



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

The Rt Hon Esther McVey MP and Graham Stringer MP
Chairs of the Finance Bill Public Bill Committee
House of Commons
London
SW1A 0AA

15 May 2023

Dear Esther and Graham,

POWERS CONTAINED IN SPRING FINANCE BILL 2023

This letter provides information on the clauses in this year's Finance Bill which contain powers to make secondary legislation and sets out detail on each power being taken.

A summary is provided on the powers contained in clauses 10, 16, 24, 25, 27, 37, 44, 45, 46, 51, 52, 55, 78, 80, 81, 83, 85, 86, 88, 90, 91, 92, 98, 99, 100, 102, 105, 112, 118, 119, 120, 125, 241, 250, 256, 257, 262, 282, 301, 314, 315, 320, 330, 331, 336, 338, 345, 347, 348, 350.

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

Yours sincerely,

VICTORIA ATKINS MP

Spring Finance Bill 2023: Clauses with powers to make secondary legislation

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Glossary of statutory references and other terms:

Statutory references

CCA	Capital Allowances Act 2001
CEMA	Customs and Excise Management Act 1979
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
TIOPA 2010	Taxation (International and Other Provisions) Act 2010
VATA	Value Added Tax Act 1994

Other terms

ATED	Annual Tax on Enveloped Dwellings
CSOP	Company Share Option Plan
FA	Finance Act
HMRC	His Majesty's Revenue and Customs
OECD	Organisation for Economic Co-operation and Development
R&D	Research and Development
RDEC	Research and Development Expenditure Credit
SDLT	Stamp Duty Land Tax
SDIL	Soft Drinks Industry Levy
SME tax relief	Tax Relief for Small or Medium Sized Companies
TPG	Transfer Pricing Guidelines
TRA	Trade Remedies Authority

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

Clause 10 Schedule 1: Relief for research and development

Clause 10 introduces Schedule 1 which makes changes to the Research and Development (R&D) tax relief for small or medium sized companies ("SME tax relief"), and to R&D Expenditure Credit ("RDEC"), the R&D relief open to all but mainly claimed by larger companies. Paragraph 2(6) of Schedule 1 allows the Commissioners for HMRC by regulations to specify the information to be provided with a claim notification as well as the form and manner in which the notification is to be made. Any regulations made under this power would be subject to the negative procedure.

Paragraph 13 of Schedule 1 allows the Commissioners for HMRC by regulations to specify the information to be provided by the claimant company as well as the form and manner in which the information is to be provided. Any regulations made under this power would be subject to the negative procedure.

Clause 16: Company Share Option Plan (CSOP): share value limit and share class

Clause 16 amends Schedule 4 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 (CSOP schemes) to increase the share option limit and remove a restriction placed on the type of shares eligible for inclusion within a CSOP scheme.

The clause introduces a new paragraph 6(5) that will allow the Treasury by regulations to change the share option limit. This power mirrors a similar power within the Enterprise Management Incentives provisions (the other discretionary tax-advantaged share scheme). The limit is already being increased, commencing from 6 April 2023. Any regulations made under this power would be subject to the negative procedure.

Clause 24: Collective money purchase arrangements

Clause 24 provides for the income tax treatment of pension benefits paid by a collective money purchase (CMP) scheme which is in the process of being wound up. Newly inserted subsections 169 (1F) and (1G) allow the Commissioners for HMRC to make regulations to provide for the treatment of CMP pensions which have been transferred to a drawdown pension as a result of the scheme being wound up. Any regulations made under this power would be subject to the negative procedure.

Clause 25: Relief relating to net pay arrangements

Clause 25 provides for a top-up payment to be paid by HMRC to individuals contributing to a net pay arrangement pension scheme, and whose total taxable income is below or equal to the personal allowance. Newly inserted subsections 193(A)(9) and (10) allows the Treasury to make regulations to amend or otherwise modify section 193(A), and provides that such regulations may make different provision for different purposes. Any regulations made under this power would be subject to the negative procedure.

Clause 27: Taxation of devolved social security benefits

Clause 27 introduces a power to allow the Treasury to amend Chapter 13 of Part 10 of ITEPA 2003 to add new, or new top up, social security benefits created by devolved administrations to the table of taxable social security payments. Under the power, the UK Government will be able to clarify that certain social security payments are taxable via statutory instrument. Any regulations made under this power would be subject to the negative procedure.

Clause 37 and Schedule 5: Records relating to transfer pricing

Clause 37 introduces Schedule 5, which provides for the keeping of records for the purposes of Part 4 of TIOPA 2020 (transfer pricing). Paragraph 1(2) and Paragraph 3(2) of Schedule 5 allows the Commissioners for HMRC by regulations to make provision as to the form or manner in which relevant transfer pricing records are to be kept and preserved with reference to the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines (TPG). Any regulations made under this power would be subject to the negative procedure.

PART 2: ALCOHOL DUTY

Clause 44 and Schedule 6: Categories of alcoholic products: interpretation

Paragraph 5 of Schedule 6 sets out the definition of “Cider”. Paragraph 5(b)(ii) provides that cider may only consist of fermented apple or pear juice without the addition of anything that communicates colour or flavour other than a ‘permitted substance’. Paragraph 6(b) of Schedule 6 gives the Commissioners for HMRC the power to specify that a substance is a ‘permitted substance’ for the purposes of paragraph 5 of Schedule 6 in a notice published by them. This power re-enacts an existing regulation making power contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. The public notices are not subject to parliamentary procedure.

Clause 45: Alcoholic strength

Clause 45 explains how the alcoholic strength is to be determined for the purposes of alcohol duty charged on alcoholic products. Clauses 45(1) and (2) set out that the alcoholic strength of an alcoholic product is the ratio, expressed as a percentage, of the volume of alcohol contained in an alcoholic product to the volume of the alcoholic product (inclusive of the alcohol contained in it) at 20°C. Clause 45(5) clarifies that alcohol means ethanol.

Clause 45(3) allows the Commissioners for HMRC by regulations to make provisions about how alcoholic strength, weight or volume of any alcoholic products or other substance should be determined for the purposes of Part 2.

Clause 45(4) provides for those regulations to include provision for the alcoholic strength, weight or volume to be determined based on the bottle or container the product is contained in or documents that relate to the bottle or container.

This power is a partial re-enactment of existing powers contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. Any regulations made under this power would be subject to the negative procedure.

Clause 46: Categories of alcoholic products: regulations

Schedule 6 defines the different categories of alcoholic products on which alcohol duty is charged. Clause 46(a) allows the Treasury by regulations to make provision to amend the alcoholic product categories defined in Schedule 6. Clause 46(b) allows the Treasury by regulations to provide for an alcoholic product to be treated as being a particular category even if it would otherwise fall within another category. These powers are a partial re-enactment of existing powers contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. Any regulations made under clause 46(a) would be subject to the made-affirmative procedure. Any regulations made under clause 46(b) would be subject to the negative procedure.

Clause 51: Alcoholic products qualifying for draught relief

Clause 51 sets out the requirements for 'qualifying draught products' that are charged reduced rates of alcohol duty.

Clause 51(1)(b) explains that at the duty point 'qualifying draught products' must be contained in a large draught container or be being transported to a place in the UK for the purposes of being transferred to a large draught container.

Clause 51(3) defines a 'large draught container' as a container with (a) a capacity of at least 20 litres and (b) that incorporates or is designed to connect to a 'qualifying system' for dispensing individual drinks. Clause 51(4) defines what is meant by 'qualifying system'.

Clause 51(5) allows the Commissioners for HMRC by regulations to make provisions to amend the capacity of 'large draught containers' defined at clause 51(3)(a) and to add, remove or vary the description of a 'qualifying system' at clause 51(4).

This power gives the Commissioners for HMRC the flexibility to respond to future developments as needed to ensure that draught relief operates as intended. Any regulations made under clause 51(5) would be subject to the made-affirmative procedure.

Clause 52: Repackaging qualifying draught products

Clause 52 introduces a penalty for repackaging qualifying draught products that have been charged with a reduced rate of alcohol duty from large draught containers into containers that are not large draught containers subject to certain exceptions. Clause 52(1)(b) sets out that repackaging is allowed if the full rate of duty rather than the reduced rate of duty has been charged on the large draught container. This enables bottle shops and other on-trade business such as brewery shops to decant alcoholic products from large draught containers into smaller containers for take away sales.

Clause 52(6) allows the Commissioners for HMRC by regulations to make provisions requiring a person who has elected to be charged the full rate of duty on a large draught container, to provide to the person the container is supplied to, information or documents specified in or under the regulations, as evidence that the full rate of duty has been charged. This power gives the Commissioners for HMRC the flexibility to respond to future developments as needed to ensure that draught relief operates as intended. Any regulations made under this power would be subject to the negative procedure.

Clause 55: Small producer alcoholic products

Clause 55 defines what 'small producer alcoholic products' are, for the purposes of small producer relief. Small producer relief provides for discounted rates of excise duty on qualifying alcoholic products produced on small production premises.

Clause 55(1)(d) allows the Commissioners for HMRC by regulations to make provisions for other conditions (if any) to be met in order for an alcoholic product to be classed as a small producer alcoholic product.

This power gives flexibility in providing for any conditions that may be needed to ensure small producer relief operates as intended. Any regulations made under this power would be subject to the negative procedure.

Clause 78: Authorised use for certain purposes

Clause 78(3) provides that the Commissioners for HMRC authorise a person to receive spirits, without payment of alcohol duty for certain purposes. Those purposes are set out in clause 78(1) and (2) as the manufacture or preparation of medical articles or for scientific purposes, or where the person proposes to use spirits for the purposes of art or manufacture (other than of medical articles) and the Commissioners for HMRC are satisfied that denatured alcohol would not be suitable for that use.

Clause 78(5)(a) provides that the Commissioners for HMRC may specify in a notice published by them the conditions (if any) that must be met for an authorisation under clause 78. This power is a partial re-enactment of existing powers contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. The public notices are not subject to parliamentary procedure.

Clause 80: Restrictions on use of certain articles

Clause 80 provides for penalties and forfeiture where a person makes unauthorised use of articles that contain spirits and have been exempted from duty because they are medical articles or the alcohol duty on the spirits used in the manufacture of the article has been remitted.

Clause 80(6) allows the Commissioners for HMRC by regulations to make provisions for the purposes of enforcing the penalties and forfeiture.

Clause 80(7) provides that those regulations may require a person carrying on a trade in which spirits or articles manufactured with spirits are, in the opinion of the Commissioners for HMRC, likely to be or have been used –

- to give and verify details of the materials they are using or have used, or the articles sold; and
- to produce any documents relating to the materials or articles.

This power is a re-enactment of an existing power contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. Any regulations made under this power would be subject to the negative procedure.

Clause 81: Further provisions about remission and repayment

Clause 81(1)(b) is a regulation-making power for the Commissioners for HMRC to specify conditions (if any) by or under regulations that must be met to gain remission or repayment of alcohol duty under provisions set out in Chapter 4. Chapter 4 provides for reliefs and exemptions for alcohol duty in certain circumstances such as when alcoholic products are spoilt or used for purposes other than as a beverage.

This power, in part, re-enacts existing regulation-making powers contained in the Alcoholic Liquor Duties Act 1979 which are being repealed as part of the wider alcohol reforms. Any regulations would be subject to the negative procedure.

In addition, clause 81(1)(a) provides that the Commissioners for HMRC may specify in a notice published by them the conditions (if any) that must be met to gain remission or repayment of alcohol duty under provisions set out in Chapter 4. This power is a partial re-enactment of existing powers contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. The public notices are not subject to parliamentary procedure.

Clause 83: Supplementary provisions about approvals

Clause 83 outlines supplementary provisions for approvals given to a person to produce alcoholic products in the United Kingdom under clause 82.

Clause 83(2)(b) allows the Commissioners for HMRC by or under regulations to make provisions for such an approval to be subject to conditions or restrictions (if any).

Clause 83(4) allows the Commissioners for HMRC by or under regulations to make provision specifying the form and manner of, and the information contained within, an application for approval.

The regulations would be subject to the negative procedure.

In addition, clause 83(2)(a) provides that the Commissioners for HMRC may specify in a notice published by them the conditions or restrictions (if any) that an approval under clause 82 is subject to. This power is a partial re-enactment of existing powers contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. The public notices are not subject to parliamentary procedure.

Clause 85: Exemption: research and experiments

Clause 85 provides for an exemption from the requirement to be approved to produce alcoholic products under clause 82 if a person produces alcoholic products only for the purposes of research into, or experiments in, the production of alcoholic products.

Clause 85(b)(ii) allows the Commissioners for HMRC by or under regulations to make provisions for the requirements that a person benefitting from such an exemption must comply with and the alcoholic products must be produced in accordance with. Any regulations would be subject to the negative procedure.

In addition, clause 85(b)(i) provides that the Commissioners for HMRC may specify in a notice published by them the requirements that a person benefitting from an exemption under clause 85 must comply with and the alcoholic products must be produced in accordance with. The public notices are not subject to parliamentary procedure.

Clause 86: Mixing alcoholic products

Clause 86(5) provides for a fourth exemption (mixing for consumption on the premises) from the clause 86(1) prohibition against mixing two or more alcoholic products. Clause 86(5)(c) provides that the third condition for the fourth exemption to apply is that the method of mixing used is of a description specified by the Commissioners for HMRC in a notice published by them. The public notices are not subject to parliamentary procedure.

Clause 88: Alcoholic products: regulations

Clause 88 is the main regulation-making power for Part 2 of this Bill and, in part, re-enacts existing regulation-making powers contained in the Alcoholic Liquor Duties Act 1979 which are being repealed as part of the wider alcohol reforms.

Clause 88(1) allows the Commissioners for HMRC by regulations to make provision about alcoholic products and alcohol duty (“alcoholic product regulations”). This includes:

- for regulating the production, packaging, keeping and storage of alcoholic products produced in, or imported into, the United Kingdom;
- for determining when the production of any alcoholic product begins and when it is completed;
- for securing and collecting alcohol duty;
- for determining alcohol duty and the rate and the method of charging the duty;
- for charging alcohol duty, in specified circumstances, by reference to an alcoholic strength which any alcoholic product might reasonably be expected to have, or the rate of duty in force, at a time other than that at which the alcoholic product becomes chargeable;
- for determining the alcohol production amount in relation to a set of premises (for the purposes of Small Producer Relief), in specified circumstances, by reference to an alcoholic strength which any alcoholic product might reasonably be expected to have at a time other than that at which the alcoholic product is produced;
- for full or partial relief from alcohol duty in specified circumstances (and whether or not subject to conditions);
- for regulating or prohibiting the addition of substances to, the mixing of, or the carrying out of other operations on or in relation to, any alcoholic product;
- for regulating the approval of persons under this Chapter, including the variation or revocation of the approval or of any condition or restriction to which it is subject;

- for permitting, in specified circumstances, the removal of alcoholic products from certain premises without payment of duty (whether or not subject to conditions);
- for making provision in respect of alcoholic products permitted to be removed from premises without payment of duty or on which alcohol duty has been remitted;
- for regulating the transportation of alcoholic products;
- for requiring the production of certificates as to matters relating to alcoholic products imported into the United Kingdom, and the production and producer of those products, as evidence that conditions for charging the duty at a particular rate are satisfied.

Clause 88(2) provides that the alcoholic products regulations under clause 88(1) may include provisions:

- requiring the making of returns;
- for notifications and other communications with the Commissioners for HMRC to be made electronically;
- requiring persons to keep, and make available for inspection, specified records relating to alcoholic products;
- for the imposition under the regulations of requirements as to documents to accompany, or be provided with, alcohol products at any time during a specified period or in specified circumstances, and requiring production of those documents;
- conferring powers on an officer of Revenue and Customs to inspect, copy or remove for a reasonable period records or documents relating to alcoholic products;
- for assessing an amount as alcohol duty due from a person in specified circumstances;
- for the imposition under the regulations of conditions and restrictions (which may include a requirement to give a guarantee or other security).

This power, in part, re-enacts or aligns across the product categories existing regulation-making powers contained in the Alcoholic Liquor Duties Act 1979 which are being repealed as part of the wider alcohol reforms. It also ensures that new provisions for small producer relief operate as intended. Any regulations made under this power would be subject to the negative procedure.

Clause 90: Denatured alcohol

Clause 90(1) provides for denatured alcohol to be exempt from the charge of alcohol duty.

Clause 90(2) allows the Commissioners for HMRC by or under regulations to make provision for prescribing the formulations of denatured alcohol, specifying the substances to be added to the alcoholic product and the manner of mixing.

Clause 90(3) provides that these regulations may specify substances or the manner of mixing by reference to particular circumstances (or other factors) or the approval or opinion of specified persons.

This power re-enacts existing regulation-making powers contained in section 5 of the Finance Act 1995 which is being repealed as part of the wider alcohol reforms. Any regulations would be subject to the negative procedure.

Clause 91: licence to manufacture and deal wholesale in denatured alcohol

Clause 91(1) provides that a person may not denature any alcoholic products or deal wholesale in denatured alcohol unless they hold an excise licence as a denaturer. Clause 91(2)(a) sets out that “dealing wholesale” for the purposes of clause 91(1) means selling at least 20 litres of denatured alcohol at one time to one person.

Clause 91(2)(b) allows the Commissioners for HMRC by or under regulations to make provision for a smaller quantity than 20 litres to be specified.

This power re-enacts an existing regulation making power contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. Any regulations would be subject to the negative procedure.

In addition, clause 91(4) provides that an application for an excise licence as a denaturer must be in the form and manner, and contain the information, specified by the Commissioners for HMRC in a notice published by them. The public notices are not subject to parliamentary procedure.

Clause 92: Regulations relating to denatured alcohol

Clause 92(1) allows the Commissioners for HMRC by regulations to make provision for denatured alcohol. This includes:

- for regulating the denaturing of alcoholic products;
- for regulating the supply, storage, removal, sale, delivery, receipt, use, export or shipment as stores of denatured alcohol;
- for permitting alcoholic products to be denatured in a warehouse;
- for permitting dealing wholesale in denatured alcohol of a specified description, in specified circumstances, without an excise licence;
- for regulating the import, receipt, removal, storage and use of alcoholic products for denaturing;
- for regulating the storage and removal of substances to be used in denaturing alcoholic products;

- about the manner in which account is to be kept of stocks of denatured alcohol in the possession of persons licensed as denaturers and of retailers of denatured alcohol.

Clause 92(2) provides that regulations for denatured alcohol under clause 92(1) may include provisions:

- for applications and other communications with the Commissioners for HMRC to be made electronically;
- requiring persons licensed as denaturers and retailers of denatured alcohol to keep, and make available for inspection, specified records relating to denaturing;
- conferring powers on an officer of Revenue and Customs to inspect, copy or remove for a reasonable period those records;
- for the imposition under the regulations of conditions and restrictions (which may include a requirement to give a guarantee or other security).

This power re-enacts and modernises an existing regulation making power contained in the Alcoholic Liquor Duties Act 1979 which are being repealed as part of the wider alcohol reforms. Any regulations made under this power would be subject to the negative procedure.

Clause 98: Definitions

Clause 98 defines certain expressions used in Chapter 7 which relate to the wholesaling of controlled alcoholic products. Clause 98(3) sets out the circumstances under which controlled alcoholic products are sold 'wholesale'. Clause 93(3)(d) provides that alcoholic products are not sold wholesale if the sale is an 'excluded sale'.

Clause 98(7) allows the Commissioners for HMRC by or under regulations to make provision specifying a described sale as an 'excluded sale'.

This power re-enacts an existing regulation making power contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. Any regulations made under this power would be subject to the negative procedure.

Clause 99: Further provision relating to definitions

Clause 99(1) allows the Commissioners for HMRC by regulations to make provision, for the purposes of the wholesaling of controlled alcoholic products, as to which sales are or are not to be treated as wholesale sales, sales of controlled alcoholic products, incidental sales, authorised retail sales, or group sales.

Clause 99(2) allows the Commissioners for HMRC by regulations to make provision, for the purposes of the wholesaling of controlled alcoholic products, as to when a person is, or is not, to be treated as carrying out a controlled activity when:

- they are offering or exposing controlled alcoholic products for sale in circumstances in which the sale (if made) would be a wholesale sale, or
- they arrange in the course of a trade or business for controlled alcoholic products to be sold wholesale or offered or exposed for sale in circumstances in which the sale (if made) would be a wholesale sale.

These powers re-enact existing regulation-making powers contained in the Alcoholic Liquor Duties Act 1979 which are being repealed as part of the wider alcohol reforms. Any regulations made under this power would be subject to the negative procedure.

Clause 100: Approval to carry on controlled activity

Clause 100(1) provides that anyone carrying out a controlled activity for the purposes of the wholesaling of controlled alcoholic products must be approved by the Commissioners for HMRC.

Clause 100(4)(b) provides that an approval may be given by the Commissioners for HMRC subject to conditions or restrictions (if any) specified by them by or under regulations.

Clause 100(5) provides that these conditions or restrictions may require the controlled activity to be carried on only at, or from, premises specified or approved by the Commissioners for HMRC.

This power re-enacts an existing regulation making power contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. Any regulations would be subject to the negative procedure.

In addition, clause 100(4)(a) provides that an approval may be given by the Commissioners for HMRC subject to conditions or restrictions (if any) specified by them in a public notice. This power re-enacts an existing regulation-making power contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. The public notices are not subject to parliamentary procedure.

Clause 102: Regulations relating to approval, registration and controlled activities

Clause 102(1) allows the Commissioners for HMRC by regulations to make provision for the wholesaling of alcoholic products. This includes:

- for regulating the approval and registration of persons under the alcohol wholesaling provisions;
- for regulating the variation or revocation of any such approval or registration or of any condition or restriction to which such an approval or registration is subject;
- regulations about the register of approved wholesalers maintained by the Commissioners for HMRC;
- for regulating the carrying on of controlled activities, and
- for imposing obligations on approved wholesalers.

Clause 102(2) provides that regulations for the wholesaling of controlled alcoholic products under clause 102(1) may include provisions:

- requiring applications, and other communications with the Commissioners for HMRC, to be made electronically;
- as to the procedure for the approval and registration of bodies corporate which are members of the same group and for members of such a group to be jointly and severally liable for any penalties imposed under—
 - (i) the regulations, or
 - (ii) Schedule 10;
- requiring approved wholesalers to keep and make available for inspection such records relating to controlled activities as may be specified by or under the regulations;
- conferring powers on an officer of Revenue and Customs to inspect, copy or remove for a reasonable period those records;
- imposing a penalty of an amount specified by the regulations (which must not exceed £1,000) for a contravention of—
 - (i) the regulations, or
 - (ii) any condition or restriction imposed under the alcohol wholesaling provisions;
- for the assessment and recovery of such a penalty;
- for alcoholic products (whether or not charged with any duty and whether or not that duty has been paid) to be subject to forfeiture for a contravention of—
 - (i) the alcohol wholesaling provisions or the regulations made under this clause, or
 - (ii) any condition or restriction imposed under the alcohol wholesaling provisions.

This power re-enacts an existing regulation-making power contained in the Alcoholic Liquor Duties Act 1979, which are being repealed as part of the wider alcohol reforms. Any regulations made under this power would be subject to the negative procedure.

Clause 105 and Schedule 10: Penalties for contraventions of alcohol wholesaling provisions

Clause 105 and Schedule 10 contain provisions about penalties relating to the wholesaling of controlled alcoholic products.

Paragraph 10(1) of Schedule 10 sets out that the 'maximum amount' for the purposes of calculating the penalty is £10,000.

Paragraph 10(2) and (3) allows the Treasury by regulations to provide for a different amount to be substituted for the £10,000 in paragraph 10(1) if it appears to the Treasury there has been a change in the value of money since the date on which the

Finance (No.2) Act 2023 is passed or the date on which this power has been used, if that amount appears to them to be justified by that change.

Paragraph 10(4) provides that these regulations do apply to any penalty for a contravention that occurred before the regulations come into force. This power re-enacts an existing regulation making power contained in the Alcoholic Liquor Duties Act 1979 which is being repealed as part of the wider alcohol reforms. Any regulations made under this power would be subject to the negative procedure.

Clause 112 and Schedule 12: Alcohol duty: duty stamps

Clause 112 and Schedule 12 make provision about duty stamps for alcoholic products. Paragraph 1(2)(a) of Schedule 12 provides that for the purposes of duty stamps a 'retail container' means a container with a capacity of 35 centilitres or more. Paragraph 1(3) of Schedule 12 sets out that the provisions for duty stamps apply to spirits, wine or other fermented products of an alcoholic strength of at least 30%.

Paragraph 2(1) of Schedule 12 allows the Treasury by regulations to vary the capacity of a retail container at paragraph 1(2)(a). Paragraph 2(2) allows the Treasury by regulations to amend paragraph 1(3) so that the provisions for duty stamps apply to a type of alcoholic product that they don't apply to, or, for the duty stamp provisions to stop applying to a type of alcoholic product which they do apply to. These powers re-enact existing regulation making powers contained in the Alcoholic Liquor Duties Act 1979 which are being repealed as part of the wider alcohol reforms. Any regulations made under the power in paragraph 2 of Schedule 12 would be subject to the draft-affirmative procedure.

Paragraph 3(1) allows the Commissioners for HMRC by regulations to make provision about the terms and conditions for obtaining type A duty stamps and incorporating, obtaining and affixing labels with type B duty stamps. Paragraph 3(2) provides for regulations under paragraph (3)(1) to;

- require a person to pay or agree to pay a prescribed amount to the Commissioners for HMRC or a person authorised by the Commissioners for HMRC;
- require a person to provide security to the Commissioners for HMRC, in respect of payment of the appropriate duty;
- requiring or enabling the Commissioners for HMRC to bear all or part the cost of the production of labels with type B stamps incorporated into them attributed to the incorporation of the stamp.

Paragraph 4(1) allows the Commissioners for HMRC by regulations to make provisions about matters relating to duty stamps. Paragraph 4(2), (3) and (4) provides for these regulations to include;

- the times at which a retail container must bear a duty stamp;
- the type of duty stamp which a retail container should be stamped with;
- the design and appearance of a duty stamp;

- the information that is to appear on a duty stamp;
- the cost of issuing a type A stamp;
- the procedure for obtaining a type A stamp or, incorporating, obtaining and affixing type B stamps, (including provision setting periods of notice);
- where on the container a duty stamp should be affixed;
- repayment of, or credit for, all or part of a payment made under or by reason of this Schedule to the Commissioners for HMRC or to a person authorised by the Commissioners for HMRC;
- liability to forfeiture of some or all of a payment made, or security provided, under or by reason of this Schedule to the Commissioners for HMRC or to a person authorised by the Commissioners for HMRC;
- preventing a type A stamp, or a type B label, from being used by a person without authority;
- the appointment of duty stamp representatives for persons without a fixed establishment, in the United Kingdom.

Paragraph 4(5) allows the Commissioners for HMRC by regulations to make provisions with a view to protection of the revenue for securing and collecting duty payable for the purposes of duty stamps.

Paragraph 10(1) provides for a penalty under section 9 of the Finance Act 1994 and forfeiture of articles if a person fails to comply with a requirement imposed by or under regulations under Schedule 12. Paragraph 10(2) allows the Commissioners for HMRC by regulations to provide for the amount which will be used to calculate the penalty at paragraph 10(1).

The powers at paragraphs 3, 4 and 10(2) re-enact existing regulation-making powers contained in the Alcoholic Liquor Duties Act 1979 which are being repealed as part of the wider alcohol reforms. Any regulations made under the powers in paragraphs 3, 4 and 10(2) would be subject to the negative procedure.

Clause 118: Regulations: supplementary and general

Clause 118(1) allows the Commissioners for HMRC by regulations to make supplementing provisions in relation to provisions made in relation to alcohol duty by or under Part 2 or any other enactment.

Clause 118(2) and (3) make further provision about what regulations under Part 2 may contain, including that regulations can:

- make different provision for different purposes or areas;
- apply generally or only for specified cases or purposes;
- confer a discretion on a specified person to do anything under, or for the purposes of, the regulations;
- make provision by reference to things specified in a notice;
- make consequential, supplementary, incidental, transitional or saving provision.

Clause 118(5) provides that this clause does not apply to any commencement regulations that may be made under clause 120. Any regulations made under clause 118 would be subject to the negative procedure.

Clause 119: Regulations: procedure

Clause 119 makes provision in relation to laying powers, the various parliamentary procedures to be used when making regulations under Part 2 and which regulations are subject to negative, made-affirmative or draft affirmative procedures, the combining of procedures where regulations are made under provisions of this bill or under any other provision under the customs and excise Acts and other standard provision in relation to regulation-making powers under this Part. Clause 119 does not apply to commencement regulations made under Clause 120, which have no parliamentary procedure.

Clause 120: Commencement

Clause 120 deals with the commencement of Part 2 of the Bill.

Clause 120(2) allows the Commissioners for HMRC by regulations to appoint a day or days for the provisions in Part 2 to come into force (apart from Chapter 10 and any regulation making powers, which come into force on Royal Assent).

Clause 120(3) provides that different days may be appointed for different purposes or different areas.

Clause 120(4) allows the Commissioners for HMRC by regulations to make consequential, supplementary, incidental, transitional or saving provision in connection with the coming into force of any provision of Part 2.

Clause 120(5) provides for regulations under Clause 120(4) to;

- make different provision for different purposes or areas;
- apply generally or only for specified cases or purposes;
- confer a discretion on a specified person to do anything under, or for the purposes of, the regulations;
- make provision by reference to things specified in a notice.

There is no parliamentary procedure specified for this power, which is the usual practice for commencement provisions.

PART 3: MULTINATIONAL TOP-UP TAX

Clause 125 and Schedule 14: Administration of multinational top-up tax

Paragraph 39 Schedule 14 contains a power for the Treasury to make regulations providing additional rules where one member of a group makes a payment of tax on behalf of another, or where a payment of multinational top-up tax can effectively settle a payment of domestic top-up tax. Any regulations made under this power would be subject to the negative procedure.

Paragraph 68(2) Schedule 14 amends the existing power conferred by s.178(2) Finance Act 1989 in relation to various existing taxes to make regulations to set interest rates on late payments and repayments of tax. The change will create the power to do this in relation to the new Pillar 2 taxes. Any regulations made under this power would be subject to the negative procedure.

Clause 241: Pillar two territories

Clause 241 allows the Treasury by regulations to specify other countries as “Pillar 2 Territories”. Countries within this definition will be treated as having properly implemented Pillar 2 to the specification agreed via the OECD process. This impacts aspects of the operation of the tax, including which country has taxing rights in the event that top up tax becomes payable in respect of the activities of a group. There will be an ongoing peer review process organised through the OECD which will determine whether countries have properly implemented Pillar 2. A territory may be specified as a Pillar 2 territory with the specification to take effect before the regulations are made but if it subsequently becomes necessary to remove a territory from the list due to its ceasing to be compliant, that can only take place prospectively. Any regulations made under this power would be subject to the negative procedure.

Clause 250: Acceptable accounting standards

Clause 250(3) contains a list of territories whose accounting standards are to be regarded as “Acceptable Overseas GAAP” and so capable of being used in preparation of the accounts underpinning Pillar 2 tax calculations. Clause 250(4) allows the Treasury to add or remove countries from this list by regulations. Any regulations made under this power would be subject to the negative procedure.

Clause 256: Qualifying domestic top-up tax

Clause 256 allows the Treasury by regulations to specify other countries’ taxes as “qualifying domestic top-up taxes”. This is similar to the power in clause 241, (including as to retrospective inclusion but only prospective exclusion), except it relates to the adoption by other countries of domestic minimum taxes equivalent in substance to that introduced in the UK by Part 4 of the Bill. Any regulations made under this power would be subject to the negative procedure.

Clause 257: Qualifying undertaxed profits tax

Clause 257 allows the Treasury by regulations to specify other countries' taxes as "qualifying undertaxed profits taxes". This is similar to the powers in clauses 241 and 256 (including as to retrospective inclusion but only prospective exclusion), but relates to the qualifying undertaxed profits tax which the government intends to enact later with effect no earlier than accounting periods beginning on or after 31 December 2024. Any regulations made under this power would be subject to the negative procedure.

Clause 262: Power to amend to ensure consistency with Pillar two

Clause 262 allows the Treasury by regulations to amend the enacted Bill as necessary to ensure consistency with the internationally agreed Pillar 2 rules. This power is time-limited, and elapses on 31 December 2026. The power is being taken due to a number of issues where international negotiations continue and where legislation will be needed to reflect the eventually agreed position. It is possible that these issues will not be resolved at a point in time which lends itself to the timely introduction of primary legislation, and it may then not be satisfactory for the UK to fail promptly to implement legislation dealing with them. This could lead to uncertainty for taxpayers, and might lead to concerns as to whether the UK's legislation could continue to be recognised as a compliant regime. Any regulations made under the power in clause 262 will be subject to the made-affirmative procedure.

PART 5: ELECTRICITY GENERATOR LEVY

Clause 282: Generation receipts

Clause 282 identifies the business receipts and other items that are to be taken into account when calculating a generating undertaking's generation receipts for the purposes of the electricity generator levy. Where appropriate, the undertaking is required to make a fair and reasonable attribution of receipts and other amounts where these relate partly to attributed electricity generation and partly to other matters. Subsections (5) and (6) provide a power for the Treasury to specify in regulations when amounts can be fairly and reasonably attributed to generation, and that specified amounts are or are not to be treated as generation receipts. Any regulations made under this power would be subject to the negative procedure.

Clause 301: General application of corporation tax administration

Clause 301 applies the general provisions of the enactments relating to corporation tax that relate to the collection and administration of corporation tax to the electricity generator levy. Subsection (6) provides a power for the Treasury to make Regulations disapplying, modifying the effect of, or otherwise making provision in relation to such provisions in the Taxes Acts insofar as they would otherwise apply to the electricity generator levy. The electricity generator levy is not corporation tax but is to be reported and collected as if it were an amount of corporation tax, and the same rights and responsibilities regarding tax returns, assessment, appeals, interest, penalties and similar matters apply to this tax as they do for corporation tax purposes. It will be considered in the light of any changes that are to be made to corporation tax administration procedures to ensure that these apply appropriately in the context of the electricity generator levy. Any regulations made under this power would be subject to the negative procedure.

PART 6: OTHER TAXES

Clause 314: Deposit Schemes

Clause 314 introduces new sections 55B to 55D into the Value Added Tax Act 1994 (VATA) about Value Added Tax (VAT) accounting for deposit schemes. The new section 55C provides that, when sales are made of goods which fall within the scope of a designated deposit scheme, no VAT will be charged in relation to the deposit amount. However, VAT will be accounted for under the new section 55D on unreturned deposit amounts by the first seller of a deposit scheme product. Section 55D, subsections (2) and (3) of VATA confer power on the Commissioners for HMRC to make provision in regulations about accounting for VAT payable in relation to deposit schemes. This includes provision concerning the manner in which accounting entries are to be made and how they are to be calculated, and provision for error correction. Regulations may also confer power on the Commissioners for HMRC to make provision for these matters by means of a notice published in accordance with the regulations. Any regulations made under this power would be subject to the negative procedure.

The clause also confers power on the Commissioners for HMRC in new section 55B(1) of VATA to designate a deposit scheme by regulations. The value of supply rule in new section 55C and the provisions about VAT liability and the new accounting procedures provided for in regulations under new section 55D will apply to designated schemes only. An instrument containing only regulations made for the purpose of designating a deposit scheme would not be subject to parliamentary procedure.

Clause 315 and Schedule 19 and Schedule 20: Dumping, subsidisation and safeguarding remedies

Paragraph 2(2) of Schedule 19 will allow the Secretary of State for Business and Trade to make regulations on the treatment of confidential or other information provided to or by the Secretary of State for Business and Trade, and to make a reassessment prior to the termination of an investigation. Paragraph 4(1)(e), paragraph 4(3), and paragraph 11(1)(b) will allow the Secretary of State Business and Trade to make regulations regarding the provision of alternative options for a measure within a Trade Remedies Authority (TRA) recommendation. Paragraphs 5 and 12 will allow for regulations to be made regarding the TRA's reviews. This includes, in paragraph 5(1)(a)(ii), providing the power for the Secretary of State for Business and Trade to make regulations concerning the repayment or collection of duties following the review of a trade remedies measure. Paragraph 16(1) will allow Ministers to make regulations in relation to trade remedies measures transitioned from the EU.

Schedule 20 amends section 13 of the Taxation (Cross-border Trade) Act 2018 (the Act) and introduces a new Schedule 5A to the Act, which creates a new process to investigate and apply a bilateral safeguard. As amended, section 13 will provide powers for the Secretary of State for Business and Trade to apply a bilateral safeguard on a specific good, in the form of a provisional or definitive additional amount of import duty or tariff rate quota, or to vary or revoke the application of an additional amount of import duty or tariff rate quota, by public notice. By virtue of paragraph 1(5), the

Secretary of State for Business and Trade will take the power to make regulations containing any provision that the Secretary of State for Business and Trade considers appropriate for the purposes of section 13(3) and (4)(b) in respect of bilateral safeguards.

Schedule 5A will apply Schedule 5 (increase in imports causing serious injury to UK producers) in modified form and carries similar regulation making powers as Schedule 5. This includes powers for the Secretary of State for Business and Trade to make regulations regarding how bilateral safeguarding investigations, reviews, recommendations to the Secretary of State for Business and Trade, and appeals from decisions are conducted.

Any regulations made under these powers would be subject to the negative procedure.

Clause 320: Flavour concentrates

Clause 320 introduces Schedule 21 which brings into the scope of the Soft Drinks Industry Levy (SDIL) packaged liquid flavour concentrates which are mixed with added sugar when dispensed from a soft drink fountain machine. All paragraph references are to the Schedule.

Paragraph 3(7) allows the Commissioners for HMRC by regulations to make provision about the criteria for determining dispensing instructions for a flavour concentrate where:

- none are provided; or
- they are provided but it's reasonable to assume the main purpose of providing particular dispensing instructions is avoiding or reducing liability for the SDIL.

Any regulations made under this power would be subject to the negative procedure.

Paragraph 5 inserts flavour concentrates that meet certain conditions into the list of exempt soft drinks. This inclusion allows the Commissioners for HMRC by regulations to make further provision about the criteria for determining what is, or is not, to be treated as an exempt soft drink with regards to flavour concentrates. Any regulations made under this power would be subject to the negative procedure.

Paragraph 6(4) allows the Commissioners for HMRC by regulations to determine the relevant proportion in cases where the flavour concentrates are formulated to be combined in a dispensing machine in unequal proportions or in different combinations for different beverages. Any regulations made under this power would be subject to the negative procedure.

Paragraph 7 expands the existing power for the Commissioners for HMRC to make regulations regarding entitlement to tax credits to include liable flavour concentrates which have not been combined with added sugar ingredients or have been combined with added sugar ingredients, but the dispensed beverage contains less than 5g of sugars per 100ml. Any regulations made under this power would be subject to the negative procedure.

PART 7: MISCELLANEOUS AND FINAL

Clause 330, 331 and Schedule 23: Freeports and investment zones

Clause 330 makes amendments to section 113 Finance Act (FA) 2021 to re-define areas in Great Britain which have been or can be designated as a 'freeport tax site' so that such an area is known as a 'special tax site', and future designations can include areas in, or connected with, an investment zone. This extends reliefs available for investment in freeports, to investment zones.

Clause 331 makes amendment to the sunset date for relief in section 61A FA 2003, sections 45O, 270BNA and 270BNB Capital Allowances Act (CAA) 2001 to change this from 30 September 2026 to the applicable sunset date for the special tax site concerned, and defining this as being either 30 September 2026, or such later date as may be specified in relation to the site by regulations made by the Treasury.

Both clauses introduce Schedule 23, which principally provides for consequential amendments for Stamp Duty Land Tax, capital allowances and National Insurance Contributions through Part 4 FA 2003, Parts 1, 2, 2A, 12 & Schedule 1 CAA 2001 and the National Insurance Contributions Act 2022. Clause 331(4) allows the Treasury by regulations to specify a sunset date falling after 30 September 2026 for a specific special tax site. Any regulations made under this power would be subject to the negative procedure.

Clause 336: Insurance premium tax: power to make regulations about notifications

Clause 336 introduces a new sub-section (6A) into section 74 of the Finance Act 1994. Part 3 of that Act provides a number of regulation and order making powers in relation to insurance premium tax. Section 74 sets out further provision in relation to the making of such regulations and orders. The new sub-section (6A) will allow the Commissioners for HMRC, on exercising the existing powers in Part 3, to make reference to things specified in a notice published by them. Any regulations made under this power will be subject to the negative procedure.

Clause 338: Approval of Aerodromes

Clause 338 introduces a power for the Commissioners for HMRC to grant approvals to aerodromes for the purposes of the customs and excise acts and to amend and revoke those approvals. It also introduces a requirement for operators of aerodromes to take reasonable steps to ensure that no aircraft lands or departs in contravention of the Customs and Excise Management Act 1979 (CEMA). Paragraph 2 of clause 338 enables Commissioners to make regulations that specify conditions aerodrome operators will be required to meet before approval is granted. The proposed changes will take effect upon Royal Assent and HMRC may not require aerodrome operators to have these new approvals until 1 January 2024. Any regulations made under this power will be subject to the negative procedure.

Clause 345 and Schedule 24: Homes for Ukraine Sponsorship Scheme: Exemptions from tax

Clause 345 introduces Schedule 24 and provides for temporary reliefs from Annual Tax on Enveloped Dwellings (ATED) and the 15% rate of Stamp Duty Land Tax (SDLT) in connection with the provision of accommodation made available under the Homes for Ukraine Sponsorship Scheme. Relief from ATED is available for the period from 1 April 2022 and ending on a date to be specified in Treasury Regulations (para 2(6)(b) of Schedule 24 Finance (No. 2) Bill 2023) and relief from the 15% rate of SDLT is available for the period from 31 March 2022 also ending on a date to be specified in Treasury Regulations (para 3(5)(b) of Schedule 24 Finance (No. 2) Bill 2023). Paragraph (4) of Schedule 24 allows for Treasury regulations to be made which would be subject to the draft affirmative procedure.

Clause 347: Pension benefits and inheritance tax

Clause 347 provides for the income tax treatment of pension benefits which are reclaimed from an authorised reclaim fund. Newly inserted subsection 274ZB (3) allows the Commissioners for HMRC to make regulations in specific cases. This is where an amount is due to be paid out by an authorised reclaim fund and the registered pension scheme from which the benefits were originally transferred has been wound up. Any regulations made under this power would be subject to the negative procedure.

Clause 348: International arrangements for exchanging information

Clause 348 will allow the Treasury to make regulations for or in connection with, giving effect to “international tax compliance arrangements” subject to any appropriate exceptions or modifications. The Clause consolidates the powers of the Treasury to make regulations under the following statutory provisions, into a single provision:

- (a) Section 222 of FA 2013;
- (b) Section 122 of FA 2015;
- (c) Section 84 of FA 2019;
- (d) Section 129 of FA 2021.

Subsection (2) defines “international tax compliance arrangements” by listing the arrangements, agreements, and documents in respect of which regulations may be made. These are:

- arrangements specified in an Order in Council made under section 173 of FA 2006 (international tax enforcements arrangements);
- the Foreign Account Tax Compliance Act (FATCA), which refers to United States’ legislation which the Government of the United Kingdom has agreed to implement, and the Common Reporting Standard (CRS);
- Country by Country Reporting (‘CBC’);

- Mandatory Disclosure Rules ('MDR');
- Reporting rules for Digital Platforms; and
- any other arrangements, agreements or related documents which make corresponding or similar provision.

Regulations have already been laid under existing powers and are currently in force in relation to FATCA, CRS, CBC and the MDR.

Subsection (3) provides that the items listed in subsection (2) include any changes which may be made to them in the future.

Subsection (4) includes powers:

- to require the disclosure of information, including information about arrangements entered into before as well as after the coming into force of the regulations;
- to require that the same information is disclosed to HMRC, specified persons or persons of a specified description, (ii) at specified times, (iii) in relation to specified periods of time, and (iv) in a specified form and manner; and
- to impose other obligations in connection with requirements to disclose information including obligations to provide information to, and obtain information from, other specified persons.

It also allows the regulations to make provision for penalties and ambulatory references.

Subsection (5) allows the regulations:

- to make consequential, supplementary, incidental, transitional or saving provision, including amendments to primary legislation, and to make different provisions for different purposes;
- to enable the Commissioners for HMRC to impose disclosure obligations mentioned in subsections 4(a) to (c) (including in relation to information about arrangements entered into before the coming into force of the regulations), and for those obligations to provide and obtain information by directions;
- to make provision by reference to things that are specified in notices published by Commissioners, that may be revised and replaced from time to time, and to allow the Commissioners or other persons to exercise discretions.

Subsection (6) provides for certain definitions.

Subsection (7) allows the Treasury to amend the list of international tax compliance arrangements in subsection (2) by regulations. The list can be amended by adding an entry or altering or removing an entry.

Subsection (8) ensures that all regulations under this section are to be made by statutory instrument.

Subsection (9) ensures regulations made under subsection (7) will be made by draft affirmative procedure. This power provides important flexibility for the future.

Subsection (10) provides that other regulations made under subsection (1) are subject to the negative procedure in the House of Commons.

Subsection (11) repeals the statutory provisions that clause 348 consolidates, but subsection (12) ensures that regulations made under these provisions are to be treated as if they are made under this clause.

Clause 350: Financial sanctions regulations: prohibition on certain payments by HMRC

Clause 350 provides for a prohibition on the exercising of certain payment functions of HMRC in respect of persons subject to financial sanctions regulations. Clause 350(7) allows for the Treasury by regulations to add further exceptions to the prohibition in subsection (1) and make such other provision as they consider appropriate for the purposes of, or for purposes connected to, any provision made by this section. Any regulations made under this power would be subject to the negative procedure.