes, for example, that for flexible geography businesses such as construction, there might be practical issues, because quite a few Northern Ireland construction companies are based in Northern Ireland but tender for work throughout the UK, and indeed beyond, and they send people wherever the work is. They employ people with different employment statuses.

The Minister and I have discussed the employment status of various people in the construction sector several times, and it is not always a straightforward

matter. The Government have legislated to take account of some of the ways in which those statuses are used to avoid tax. What consideration has he given to this problem in the construction sector, to the definition of employment and to the impact of different types of employment status when it comes to the question of who should ultimately be included in the work force for an SME to meet the test set out in chapter 4?

The CIOT also states that for relevant smaller businesses there will need to be a measure of whether at least 75% of the business's staff time and costs relate to work in Northern Ireland. That will inevitably add to the compliance burden on businesses. Obviously, for small businesses, that can be a particular problem. Can the Financial Secretary tell us what assessment has been made of that burden on small businesses? Are there things that HMRC can do, from a more educational perspective, to help small businesses with their approach in dealing with companies that have acted in good faith, but may find themselves falling foul of the rules?

I am grateful to the Financial Secretary for his clarification of excluded trades and back-office functions. Taking into account what he has said and what Mr Williams said in oral evidence, my understanding is that he and his officials will keep an open mind about whether more definition is needed in legislation. Perhaps the first preference would be to consider slightly more detailed guidance from HMRC. A yes or a no answer would be helpful on that final point.

Sammy Wilson (East Antrim) (DUP): It is a pleasure to serve under your chairmanship, Mrs Osborne.

I do not want to go into the detail of the first clause, because I do not understand most of it, to be truthful. I have read through it and all I can imagine is that some of the people in KPMG must be salivating at the opportunities that the Bill will present to them and their clients. However, I want to raise a few issues.

First, I thank the Financial Secretary, who has been to and fro over the years working with the Northern Ireland Executive on this issue. I thank him for his endurance and also for the interest that he has shown. I suppose we always knew there would be a political solution at the end of the day, and I am glad that we have now reached this position. However, the measure is not a silver bullet for the Northern Ireland economy. Indeed, investors have put many factors ahead of the reduction in corporation tax as the types of things that would influence them to locate in Northern Ireland. Nevertheless, it is an important element in helping the Northern Ireland Executive to rebalance the economy. That is not something that we have yet achieved.

I welcome the effort that the Government have made. The one thing that we in Northern Ireland wanted to see was this legislation on the books before the end of this Parliament, and we seem to be on a path to doing that. However, there are conditions that still have to be met by the Executive in Northern Ireland, and I want to press the Financial Secretary on that. Welfare reform has been mentioned, which I think will get through the Assembly now because the parties seem to be committed, but there is this also idea of a sustainable budget.

The matter cannot be devolved unless there is a sustainable budget, for the simple reason that the quantum of the reduction in the block grant of about 3% will

[Sammy Wilson]

cause significant changes to be made in departmental budgets in Northern Ireland. It is difficult for the Assembly and for politicians in Northern Ireland to get to the position where they can work out a system or budget if they do not have certainty as to the cost. I can understand the Financial Secretary's argument that there are still significant negotiations to be had between the Treasury and the Executive in Northern Ireland. However, there is no point in imposing a condition—and it was the Government who rightly imposed the condition on the Northern Ireland Assembly—without pinning down the figures, and if there is still uncertainty about what must be done to comply. As to the figures that have been floating around—and not just for the initial handover—the hon. Member for Foyle and the shadow spokesperson tried to get the Minister to explain how the continuing costs will be calculated; certainty about that is important.

The other condition laid down was that a budget would be agreed for the next year of the Assembly. That will be done, but the relevant budgetary considerations in relation to a sustainable budget are not for 2015-16, but for the years afterwards. That is why we need clarity about the costs.

I am heartened by what the Minister has said today. I will pass it on to colleagues in Northern Ireland, because the figure of £325 million is not just the direct costs; behavioural costs have also been built in. I was especially heartened by his replies to the hon. Member for Amber Valley. I hope that he is right in believing that the ability and mechanisms to prevent the moving of huge amounts of profit are built into the Bill.

As I said in an intervention, the moving of profits is not in the interest of the Executive in Northern Ireland. The whole idea of devolution is to bring jobs to Northern Ireland, not paper transactions about profit movement. Indeed, if that happens, we will have failed, because we will be paying out money and getting no reward for it. That is why vigilance on the part of HMRC is important. I do not doubt that the Northern Ireland Finance Minister and the Minister at the Department of Enterprise, Trade and Investment will keep a sharp eye out for such movement, but if it is identified, HMRC should immediately deal with it.

At one stage, about a third of the costs of devolving the matter to Northern Ireland were in anticipation of behavioural effects, many of which were to do with profit movement. If the Minister will stand over the assurances that he has given today, I am sure that those negotiating on behalf of the Northern Ireland Executive will say, "That figure, then, should be pressed down—squeezed—and the total cost to the Northern Ireland Executive reduced."

The question has been asked whether resources will be attached, to ensure that there will not be movement of profits. I understand that payment by the Northern Ireland Executive is still built into the costs: they will pay to ensure that the compliance regime is resourced. At one stage, more than £10 million was attached to that. I hope that not only will there be safeguards set out in the Bill, but additional resources to make sure there is compliance. The Minister's assurances, together with resources from the Executive, should deal with some of the fears expressed by Members such as the hon. Member for Amber Valley.

3.15 pm

The last thing is the issue of definitions. The Minister mentioned tightening the definitions of back-office facilities, especially regarding the financial services industry. This is not an unimportant issue for Northern Ireland because over the past few years, the one area where we have been successful in attracting jobs, especially high-paid jobs, has been financial services and, in particular, in what would be defined as the back-office areas of that industry. That could be legal departments, call centres in Northern Ireland, or analysis of the kinds of business that are done there. It has been a prime source of new jobs for Northern Ireland.

The DETI Minister is concerned that if the definition of a financial service is too tight, some of what she and Invest Northern Ireland have defined as back-office functions could be closed out from being offered these kinds of incentives. I hope that there will be further discussions about that so that if the definitions need to be tightened, or at least clarified, that can be achieved.

I hope that the Bill will have the transformational effects that we hope it will have for the Northern Ireland economy. Things still have to be done back home, but there has been good scrutiny so far, as well as support from the Minister and, indeed, from the Opposition. I know that this has been a difficult issue for the Labour party; I noted the attempt by the Minister to bait the Opposition spokesman on the issue. Nevertheless, having listened to the parties in Northern Ireland, it has been agreed that the provision would not be opposed, and we welcome that.

Mark Durkan: I appreciate the terms in which the Minister addressed clause 1, which is very large. He spoke not only to its details, but to the other working implications in respect of the block grant that arise and will rest on the Bill.

As the hon. Member for East Antrim mentioned, part of the problem is that we now have more understanding of the implications for companies' tax status and position than we have of the budgetary situation of the Executive and the Assembly. As he said, it is not important just that we know the numbers, but that we understand the method. We still do not quite know the method. The Minister was honest enough to say that some of that still has to be worked out, but there is a difficulty in that people will say that, in the Committee and elsewhere, we are talking up what we hope will be the benefits of the Bill, but are not clear yet what the costs will be and how they will be counted or managed. That needs to be addressed and the Executive and the Treasury need to move further and faster if people are to be reassured that there is not a big gonk to come in a couple of years' time.

We asked the Minister how the measures would affect the block grant, and there still seems to be some uncertainty about that. I know from talking to some parties—certainly, some parties were saying this during the talks at Stormont house—that they are content that the only hit on the block grant is simply the marginal difference of whatever the reduced rate would be from those companies. Otherwise, everything else in the block grant would be there.

The Minister seemed to say that no, the block grant will take the hit of the whole 20%, not just of the estimated differential, meaning that the Executive will have to complement the lower block grant with the lower rate

of corporation tax revenue raised. That will create its own budgetary challenges for the Executive, along with knowing when they can count on having the money. Will they be allowed to continue spending on the basis that it is known or thought that the revenue will come in, or will they have to wait, as with the regional rate grant? The regional rate grant is a discrete tax that falls to the Executive and Assembly at the minute, and they can add that money only on the basis of having received it.

That is important in terms of the sustainable budgetary environment about which the Minister and Ministers in previous debates have spoken, as well as the hon. Member for East Antrim. We can talk about having a sustainable budget only when we can credibly tell people that we know what the budgetary regime will look like after corporation tax is devolved for certain qualifying activities. We need to know how the block grant will be counted in terms of corporation tax. That is why, in the evidence session the other day, I asked whether we were essentially considering a form of tax assignment, like what we are considering in relation to Scotland and like what many people in England now seem to favour for local government and local government conglomerates here. I still think that we need more clarity on that, if the Minister can say anything in that regard.

The issue for the block grant is not just the corporation tax raised from those companies that qualify for the lower devolved tax rate but the rest of the corporation tax raised. Will that be deemed to be assigned or counted towards the block grant, and how so? The Minister said earlier that the answer to some of the questions that we have raised might lie in considering how devolved tax matters will be handled in Scotland. The issue of tax assignment arises there in terms of transparency, because with some matters in Scotland, it is clear that the tax assignment arrangement means that the Barnett formula allocation for Scotland will include certain assigned taxes, such as the first half of VAT and so on. Are we facing a situation in which the Northern Ireland block grant in future, under a hopefully revised Barnett formula—well, revised as we would want it revised, not as others might want it revised—might include a clear element of tax assignment? I say that not because I believe that that would be a bad thing; it could actually be a good thing in terms of ensuring greater clarity.

I note that the hon. Member for Birmingham, Ladywood mentioned that some people were concerned that creating a devolved corporation tax window in Northern Ireland would lead to insinuations about an onshore tax haven. Clearly, we all want to protect our reputation from any such impression. The companies operating in the region will want to be protected from any such insinuation, as will the Government here, given the lead role that they are taking on base erosion, profit shifting and other issues.

The more transparency we can have on the difference to our budget and our budget management system, the better, as well as clarity that there is not room for a lot of buckshee activity to be passed off as happening in Northern Ireland when it is really elsewhere because profits are being shifted, along with plates of various commodities. I do not know why everybody is obsessed with brass, or why it can only be brass; in the age of innovation, there are plates of many other kinds. I am

quite sure that the Treasury is alert to the fact that plates come in more forms than just brass, as we all should be.

That raises the important questions of how we want to make use of this benefit and why we have wanted power over elements of corporation tax to be devolved or, going all the way back to the Good Friday agreement, to have what we described then as “fiscal discretion” in some areas. Yes, of course it is to foster and encourage more of our own businesses to grow and, when they grow, to stay; it is also to ensure that we do not lose jobs in Northern Ireland when businesses grow, become big players and are acquired. We have had the experience of firms growing, being very successful and then being acquired and their jobs being removed. It might well be that when some of those firms are acquired in future, there is more of an incentive for the new owners to keep the jobs in Northern Ireland. That is one reason why I had concerns about amendment 3, tabled by the hon. Member for Amber Valley. It could have had an unforeseen consequence if it was used against a company that had made a decision to maintain an acquired establishment in Northern Ireland.

When it comes to canvassing for inward investment, we want to ensure that Ministers and others, such as Invest Northern Ireland, who will be making the sales pitch are not open to any sneering insinuation that they are somehow trying to sell a tax avoidance location. That is another reason why we need clarity through dedicated and bespoke Northern Ireland guidance. No one will then have the sense that anything is being done or sold in any other terms, and we will all be protected.

Ministers have made the point that part of the logic of doing this is to ensure a more balanced economy in Northern Ireland. Clearly, steps will be taken under the Stormont House agreement in relation to getting the right size for our civil service and wider public services, but simply downsizing in the public sector will not give us a balanced economy in a dynamic sense unless we also do more to grow our private sector. We hope that this capacity in terms of corporation tax will give us one plank in the platform we need for that growth.

As we have seen in the experience of the south of Ireland, corporation tax alone is not what drives growth. Originally, the low rates of corporation tax in the south attracted low-end jobs doing basic assembly, with little spin-off business for indigenous companies in the economy and not much value added in terms of skills. That changed over the years because of significant investment in skills, in further and higher education and in infrastructure in the Republic. If we want Northern Ireland to be in a better position to compete with the south in terms of the levels of investment and growth, we have to be realistic. The Assembly will not have the same power over corporation tax as the Oireachtas in Dublin does. Differences will remain at a number of levels. We must also recognise that more needs to be done in the north in terms of skills, further education and expanding higher education significantly.

3.30 pm

We see developments in further and higher education here, some of them linked to Treasury measures and some to the growth deals and city deals that are coming forward. The Assembly and the Executive in Northern Ireland need to look at more tools of that kind. I have

asked the Chancellor and Ministers questions in the Chamber about Northern Ireland being able to pick up more on enterprise zones. We now have one enterprise zone. I will not go into my issues on how that was chosen or how that came about, but I favour the idea and I want us to have more than one, and not least one in my constituency. I would also like us to develop our own version of the city deals. A city deal has been done in Scotland involving the devolved interests, local government and other local stakeholders and the Treasury, and I would like to see the same done in Northern Ireland.

Having a more balanced economy can work only if we have a more balanced region, and we do not have a balanced region in Northern Ireland. The west is badly depleted, not least the north-west, where we have enduring levels of high unemployment. There is a huge need to expand higher education and for infrastructure. Many of those issues are the subject of plans that have been agreed by all the parties and across all the main sectors. For instance, in my city of Derry there is the One plan. Our own version of a city deal may well be a way of taking some of those measures forward and ensuring that a city such as my own is in the best position to benefit from the devolution of corporate tax powers to the Assembly.

It is clear from what the Minister is saying and what we heard from the officials who gave evidence the other day that there will be careful monitoring of what happens and of how companies adapt to the new corporation tax environment. There will be a measured consideration of behavioural impacts and any consequential adjustments that need to be made, but I am not sure that that can all be done from the remote assumed sophistication of some HMRC offices here in Britain. HMRC's move to remove more of the capacity on the ground in Northern Ireland will hamper some of that monitoring. The local tax officers are in a better position to know what is going on, how things are being done and to make an assessment.

I say that based on experience of the terrible treatment that people have had from HMRC. Cross-border workers have had an absolute nightmare with tax credits, precisely because there is no local tax office that they can turn to anywhere in Northern Ireland. Firms operating on a cross-border basis are having huge difficulties with their declarations and their attempts to reclaim money paid in tax in the south. They are having huge difficulty with some of the arrangements, and they are dealing with an office in Liverpool, which keeps saying, "No, we lost that," or, "We have not got it."

From everyone's point of view, it would be better if we have a new differential regime in Northern Ireland. The more there can be a local accent to how the system works, the better that is for everybody. HMRC would not lose anything by that, because, if we are going to follow through on the terms we heard the other day, this would be different from other interjurisdictional issues, because HMRC would be on both sides of what was happening. There is a case for asking HMRC to revise its plans to foreclose essentially on three tax offices in the border areas: Newry, Enniskillen and Foyle house in Derry, in my constituency.

The Minister touched on the issue of intellectual property. It strikes me that that is another area where room has been left in the legislation for future adjustments

and interpretations. The qualifying line for that—it is intellectual property only after a certain date—gives rise to a slight wrinkle, in that some people will question whether they should wait until that point even if they have an idea that is ready before then. I raise that only to make sure that no unintended consequences arise from the provision. The point needs to be made—there cannot just be a big bang and then everybody can find a new place. I accept the need for a qualifying timeline; I simply want to make sure that people do not wait for that day one if they have natural and strong business ideas that should move forward.

My only other questions relate to the compliance-related costs that will fall to the Executive. We should make sure that there is always clarity about those costs. It will be good if we can avoid any kind of tension or contention between the Executive and the Treasury on those matters. We know are dealing with an unequal relationship—we have to be honest about that. The interpretive power always rests with the Treasury—it always has the last word on all such matters, whether interpretations about behavioural effects, decisions on the block grant or the rest.

Both the hon. Member for East Antrim and I are former Finance Ministers in the Northern Ireland Executive, so we know that mentality of, "We are the Treasury, so we don't have to give you a reason." We have all had experience of trying to find out how a decision was made on what was or was not counted under the Barnett formula. An example might be the Olympic spend; back in my days, it was the spend on metropolitan railways and other things. If it is always going to be left to the Treasury and there is then a grumble from the Executive, again, that will undermine the credibility of what we are trying to do.

With the various measures in the Stormont House agreement, some of them very difficult, we are trying to make sure that we have a more sustainable basis economically, to make some infrastructure investments and to make some structural changes that are difficult but have to be made. In doing those things, we have to take people with us who may have different interests or many misgivings. The Assembly and the Executive will best be able to do that if they do not face questions about their own credibility or their competence to deal with the Treasury and get a good deal, or even questions about whether they know what deal they have got. The very questions that the Minister addressed are questions that we cannot comfortably leave for long.

Mr Gauke: We have, not surprisingly, had a full debate on clause 1. I will attempt to address the various questions raised.

I will go back to the beginning and the speech by the hon. Member for Birmingham, Ladywood. She made the point, as others have, that corporation tax is not the only issue and policy—to use the phrase of the hon. Member for East Antrim, it is not a silver bullet. The Government recognise that there are other measures of relevance for Northern Ireland. Many of the relevant issues are devolved and are in the hands of the Northern Ireland Executive; it is principally their responsibility to come forward with policies that will help Northern Ireland to grow. Whether that is matters to do with planning or whatever, it is not for me to be prescriptive this afternoon.

I will point out, however, that the financial package that was part of the Stormont House agreement included a contribution to capital funding of up to £500 million over 10 years in respect of projects to support shared and integrated education, subject to individual projects being agreed between the Executive and the UK Government. There is also up to an additional £350 million borrowing for infrastructure projects. The UK Government are taking measures to assist the Northern Ireland Executive on education and infrastructure, both of which are important in the context that we are discussing.

On the benefit to the Northern Ireland economy, I will make a general point—I thought for a moment that we might have consensus on this. Lower corporation tax can mean a higher return on investment, and a higher return on investment can drive up productivity. There is therefore a strong case for lowering corporation tax, as the Government have done over the course of the Parliament.

Control of corporation tax in the context of Northern Ireland can be a powerful lever to rebalance the economy and to increase private sector investment. The potential impact of the policy will depend on the rate set by the Northern Ireland Assembly and the Executive. The intention clearly is to rebalance the economy by encouraging growth. Devolution of taxes can provide macroeconomic benefits, as well as achieving wider political or social goals, although it is difficult to quantify any possible benefits or costs. Today we are devolving the power to set the rates; the Bill does not set the rates themselves, so the impact will depend on what happens with that.

The block grant and various associated issues were mentioned, as were the discussions with the European Union. By way of background, the EU state aid rules—specifically, the Azores criteria, as I said earlier—mean that Northern Ireland's block grant must be adjusted to pay for the devolution of a corporation tax rate-setting power. There is no standard EU formula, because member states all have different tax systems and different ways of funding devolved Administrations, but the approach that we and the Northern Ireland Executive are working on is based on the arrangements agreed with the Scottish Government on the Scottish rate of income tax. I have already set out information about the Azores criteria and explained the key points. In terms of what is happening with the Commission, I can confirm that we are in discussions, which I hope to be completed later this year. As for state aid, let me be clear: we are confident that the regime is within state aid rules.

The hon. Member for Birmingham, Ladywood also asked about the details of the questions that need to be answered on the block grant adjustment. That is a fair question, but the answer is somewhat complicated. To be fair and to ensure that I am as accurate as possible, probably the best thing for me to do is to write to her about it. We do need to agree detailed arrangements with the Northern Ireland Executive. We expect to have a reconciliation process at some point after the end of each financial year.

Such a process is already planned in relation to the Scottish rate of income tax. Before the start of each financial year, the Scottish Government budget will be set using forecasts of the block grant adjustment and the income tax revenues. About 12 months after the end of the financial year a reconciliation process will replace the forecasts with what happened, with adjustments

applied in the following year. As I said, the UK Government and the Northern Ireland Executive will have to agree precise arrangements for estimating the initial tax revenue forgone on the appropriate index.

3.45 pm

The hon. Member for Foyle referred to cash-flow issues, which brings us back to what I was saying about the readjustment. There are couple of income streams: the revenue coming in from corporation tax receipts and the block grant that goes through to the Northern Ireland Executive. We need to work in a constructive manner to ensure that those flows work as smoothly as possible, which will help in terms of deduction and revenue in. We will agree the cash-flow basis for deduction and revenues.

On resourcing costs for assessing profit shifting, which was an important point raised by the hon. Lady, a memorandum of understanding between the Northern Ireland Executive and the UK Government will cover areas such as the costs, processes, governance and accountability. Work on that is ongoing.

The hon. Lady also raised the cost of tax-motivated incorporation. That number has been revised significantly downwards since the number she quoted was published. For 2019-20, the first year of the steady state, TMI is estimated to be only £5 million, presuming a 12.5% rate in Northern Ireland and a 20% rate for the rest of the UK. That revision has resulted in a significantly reduced figure.

The hon. Lady asked whether there was a conflict of interest for HMRC in ensuring that the correct sum is reached when determining the right amount to be paid at the right time by businesses operating in Northern Ireland. HMRC always has the same aim: to ensure that the right amount of tax is paid at the right time. Where there are disputes between companies and HMRC, it will ultimately be for the courts to arbitrate. HMRC's relationship in reporting to the Northern Ireland Assembly will be part of the governance arrangements we will set up, which I described in the debate on amendments 6 and 7 tabled by the hon. Gentleman.

On help for small businesses with the work force test, HMRC will produce detailed guidance to assist small businesses with applying the regime. There is no plan for a further formal consultation that would be lengthier and technical, but the Treasury and HMRC are always open to representations from business and we have made it clear that we can amend the provisions before the regime comes into force. However, up to now, the reception has been positive: there is recognition of the hard work put in by HMRC and the Treasury. Perhaps I should say, in words that will be familiar to the hon. Lady, that we keep all tax matters under review.

On back-office and excluded trade, our position, as Mike Williams made clear to the Committee earlier this week, is that "back-office" is not defined, so it has its usual meaning. I assure the Committee that HMRC will provide detailed guidance on matters such as excluded trades. I understand that businesses that are likely to be affected will have a clear idea of what their back-office functions will be, but the guidance will be available for those that do not. Many firms already identify those cost centres for their internal management accounting, so that should not be too much of a difficulty.

The hon. Member for East Antrim asked on what implementation was conditional, and what would happen in future. One condition of the Stormont House agreement was that legislation for changes to the welfare system would be pushed through, and I believe that that is on track. It is crucial for the Executive to demonstrate that they can deliver sustainable budgets as they prepare to take on corporation tax-setting powers. The Stormont House agreement rightly makes that a condition of any decision to turn on the Executive's power to vary the Northern Ireland corporation tax rate. We are all determined to work to put the Northern Ireland Executive in a position to make use of the power.

The question of intellectual property was raised by my hon. Friend the Member for Redcar and touched on by the hon. Members for Foyle and for Birmingham, Ladywood. As I have said, the risks of benefiting from shifting existing intellectual property are removed by including only intangibles created post-commencement within the Northern Ireland rate. Existing profit allocation rules will apply to new assets and may be strengthened further by the base erosion and profit shifting project recommendations. The Bill also amends the existing intangibles regime targeted anti-avoidance rules to provide protection against manipulation prior to disposals.

The hon. Member for Foyle spoke about HMRC officers. That point is a familiar one for him; he is nothing if not persistent. I am not persuaded by his case that proper enforcement of the new regime requires additional resources to be placed in Northern Ireland. It is worth bearing in mind that the costs of implementation are borne by the Northern Ireland Executive. Although I hear what he has said, if substantial new resources were to be put into HMRC—I argue that that would not be the most cost-effective thing to do—the cost would be picked up by the Northern Ireland Executive.

I hope that those points of clarification are helpful to the Committee. Agreement over the governance of compliance costs is important, as the Northern Ireland Executive must meet the additional costs that arise as a result of devolution. They are likely to form part of governance discussions, which I expect to commence shortly. As I have mentioned, Scottish income tax arrangements provide a good starting point for those discussions. There is a formal memorandum of understanding between the Scottish Government, HMRC and the Treasury, and a similar memorandum of understanding will be agreed for the Northern Ireland Executive and the Treasury.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 3 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5

COMMENCEMENT

Mr Gauke: I beg to move amendment 2, in clause 5, page 67, line 36, at end insert—

“() Section 1171 of CTA 2010 (orders and regulations) does not apply to the power of the Treasury under subsection (3)(a).”

This amendment prevents a general provision about the procedure applicable to regulations under “the Corporation Tax Acts” (defined in the Interpretation Act 1978) from affecting regulations under Clause 5(3)(a). As is usual with orders or regulations bringing legislation into force, these regulations are not subject to parliamentary control.

The clause gives the Treasury the power to set the start date of the new regime through regulations before Northern Ireland can set its own rate of corporation tax. As the Committee knows, commencement of the regime will depend on the Northern Ireland Executive delivering on their commitments in the Stormont House agreement, which we have been discussing. The start date of the new regime will therefore depend on the Executive's ability to demonstrate a sustainable plan for their finances. The earliest the regime can come into effect is April 2017. We hope it will come into effect on that date, but, first, the Executive must demonstrate that their finances are on a sustainable footing for the long-term.

As my right hon. Friend the Secretary of State for Northern Ireland said in the oral evidence session, the Treasury, the Northern Ireland Office and the Northern Ireland Executive will work out the exact criteria that will be applied to determine whether that is the case. Although the exact criteria have not been settled, it will be important to see a stable budget and a clear demonstration that the Executive are able to live within their means. It is important for discussions to continue on the arrangements for calculating the block grant and for that to be agreed ahead of 2017.

The recent agreement on a final draft budget for 2015-16 is a welcome development, as is the Executive's commitment to reform the public sector and to take steps to ensure that their budget is sustainable for the longer term. They have shown that they have the determination to sort out their budget for 2015-16, and that there is strong political support for a reduction in corporation tax.

The 2017 start date, if met, will allow Her Majesty's Revenue and Customs to update its systems for the new regime. Importantly, it will also give companies two years to prepare. Finally, it will allow for any necessary tweaks to the legislation to ensure that it functions as we intend when the new regime begins. The clause also includes provisions for companies whose accounting periods straddle the commencement date.

The amendment ensures that the clause has been drafted in line with normal practice for commencement powers that give the Government the power to turn on the legislation by regulations made by statutory instrument. It is a minor, technical amendment to ensure that the legislation does what it is intended to do and that there is no scope for misinterpretation.

Mark Durkan: Can the Minister assure us that there is no intention to use the power to switch on the legislation, which remains in the hands of the Government, to impose policy choices on the Executive? Some of us perceived strong-arm tactics being used in relation to welfare reform. The Assembly thought it could make certain choices, but now it cannot. Can he assure us that there is no plan to abuse the power relating to sustainable budgets and the Treasury's judgment to enforce policy directions on the Executive?

Mr Gauke: I return to what I said a moment ago. There is certainly no intention to abuse the power. The intention is to ensure that the Stormont House agreement

is fulfilled, which requires the Northern Ireland Executive to ensure that their public finances are on a sustainable footing. That is the purpose, and I assure the hon. Gentleman that we will not abuse the power.

Sammy Wilson: Just so it is on the record, does the Minister accept that that was not the interpretation of all parties in Northern Ireland? Indeed, the implementation of welfare reform was an essential part of balancing the budget, insofar as while it was not implemented, substantial moneys were going from the block grant back to the Treasury.

4 pm

Mr Gauke: I am grateful for that intervention. I was attempting to address the general accusation of strong-arm tactics, and I have a lot of sympathy with what the hon. Gentleman has said. With those comments, I beg to move that the amendment be accepted and the clause stand part of the Bill.

Shabana Mahmood: I am grateful to the Minister for his explanation of the clause and the amendment. I will be brief. Everything he said highlights again that the onus is back on the political process that must now be undergone for the Northern Ireland Executive to show that they have put their finances on a sustainable footing. In the clause 1 stand part debate, I asked whether there was potential for the Minister, until this Bill completes all its stages in this House and the other place, to give an indication of the timetable we might be working to over the next year or year and a half or so. I did not catch an answer to it in his previous remarks. Will he return to that point?

Mr Gauke: First, I am grateful for the hon. Lady's support for the clause and the amendment. All I can say at this point is that the earliest possible date of implementation, as set out in the Stormont House agreement, will be the financial year beginning 1 April 2017. As the agreement states, the powers will be commenced from April 2017, subject to the Executive demonstrating that their finances are on a sustainable footing for the long term, including successfully implementing measures in the agreement and subsequent reform measures. A moment ago, we nearly had a rerun of some of the debates in Northern Ireland on that matter.

Beyond what is set out in the Stormont House agreement—agreeing and delivering a final balanced budget for 2015-16 by January 2015 and the Welfare Reform Bill passing through consideration stage in the Assembly by the end of February 2015—the UK Government are working with the Northern Ireland Executive to agree further detail. I do not think I can set out any more information at this point, but we hope to make good progress on that.

Mark Durkan: I thank the Minister for accepting an intervention; it saves me from trying to make this point separately after he sits down. There is some concern, not just because of the experience on welfare reform, where the block grant was fined unless the Assembly passed a Bill that it otherwise would not have wanted to pass. Without going back to all that, will the Minister assure us that the judgment that is made on budget

sustainability in a couple of years' time will not hinge on the Treasury saying to the Executive, for instance, "You do not have a sustainable budget unless you introduce water charges. You do not have a sustainable budget unless you introduce some other measure, or unless you raise revenue in another direction"? That is people's concern in relation to the switch-on power—that the switching on will be withheld unless and until other things happen, a bit like the welfare reform experience.

Mr Gauke: Let me say this: my approach to looking at the finances of the Northern Ireland Executive as a whole, in their totality, is that they need to be on a sustainable footing. When it comes to public finances, whether in Northern Ireland or in the United Kingdom—public finances are the sum of its parts—this is a matter of looking at the totality of the public finances and the full context. I do not think I can say much more on that point. The hon. Member for East Antrim was in some respects making the point that it was credible to address the sustainability of the public finances of the Northern Ireland Executive only if welfare reform was included—that is the argument I think he would make and there is a lot to be said for it. Nevertheless, in terms of how the Treasury will view that in future, I would not go beyond the wording set out in the Stormont House agreement.

With those remarks, I commend the amendment to the Committee.

Amendment 2 agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

Mr Gauke: On a point of order, Mrs Osborne. Before you put the final question to the Committee, I want to stand briefly to thank you for your guidance today and on Tuesday. I also thank Sir David Amess for his role. I know that his day in the sun was cruelly taken away and that he will feel a degree of emptiness next week. I must say that he conducted the Programming Sub-Committee with great dispatch: we completed it in approximately 60 seconds, so his service on this Bill was most efficient, as indeed has been the scrutiny today. I thank all Members for their participation. Although we have managed to progress more quickly than anticipated, the Bill has been properly probed. I am delighted by the support of the five parties represented today for the direction of the Bill; it is heartening.

I thank the usual channels: as always, my hon. Friend the Member for Croydon Central and the hon. Member for Scunthorpe managed to arrange matters in good spirit. I thank the hon. Member for Birmingham, Ladywood. Once again, our paths have crossed in a Bill Committee, as they have on numerous occasions over the course of the parliamentary year. So much for a zombie Parliament: I think we have done about five Bills between us. I also thank the Clerks, the *Hansard* reporters, the police and the attendants. I thank the officials from the Treasury, HMRC and the Northern Ireland Office, and I thank my hon. Friends the Members for Dartford and for Harrogate and Knaresborough, who passed inspiration to me as and when necessary.

I hope that the smooth progress made on the Bill can continue. The hon. Member for East Antrim, who has had much to do with this project in more than one capacity over many years, pointed out that it was important

[Mr Gauke]

to the people and parties of Northern Ireland that we get this legislation on to the statute book in the course of this Parliament. We have made a big step towards achieving that goal today, and I am delighted that we have done so. Some of us, particularly the hon. Gentleman and I, have been working on this matter for many years, so I am pleased that we have reached this point.

Shabana Mahmood: Further to that point of order, Mrs Osborne. I associate myself with the Minister's remarks, particularly his thanks to you and Sir David Amess. I thought that his 60 second estimate was rather generous; the time we spent in the Programming Sub-Committee was considerably shorter, but that was entirely down to Sir David's excellent chairmanship. Long may it continue.

I, too, thank the officials from the Treasury, HMRC and the Northern Ireland Office, as well as the Clerks,

the Doorkeepers, the police, *Hansard*, the Whips for keeping us all in line so very well, and Members from across the House. Although the debate has not taken up all the sittings allocated, it has been detailed and we have had high-quality contributions from Members from across the House. That is a sign of how important some of these issues are to not only Members with a direct interest but all of us who want both Northern Ireland and UK plc to succeed.

I also thank the Minister. He is right: so much for a zombie Parliament. He and I alone are keeping the legislative flame alive in this Parliament. I see more of him than I do many of the rest of my colleagues. I look forward to discussing the Bill further as it continues its passage through the House.

Bill, as amended, to be reported.

4.11 pm

Committee rose.

Written evidence reported to the House

CT02 ACCA

CT01 KPMG Belfast

