

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

# NATIONAL INSURANCE CONTRIBUTIONS BILL

*First Sitting*

*Tuesday 21 October 2014*

*(Morning)*

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### CONTENTS

Programme motion agreed to.  
Motion to sit in private agreed to.  
Written evidence (Reporting to the House) motion agreed to.  
Examination of witnesses.  
Adjourned till this day at Two o' clock.

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**not later than**

**Saturday 25 October 2014**

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

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**The Committee consisted of the following Members:**

*Chairs:* † ANNETTE BROOKE, DR WILLIAM MCCREA

† Baldwin, Harriett ( <i>Lord Commissioner of Her Majesty's Treasury</i> )	† McInnes, Liz ( <i>Heywood and Middleton</i> ) (Lab)
† Crockart, Mike ( <i>Edinburgh West</i> ) (LD)	† Mahmood, Mr Khalid ( <i>Birmingham, Perry Barr</i> ) (Lab)
† Cryer, John ( <i>Leyton and Wanstead</i> ) (Lab)	† Mahmood, Shabana ( <i>Birmingham, Ladywood</i> ) (Lab)
† Evans, Jonathan ( <i>Cardiff North</i> ) (Con)	† O'Donnell, Fiona ( <i>East Lothian</i> ) (Lab)
† Gauke, Mr David ( <i>Financial Secretary to the Treasury</i> )	† Phillipson, Bridget ( <i>Houghton and Sunderland South</i> ) (Lab)
† Glindon, Mrs Mary ( <i>North Tyneside</i> ) (Lab)	† Robathan, Mr Andrew ( <i>South Leicestershire</i> ) (Con)
† Halfon, Robert ( <i>Harlow</i> ) (Con)	† Weatherley, Mike ( <i>Hove</i> ) (Con)
† Hunter, Mark ( <i>Cheadle</i> ) (LD)	Wilson, Sammy ( <i>East Antrim</i> ) (DUP)
† Kelly, Chris ( <i>Dudley South</i> ) (Con)	
Liddell-Grainger, Mr Ian ( <i>Bridgwater and West Somerset</i> ) (Con)	Matthew Hamlyn, <i>Committee Clerk</i>
† McCartney, Jason ( <i>Colne Valley</i> ) (Con)	† <b>attended the Committee</b>

**Witnesses**

Gillian Wrigley, Technical Officer, Low Incomes Tax Reform Group

John Whiting, Tax Director, Office of Tax Simplification

Frank Haskew, Head of Tax Faculty, Institute of Chartered Accountants in England and Wales

Andrew Hubbard, Partner, Baker Tilly

Colin Ben-Nathan, Employment Taxes Sub-Committee Chairman, Chartered Institute of Taxation

Kevin Green, Chief Executive, Recruitment and Employment Confederation

David Gauke MP, Financial Secretary to the Treasury, HM Treasury

Clare Sheehan, Policy Adviser, HMRC

David Edney, Policy Adviser, HMRC

Robert Burton, Policy Adviser, HMRC

Jane Edwards, Policy Adviser, Department for Work and Pensions

## Public Bill Committee

*Tuesday 21 October 2014*

*(Morning)*

[ANNETTE BROOKE *in the Chair*]

### National Insurance Contributions Bill

8.55 am

**The Chair:** Before we begin, I have a few preliminary announcements. Please could everyone switch their electronic devices to silent? I remind members of the Committee that tea and coffee are not allowed during sittings and that they may remove their jackets.

The Committee will first be asked to consider the programme motion as on the amendment paper. Debate on that is limited to half an hour but we intend to proceed as quickly as possible. Then we will consider a motion to permit the Committee to deliberate in private in advance of the oral evidence session, and then a motion to report written evidence. In view of today's tight timetable, I hope that the motions will be moved formally. Assuming that there is agreement, we will then deliberate in private to discuss the line of questioning. Therefore, I am afraid that we will be asking a large number of people to leave the room for a few moments. Obviously, they will be invited back as soon as our deliberations in private are completed; I hope they will not take long.

*Ordered,*

That—

(1) the Committee shall (in addition to its first meeting at 8.55 am on Tuesday 21 October) meet—

- (a) at 2.00 pm on Tuesday 21 October;
- (b) at 11.30 am on Thursday 23 October;
- (c) at 8.55 am and 2.00 pm on Tuesday 28 October;

(2) the Committee shall hear oral evidence in accordance with the following Table:

<i>Date</i>	<i>Time</i>	<i>Witness</i>
Tuesday 21 October	Until no later than 9.30 am	Low Incomes Tax Reform Group; Office of Tax Simplification
Tuesday 21 October	Until no later than 10.15 am	Institute of Chartered Accountants in England and Wales; Baker Tilly
Tuesday 21 October	Until no later than 10.45 am	Chartered Institute of Taxation; Recruitment and Employment Confederation
Tuesday 21 October	Until no later than 11.25 am	Her Majesty's Treasury; Her Majesty's Revenue and Customs; Department for Work and Pensions

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clause 1; Schedule 1; Clauses 2 and 3; Schedule 2; Clauses 4 to 8; new Clauses; new Schedules; remaining proceedings on the Bill.

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 28 October.—*(Mr Gauke.)*

*Resolved,*

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Mr Gauke.)*

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Mr Gauke.)*

8.57 am

*The Committee deliberated in private.*

#### Examination of Witnesses

*Gillian Wrigley and John Whiting gave evidence.*

9.1 am

**The Chair:** May I welcome our witnesses? We are going to hear oral evidence from Gillian Wrigley, technical officer, Low Incomes Tax Reform Group, and John Whiting, tax director, Office of Tax Simplification. I should remind all Members that we must stick to the scope of the Bill and we have very strict timings. Could the witnesses please introduce themselves for the record and then I will ask Members to start the questioning.

**Gillian Wrigley:** Good morning. I am Gillian Wrigley from the Low Incomes Tax Reform Group. We seek to represent unrepresented taxpayers.

**John Whiting:** I am John Whiting. I am here as tax director of the Office of Tax Simplification. I also represent the Administrative Burdens Advisory Board.

**Q1 Shabana Mahmood** (Birmingham, Ladywood) (Lab): I thank both witnesses for coming to give us evidence today. I should like to start with Gillian. Thank you very much for your very helpful written evidence and the various briefings provided throughout the course of the Bill so far. I wanted to ask you about the interplay between the changes introduced by the Bill and universal credit in particular. Could you set out your key concerns about the impact of claiming universal credit? What do you think is the best way to try to manage that issue, given the changes that have been introduced in the Bill?

**Gillian Wrigley:** Thank you for inviting me here today. Perhaps I can give a bit of background about how universal credit works. If you are an employed person, such as I am, universal credit depends on both my family circumstances and the amount of net income that I receive from my employer on a monthly basis. In other words, what is looked at is my income after tax and national insurance contributions. To try to put self-employed people on a similar basis, their income is looked at after various trading expenses, if I can call them that, but also looking at their income after their tax and national insurance payments. The issue that arises here is that currently many self-employed individuals pay their class 2 national insurance on a monthly basis by direct debit, presumably because that helps them budget their payments.

Universal credit for self-employed people also has another slight nuance to it in that there is a device called the minimum income floor. The minimum income floor

is designed to stop people having hobbies rather than trades. It says that for a particular month an individual will have a minimum amount of income, regardless of what their income actually is. The effect, if you like, of making people pay all of their national insurance contributions in one lump sum is that it could push people's income below that minimum income floor and so people would not get full relief for that national insurance. The implication is that they would get a smaller overall award of universal credit. That seems quite unfair when they are in exactly the same position that they might have been had they paid that on a monthly basis. Our view is that it would be much easier for people to budget if it were possible for them to have a proper, well communicated budget payment plan, so that they were able to continue paying on a monthly basis both national insurance and income tax.

**Q2 Shabana Mahmood:** How many people would benefit from a budget plan of the type you are describing? What are the numbers we are talking about?

**Gillian Wrigley:** I understand that currently approximately half of people pay their national insurance by some form of direct debit. You are talking about approximately 2 million people. I saw figures that said approximately half a million might be expected to claim universal credit of the self-employed. It is a huge number of people.

**Q3 Jonathan Evans (Cardiff North) (Con):** I am going to speak rather loudly, not because I want to shout at you, but because I am told that otherwise *Hansard* might not pick up what I say. I can understand that in the context of so many very wealthy celebrities who end up before the bankruptcy courts and explain the circumstances on the basis that they live for the moment and then along comes a big tax bill that they are not able to settle.

For people who are on low incomes and have difficulty budgeting it is an even more serious problem. That is the way that I read your evidence. You say towards the end of your evidence, however, that you have been speaking to Treasury and other officials and are hopeful of finding a solution. Can you give an idea for those of us who are concerned that a problem may be emerging if we do not take money on a regular budgeted basis and so end up presenting people with a large bill that looks beyond their means to settle?

**Gillian Wrigley:** I am sorry that I cannot give you any direct confirmation. We have been in discussion with Treasury as part of the consultations. We made it clear that it was essential that there was a budgeting plan available for them. We do not have any details of that so far.

**Q4 Jonathan Evans:** My second question is related to statistics produced by the Government that tell us that since 2010, 2 million more jobs have been created in the country. I am not sure what the split is in those statistics between those people who are in employment and those who are self-employed or, more particularly, self-employed people on low incomes. Has your group done any research in that area?

**Gillian Wrigley:** I am sorry that I cannot provide you with any figures on that. Perhaps I could come back to the Committee on that.

**Jonathan Evans:** Thank you.

**John Whiting:** May I make a brief comment on the first part of the question? The Office of Tax Simplification has regularly looked at the difficulty that the self-employed have in paying their taxes in two large chunks annually rather than through the traditional PAYE. In a report we published last week, we pointed up as an example a system that operates in Sweden via a composite monthly payment plan for all taxes. That does not necessarily affect only the low paid. It could be, as you alluded to, quite high-earning people who would benefit from spreading their tax payments. That could encompass VAT if they were registered for VAT, not just income tax. We have suggested that is something that could usefully be looked at, basically to help people budget their tax payments.

**Q5 Jonathan Evans:** Although it is not the case for national insurance, we have a system in self-assessment for taxation where you make your first payment to cover the preceding year if you are self-employed but are also then invited to make a contribution in advance for the next year. That, in a sense, exacerbates the problem.

**John Whiting:** It does, particularly when you are first starting in business. I appreciate that this is slightly going off the tangent, but it is very relevant to the whole process of budgeting and paying all the taxes.

**Q6 Jonathan Evans:** It may be relevant in the context of national insurance. If people come into the employment space and are making their first tax payments as well as their up-front payments for the next year, and someone then comes along and asks for their national insurance, it can become much more of a burden than just looking for national insurance payment.

**John Whiting:** Exactly. They might be used to paying PAYE national insurance every month in their previous job.

**Q7 Mike Crockart (Edinburgh West) (LD):** In your evidence, Gillian, you talk about the difference between an ability to make in-year payments and the current system. What sort of thing are you looking for?

**Gillian Wrigley:** We would want something very flexible. The issue for a lot of self-employed people is that they do not receive money on a regular basis—they might receive a large lump sum and then nothing for a period of time. While there are currently certain payment plans with Her Majesty's Revenue and Customs, those are not adequately flexible. People on a low income might receive money and want to put some aside, but the current plans mean that they have to set aside a regular sum. It needs to be something very flexible.

**Q8 Mike Crockart:** Your argument seems to be that making in-year payments is better because it adds to the flexibility.

**Gillian Wrigley:** I think so.

**Q9 Mike Crockart:** Would the Bill be a move in the right direction?

**Gillian Wrigley:** What is being suggested here is that national insurance is paid after the end of the year. The Bill states that the whole class 2 national insurance will be paid afterwards.

**Q10 Mike Crockart:** I accept that, but you said in your evidence that one of the annexes

“makes reference to an ability to ‘make in year payments’”.

Does that answer your worry? Could the Government do more to add flexibility and to allow those on low incomes—incomes that might change month to month—to cope with this and not end up with a big national insurance bill at the end of the year?

**Gillian Wrigley:** Yes. There has to be an ability to make in-year payments. The issue is that the current plans are not adequately flexible. There has to be far more flexibility.

**Q11 Mike Crockart:** Okay. You raised a concern about the definition of “worker” in terms of foster carers and Shared Lives carers. It seems to be about the difference between a self-employed earner and someone “in employment as a self-employed earner”.

Can you elaborate on your worries about that?

**Gillian Wrigley:** Foster carers or qualifying carers in general have experienced a favourable tax and national insurance regime for a long time. My concern is that the change in definition might be intended to change the regime for foster carers. The word “employment” is defined in the social security Acts as someone being in a trade profession or vocation, which is quite wide. My concern is whether that is adequately wide to include the carers. I suppose I would have liked something explicit to include qualifying carers.

**Q12 Mike Crockart:** In the discussions that you have been having, have you had any response that deals with those concerns?

**Gillian Wrigley:** In our discussions it was made clear that there was no intention to exclude them. But, as I say, I would have preferred something definitely inclusive.

**Q13 Shabana Mahmood:** I have a question for John. The simplification in the Bill comes as a result of the work that your team did. When you were looking at this, did you consider the impact on those with very low incomes, particularly around the impact on accessibility to benefits, and particularly universal credit? Is that something that you modelled or thought about when you were putting together the proposals for the change?

**John Whiting:** Yes, clearly we acknowledged that although from an administrative simplification point of view, merging class 2 and class 4 together is in many ways an obvious step, that has the clear implication and the clear issue that class 2 brings with it the entitlement to benefits, so one has to look at how that will be addressed. In the programme of reforms that we suggested in our initial report, which in many ways has given rise to this, we did point out that in many cases the contributory link is disappearing, and we felt it was not impossible to tie the contributory entitlement to possibly the combined class 4. That would be from a simplification route—our preferred route. It raises the issue—clearly within Gillian’s area—of the very low paid who might be paying class 2 and getting entitlement, but are below the class 4 limit. Like so many things, it is something that would need to be addressed with decisions taken as to what happens at the margins.

**Q14 Shabana Mahmood:** Do you have a view about the numbers that we are talking about? Gillian thought about half a million. Is that something that you looked at?

**John Whiting:** I do not have an exact figure, although I recognise that figure. It was discussed when we were looking at it, but we did not go as far as research. Inevitably, what we are supposed to do is come up with ideas that can, if Ministers are inclined, be gone into in far more detail in terms of the impact.

**Q15 Shabana Mahmood:** A question for both of you. How the changes are communicated to the group of people affected will be really important. What do you think good communication would look like in respect of the changes? What would you like to see happen to make sure that those affected know what is going on and know what they need to do to organise their affairs?

**John Whiting:** Given that all the class 2 payers are known to HMRC, a fairly obvious first step is that they should all be written to and have it carefully explained. It will need a certain amount of following up, quite careful and directed. At the same time as one writes generally to class 2 people that life is changing for you, you could imagine, I hope, as follow-up, targeting it very much at the low-earning class 2 payers. That would be a potential second round, and you could imagine, after the change has happened, potentially a third round of, “This has happened; have you seen it? Are you absolutely sure what is going on?” That starts to get us into the possibility of voluntary class 2, and there is this extra little tweak of the difference between voluntary class 2 and voluntary class 3. So there is quite a communications exercise, as I see it.

**Gillian Wrigley:** I think it is necessary to write to people. We understand the will to have things done digitally, but lots of low-income people are in fact digitally excluded. Although it would be good to have a digital resource for those who might wish to refer to it, writing to people is probably key. If we look back to when self-assessment was first brought in, there was a huge campaign. For the low-income people, such a campaign is probably needed.

**Q16 Mr Andrew Robathan** (South Leicestershire) (Con): This is a question for Mr Whiting. I understand that the proposals are, to a large extent, yours or, should I say, your Office’s?

**John Whiting:** You are very kind.

**Q17 Mr Robathan:** Most laymen, such as me, would view the integration of national insurance contribution and income tax as inherently desirable in the long term, in terms of simplification. We are constrained by time so could you, in general terms, explain how this step is leading towards that, what further steps are necessary, what sort of time frame one might have, and anything else you would like to say? Is there opposition to it?

**John Whiting:** To pick up your opening comments, most businesses say that the difficulty caused by national insurance and income tax being on very different systems and computation is one of the greatest sources of complexity, confusion, error and so on; ABAB and OTS have long argued that they should be brought together. I do not need to tell you that combining the two major levies into one tax is clearly a major undertaking with huge political implications.

At the OTS in the early days, we said that that is clearly a desirable goal but that what could and should be done is to set out a programme to bring them closer together, of which—you are right—this is one step. Others are, as far as possible, common definitions of income, if I can use a fairly neutral term, for income tax and national insurance. If there are to be differences—for example, pension contributions are deductible for income tax but not for national insurance—one should be clear about what those differences are. Then, why not put national insurance on to an annual cumulative basis, in line with PAYE, so that it can be calculated accordingly? This little change is a move in that direction. That itself has further implications but it makes it much easier to run.

Is the contributory principle, to which we have alluded, really worth it? Is it really necessary in this day and age? If one is subtle, we have done a later report looking at employee benefits and expenses. Generally, employee benefits are taxed to class 1A national insurance, that is, employers only, rather than employers and employees. Should that subsist? There are a number of stages where, as we put it, useful simplification dividends would accrue at each of those that are tackled; it could stop short of merging the two levies formally into one.

**Q18 Mr Robathan:** That is extremely useful context for a layman such as me. Apart from obvious difficulties, some of which you have mentioned, is there much resistance to the principle of having one single base, given that, as you alluded to, national insurance does not seem quite the contribution that it was initially when it was, indeed, national insurance?

**John Whiting:** If you are talking to somebody who I might call a technician or, indeed, to a business man who, as an employer, has to run the payroll, you will probably find very little opposition to it. However, we have to acknowledge that they are separate levies, and they are known and managed as such. Clearly, to many people, national insurance still pays for the health service, pensions and whatever. If you ask people, that is probably what many of them believe. There are huge issues to be tackled. From the point of view of simplification and an employer's administrative burden, there is surely a huge win for bringing the levies together, but in no way do we belittle the difficulties that causes. Going back to Shabana Mahmood's point on the low paid, those are some of the issues that would have to be tackled through this merger. The current Government have started some work in the integration of the operation of the two taxes. Inevitably, it has been slightly sidelined because of universal credit, but a lot of work has been done, at least on a preliminary basis.

**The Chair:** Are there any further questions for our witnesses? I would like to thank both of our witnesses on behalf of the Committee for their evidence this morning. We will now move on to the next witnesses.

#### Examination of Witnesses

*Frank Haskew and Andrew Hubbard gave evidence.*

9.26 am

**Q19 The Chair:** Welcome. We will now hear oral evidence from Frank Haskew, head of the tax faculty at the Institute of Chartered Accountants in England and

Wales, and Andrew Hubbard, a partner at Baker Tilly. Would the witnesses introduce themselves for the record? A sentence will be fine, then we will ask questions.

**Andrew Hubbard:** My name is Andrew Hubbard. I am a tax partner at Baker Tilly. I am a former president of the Chartered Institute of Taxation.

**Frank Haskew:** I am Frank Haskew. I am the head of the tax faculty at the Institute of Chartered Accountants in England and Wales.

**The Chair:** Thank you.

**Q20 Shabana Mahmood:** Thank you both for coming to give evidence. I would like to put some questions about clauses 3 and 4, which relate to the provisions for follower notices and accelerated payments, and promoters of tax avoidance schemes. Some of these provisions have already been made in the Finance Act 2014, so the sister provisions have been in place for a short period. How do you both think that they are working so far?

**Andrew Hubbard:** I think it is slightly too early to say in terms of their actual impact, because the follower notices and accelerated payment notices have only started to be issued. I think the prospect of those notices being issued has had quite an impact on taxpayers. In my experience, a significant number of taxpayers, who perhaps in the past have used fairly aggressive avoidance schemes that they now regret, are using the opportunity to say, "Right, it is time to sort matters out." In the past, there was a little bit of a head in the sand attitude in thinking, "Well, at some point something may happen." So, the fact that the notices may come quite soon is having some impact. I think it will mean that those who were not quite sure whether avoidance was the right thing to do, will pay their tax and settle. I am not sure how much impact it will have on those people who are determined to see it out to the end.

**Frank Haskew:** I entirely agree with Andrew. It is still very early days with these provisions. I know that HMRC has a rolling programme to put out letters over almost two years to address the number of cases, so it is early days. We are starting to see a few comments coming through, but I think we will see a lot more over the next six months. In terms of the market, we are already seeing things like professional indemnity insurance starting to get quite interested in this area and whether people have been involved in aggressive tax avoidance schemes. So I think the market is starting to move already in relation to things such as insurance.

**Q21 Shabana Mahmood:** Do you mean in respect of potential professional negligence claims?

**Frank Haskew:** Yes.

**Q22 Shabana Mahmood:** In a way that was not already the case?

**Frank Haskew:** Like all these things, you pick up a number of comments and it is at this stage fairly anecdotal. I have heard now from a number of different sources concerns about the PI insurance renewal process. PI insurers are starting to ask much more searching questions about the business and whether you do tax advisory work and, if so, what sort. The market is already shifting in that way. Obviously our members have to have professional indemnity insurance. That is already becoming quite an issue.

**Andrew Hubbard:** It is part of a continuum. If you look at the changes that have happened in tax avoidance policy and practice over the last four, five, six, seven years, this is another element in that chain of people saying, “Well, okay, it might have been the ‘right thing’ to do five years ago, but it ain’t the right thing to do now.” It is undoubtedly having an impact on the delivery and the number of firms that are promoting schemes. Taken as a whole the market and the environment have changed quite rapidly.

**Q23 Mike Crockart:** According to your written evidence you both seem to agree that while what is proposed is generally okay, we should have gone further. Is that fair?

**Andrew Hubbard:** In the specific reference to the class 2 reforms, I welcome the changes to class 2. But if you were designing a system from scratch would you have two different classes of NIC for the self-employed? Or would you roll it into a single class of NIC, as in an ideal world that is what would have happened. Class 2 is essentially the relic of the old days of the stamp. Some people still talk of it in those terms. I think it is the right thing to move from the weekly basis to a class 4 basis. It would have been interesting to see whether it could have all been rolled into a single revised class 4.

The mechanics of class 2 and the deferments, small incomes, exceptions, all of those were immensely complicated. If I could just say from a personal point of view, I had a time when I was an earner and had a small amount of self-employed income. Dealing with the complexities of the deferment of NIC in those situations was quite messy for tiny amounts of money. It is a welcome change but I should like to have seen it all rolled into a single self-employed national insurance rate.

**Frank Haskew:** Again, I entirely endorse what Andrew has just said. We have made similar representations in the past on this. Page 9 of your research paper 14/45 sums up some of the problems with class 2. It says that less than 0.3% of the NICs collected accounts for about 40% of admin burden of HMRC. That seems totally out of kilter. Given HMRC is under pressure, we all need to help streamline and reduce costs. It was essential that class 2 was looked at. Given those statistics it must make sense to bring it closer to class 4. But as we say, in the long term you have to ask whether class 2 can survive in its current form.

**Q24 Mike Crockart:** You are making a strong case for why it is better for HMRC. But we have just had evidence about the impact that it may have on the low income self-employed. Are you at all worried by the difficulties the simplification may cause for that group of people?

**Frank Haskew:** Under the new rules you will not have to make class 2 if you are below the £5,885. You can still make voluntary contributions. There is some concern about the universal credit purposes. If you are paying every six months rather than as you go through it can make a change to your universal credit. So there are still concerns about that. Again, time will tell how that will impact in practice.

**Q25 Mike Crockart:** You both agree, once again, on one of the other parts of the proposed Bill, which is introducing a targeted anti-avoidance rule for intermediaries relating to national insurance, and you are both quite critical of it. Could you elaborate a little on why that is?

**Andrew Hubbard:** I am not critical of the fact that there needs to be national insurance avoidance legislation; there needs to be, just as there needs to be anti-avoidance legislation for PAYE. The question is whether or not there is a need for a specific TAAR as well as all the other issues that bear into this area, because we clearly have a large number of specific provisions: IR35, the agency legislation and the managed service company legislation. You also have the general anti-abuse rule itself, and one of the questions in my mind is this: is there, on top of the GAAR, a need for a specific TAAR? My fear with all of these things is that they overcomplicate matters, and that the more different ways you have of slicing things up the more opportunity there might be to fall through the gaps between the various anti-avoidance provisions. I am not yet convinced that there is a need for a TAAR as well as everything else we have.

**Frank Haskew:** That is very much our view, as well. Just to reiterate what Andrew said, we support the fact that the Government need to take steps. They have obviously created provisions in relation to the income tax, and it makes sense to cover off national insurance too. However, we are a bit concerned that we now seem to have what Andrew said in his evidence is a plethora of all sorts of different anti-avoidance rules. Given that we now have the GAAR for both direct tax and national insurance, and given that people are normally looking to avoid income tax and national insurance, we wonder whether we have already got enough, with a separate TAAR for income tax and effectively a GAAR that covers both income tax and national insurance. So, is it, if you like, overkill? We have got the longest tax code in the world and we think that anything we can do to make it shorter must be encouraged.

**Q26 Shabana Mahmood:** Off the back of those questions, I want to come on to the GAAR and the TAAR. Obviously, abuse and avoidance are two different things. I was just interested, Mr Hubbard, that you said you were worried that we may be creating more opportunities for schemes to fall through the cracks, but I wondered if the reverse was actually the truth, because you have to go quite a long way to fall foul of the GAAR, which has been one of the criticisms that some people have made of it. If you are not caught by the TAAR in respect of this measure, you will still be caught by the GAAR. Is it not the case that, one way or the other, you will be caught rather than slipping through the cracks?

**Andrew Hubbard:** Time will tell. We have very little experience yet of how the GAAR is operating, and I think it will be several years before that comes through. It may be that in the end the TAAR and the GAAR operate in different spaces, and it may be that in the end there was almost no need for the GAAR because the TAAR catches this activity. However, having gone through the process of creating a GAAR, with all the very important defence mechanisms within it and the checks and the balances, it almost feels like, “Well, we’ll put that to one side and we’ll put a TAAR in place, because it’s much easier to do that.” There is less in terms of balance and defences. The issue is that there are so many things going on in this space that we wonder if there is time to consider how each one of them moves before you go on to the next one, because potentially next year something else could come in.

**Frank Haskew:** We did a lot of work around the introduction of the GAAR, which was a seminal moment in UK tax. We hoped that the introduction of the GAAR would cut out the need for things such as TAARs, so the Government could rely less on them. We are still at the early stage of the GAAR. We have not seen a lot of activity relating to it, and we do not know the sort of things it might catch. We still need the belt and braces of the TAAR, but over time, as the GAAR starts to catch things, we will not need those sorts of provisions, but we are probably talking 10 to 15 years.

**The Chair:** Thank you for that. Before I call Fiona O'Donnell, may I ask everybody to keep their voices up, as I am struggling to hear the speakers?

**Mr Robathan:** Is there a reason why we are in this room?

**The Chair:** I think we have to cope with this room today, but it means that we must keep our voices up.

**Q27 Fiona O'Donnell (East Lothian) (Lab):** I am very glad to lead by example.

Mr Haskew, you said that there may be no need to separate the avoidance regulations for national insurance and income tax, but with the possible devolution of income tax to Scotland and the other devolved institutions—who knows?—do you think that is a sensible way for the Government to proceed?

**Frank Haskew:** I will follow your example and speak loudly.

I did not anticipate that question. Clearly, with the devolution settlement we are going to see a lot of activity over the next few years in this area. For that reason, one can understand why the Government adopted the approach they did, but the balls have been thrown in the air and is difficult to know where they will land, in tax and NIC terms. The Government adopted a pragmatic approach, but in the long term we will look at whether things such as TAARs are necessary, given that we are going to have an overarching GAAR.

**Q28 Mr Robathan:** Our previous witnesses were asked about information campaigns, particularly for the lower paid. Do you think—this is quite a general question—that your fellow accountants and their clients will be sufficiently well-informed about these complicated changes? Are you content that the information will be passed on by you and the Government?

**Andrew Hubbard:** I think it will be a bit haphazard. We in the profession will pass on that information and the Government will pass it on. As with all these things, getting to the right people with the right message at the right time is difficult. If the e-mail lands at the wrong time, people do not read it. It is all about having sustained and regular communication. I think HMRC does some communication extremely well, but some of it does not work well; it is a little haphazard. Some of the stuff on the website is well signposted and is very clear and good, but some of it is not. I would wait and see what happens here. The message has got to be that this is not a once-only campaign. We as advisors and HMRC need to continue reinforcing the message about these significant changes. I imagine that a lot of people will forget that the changes to class 2 have happened and will continue to pay the money in the normal way.

**Frank Haskew:** Going back to your question, we agree that not enough has been done in this area because it is poorly understood. We consider ourselves tax specialists, but the people who have a real grasp of the national insurance rules and the state benefit rules are very few and far between. Yet it is hugely important for an awful lot of people. Funnily enough, I was looking at my own state pension position only a few weeks ago, and I was struggling to understand what my entitlements were going to be. If I am struggling then—I hate to say this—I think it is understandable that the average citizen is going to really struggle to get to grips with just how complicated the NIC rules can be in terms of your contribution record. When you add all that up, it is a very complicated area. The amounts of money are significant, particularly if you are not well paid. We need to do more as a country to ensure that citizens understand the NIC rules and what that gives them in terms of entitlement. What also comes over is that it is a very complicated system and I think people will struggle. There probably is a need to try to see if we can do some further simplification.

**Q29 Mr Robathan:** You have reassured me that I am not the only person that finds it rather difficult to understand.

**Andrew Hubbard:** Obviously, we have class 3 national insurance contributions, which are voluntary. Under this regime there will be a form of voluntary class 2 contributions. I was trying to work out exactly what the difference was, because the rates are quite different, and what each of those two voluntary contributions will get you in terms of benefit. I found it very difficult to actually dig down anywhere to find out the answer to that question, and it is not fully addressed in the briefing notes. One of the things that everybody needs to do some more work on is saying what a class 3 voluntary contribution entitles you to, what the importance of that is and what a class 2 contribution entitles you to. I do not think there is enough information about that yet. If there is, I have not spotted it.

**Q30 Shabana Mahmood:** I wanted to ask about the ICAEW's written evidence to the Committee. You say:

"A power is needed to give HMRC the legal vires to repay NIC that is found to have been overpaid in connection with an accelerated payment notice."

Can you set out why you think that and whether you have had any discussions with HMRC or others about how that has come about?

**Frank Haskew:** The particular problem that you mention is the way the current wording in the Bill talks about payment on account of unpaid contributions. There is a concern that if that is the case, if they were subsequently found to not be due, they could not be repaid because they were effectively already gone and could not be reclaimed. I am aware that there has been correspondence between the Chartered Institute of Taxation and HMRC on this and I think the view is that HMRC thinks that it has the powers and will repay NIC in this position. However, like all these things, it would be helpful to have that explicitly stated in the legislation. HMRC accepts the principle so we are all on the same page in that way, but I think it would be good to ensure that it was absolutely crystal clear in the legislation.

**Andrew Hubbard:** The issue goes back to the fundamental different legal basis of income tax and national insurance. Effectively, the mechanism for repayment of overpaid income tax is very straightforward and is almost automatic, whereas, because the national insurance provisions rely on certain court rules, it is not an automatic thing that if you have overpaid NIC you get it back. There are various claims mechanisms and also various limitation issues in terms of time scales for NIC payments and repayments. It is because, in the income tax version of this, accelerated payments are effectively payments on account, whereas here, for reasons we understand, they are final. It is just not crystal clear that NIC paid under an accelerated payment notice that is ultimately found not to be due will come back. I have seen some correspondence with HMRC, but I agree with Frank that it would be better to make it crystal clear and it is not quite that at the moment.

**Q31 The Chair:** Any further comments on that? Do we have any further questions? Is there anything that either of our witnesses would like to add very briefly?

**Andrew Hubbard:** The only thing I would like to add—it is the final comment I made in our firm's representation—is that we understand completely why NIC has to go through a different process, but I think it is extraordinarily confusing that essentially the same provisions are dealt with in a different context at different times. We saw, when the disguised remuneration provisions came in a few years ago—those were effectively all about PAYE and NIC avoidance—that the effective starting date was different for those, and it came up with some very peculiar results indeed.

Here, because the power to issue an accelerated payment notice in an employment case for income tax is going to have a different starting date to the power to issue one in relation to NIC, we have this strange position at the moment in which NIC had the power to issue accelerated payment notices in relation to PAYE, but they are not doing it; they are holding back until the NIC rules are in place, so they can do a notice for both at the same time. That makes sense, but it is odd from a practitioner's point of view, and I think from a taxpayer's, that these provisions, which effectively do the same thing, have different commencement dates and different sets of parliamentary process.

**Frank Haskew:** I refer the Committee to paragraph 6 of our evidence, in which we talked about the Social Security Advisory Committee's paper on NIC for the self-employed, and recommended that the DWP sets up a working group to examine the balance in social security coverage and entitlement to contributions between the self-employed and employed. That was an interesting and thought-provoking paper and I commend it. I hope that this Committee supports that important work.

There is still a need to look at simplifying and maybe rationalising NIC. I understand that from 2016, effectively the difference between what employed people and the self-employed will get from benefits will just be jobseeker's allowance, which is not necessarily a particularly large difference. I wonder whether, in the longer term, there needs to be a single coherent state NIC and benefits system that works for both employed and self-employed. That will help in the long term to make people have a better understanding of the system, which at the moment I think they do not.

**The Chair:** Thank you for those comments. There are no further questions. I thank you both on behalf of the Committee for your evidence.

9.53 am

*Sitting suspended.*

### Examination of Witnesses

*Colin Ben-Nathan and Kevin Green gave evidence.*

10.5 pm

**Q32 The Chair:** We will now hear evidence from Colin Ben-Nathan, employment taxes sub-committee chairman, Chartered Institute of Taxation and Kevin Green, chief executive, Recruitment and Employment Confederation. May I welcome both of our witnesses? I suggest that you say your name and a sentence on your background. To be fair on this, I will ask Mr Ben-Nathan to start. We have until 10.45 am for this session, but we may finish earlier.

**Colin Ben-Nathan:** My name is Colin Ben-Nathan. I am the chairman of the employment taxes sub-committee of the Chartered Institute of Taxation. My day job is at KPMG, but I am here to give evidence in relation to the CIOT.

**The Chair:** Thank you for that. I am afraid that I am going to have to ask everyone to speak up again. This room is difficult with the acoustics and this Member is definitely struggling to hear.

**Kevin Green:** My name is Kevin Green. I am the chief executive of the Recruitment and Employment Confederation, which is the professional body for private sector recruiters in the UK. We have about 83% of the market by value in membership.

**The Chair:** Thank you. I call Shabana Mahmood to start our questioning.

**Q33 Shabana Mahmood:** Thank you, Mrs Brooke. I welcome both witnesses to the Committee—thank you for coming to give evidence to us. Mr Green, I want to put some questions to you on the targeted anti-avoidance rule in the Bill. The Government have said that they are introducing the TAAR because of the speed with which people are coming up with ways of avoiding tax. Do you think that the TAAR will be effective? What has been the experience so far of the people you represent?

**Kevin Green:** We do not think that it will be effective. One of the things that we think about the way the Bill is constructed is that it does not recognise the reality of the supply chain. For us, one of the key issues that we think is clearly happening—we have made this representation to HMRC on many occasions since the Finance Act was put into place—is that, in reality, a lot of the activity is being driven by the end user, the client.

Therefore, if you think about supply-chain activity in, let us say, infrastructure projects or house building, you will have civil engineering companies that, if this were put in place along with the changes to income tax, would potentially have an increase in their wages bill of about 20%. If you think about the worker, potentially

because of the changes to the construction industry scheme in terms of this Bill, they could be 25% out of pocket.

What we have seen already, since the Finance Act was put in place in the summer, is huge numbers of different models being created, which for us means that what you are doing is putting all the liability on the intermediary, while in reality the power in the relationships is driven by large companies, because it is affecting their supply base, and obviously you will get collusion from workers who will potentially be out of pocket. Again, we have seen models such as the elective deduction model and employers taking workers on directly to avoid this. We think that the way it is constructed at the moment, without any liability being placed on the end user, means that you will end up with a proliferation of schemes, potentially more false employment and certainly the Exchequer not getting the tax take that it is potentially looking for from this and the other Bill.

**Q34 Shabana Mahmood:** I am just going to follow that up. This is clearly an area where we need to see some action in terms of revenues to the Exchequer. You said that you think the liability should rest with the end—

**Kevin Green:** I think liability should be along the supply chain.

**Q35 Shabana Mahmood:** All along the supply chain?

**Kevin Green:** Yes, so in terms of the reporting that is recommended, we think that if you put a responsibility on end users to think about their supply chain and report against it then you would certainly get a growth in terms of large organisations taking an interest in this. At the moment, we see large organisations that are being very specific to our members and other intermediaries in the marketplace about what model they want to work.

I have examples. One of our members has lost 60% of their business. They used to have 360 to 400 workers per week out on site. They want to comply with the regulations as defined. They are now down to 150 workers per week. This is because the workers refused to engage in going on to PAYE because of the loss of earnings to them. The civil engineering firm took on the workers directly on the understanding that the way that the legislation is constructed, that would not be covered. We would also have to say that the workers are then excluded from agency workers regulations as well. That is just one example of where the end user is going to end up with a cost increase for the business and the worker is going to end up with a wages reduction, so they are colluding along the supply chain because all the onus has been put on to the middle party, the intermediary.

**Q36 Shabana Mahmood:** Just to help me understand that example of the civil engineering firm, why do you think the TAAR specifically would be defective?

**Kevin Green:** Because it puts the onus on the liability of the intermediary. If you cut the intermediary out of the supply chain, then the regulations do not apply. It is a classic example of where you have put the onus on one party in the supply chain. The power in the relationship is often driven by the end user.

It is exactly the same as the anti-slavery activity. We gave evidence to the Select Committee on that. We said that if you put the onus on the intermediary, you have to put the onus on the end user to drive the activity down the supply chain. They own the supply chain. We think that there are some issues here.

There are other things that I would like to raise at a later date about the retrospective nature and also some of the activity in relation to guidance. We think there needs to be much greater guidance if this goes forward.

**Q37 Mr Robathan:** Why don't you raise those now?

**Kevin Green:** One of the things that we think about the retrospective nature is that it could be quite punitive. To some extent, they have changed the rules with a lack of guidance and then taken enforcement back to April of this year. We are great believers that you give people the chance to comply and the chance to do the right thing. You put the guidance out in advance and then bring the changes in, perhaps as of April 2015. We are really concerned. The way that the tax regime works, particularly in certain parts of the labour market, affects the ability for the regulation to be all-encompassing. If we get incremental changes, we have the ability for good tax advice and for some organisations to think about how they manage their supply chain. They are always in advance of the regulation. That is why we think that, if you are really serious about increasing the tax take and tackling false employment, you really need to think about that whole supply chain.

**Q38 Mr Robathan:** Do you think that HMRC has the ability and sufficient resources to ensure that people comply with these new systems?

**Kevin Green:** No, we don't. We can give you examples of what has happened since the summer. We have been raising lots of issues about the EDM model, for example. We have written on numerous occasions. We have had meetings. We have seen no action. There is an opportunity for HMRC to address the travel and subsistence issues that we have raised consistently for the past two or three years, which are about creating a level playing field. We have seen a lack of action around enforcement. There has been some progress recently and there is now a consultation, which we are delighted about, but we do question that this is going to take huge amounts of resource to be able to enforce. We question the resources that HMRC currently has available for enforcement activity, going by previous performance.

For us, the answer is no, we do not believe there is adequate resource. One absolutely important thing is that, whatever changes you make in relation to this, one thing that we have consistently asked Government is to ensure that, before you change regulation, you are enforcing what is already there. For us, that is critical. If you are going to put legislation in place, you really must ensure that the people who will try to get around it are going to be addressed; otherwise, the compliant people are at a disadvantage. We have seen that time and again for businesses that are compliant around travel and subsistence. Lots of our members will not do that model. They are under huge commercial pressure from their customers to undertake that activity because of the benefits to them.

The issue for us is clarity about exactly what is happening, fairness on the implementation time scale and, if you really want to make this work, you have to think slightly more broadly and strategically about how the supply chains really work.

**Q39 Mr Robathan:** To pursue that further, you are basically saying that you can see the provisions being not terribly effective when introduced. You have mentioned clarity and the time scale—what would be your solution to make the Bill work better?

**Kevin Green:** It would be to make everyone in the supply chain report openly about how they are undertaking the changes and make them accountable for looking at the compliance of their supply chain. That way, end users—I am not going to name any companies, but let us say large supermarkets, large civil engineering companies—will have accountability to ensure that their supply chain is compliant with HMRC regulations. That is the way to change this once and for all, rather than putting in elements of legislation that the market will find ways to avoid.

**Q40 John Cryer (Leyton and Wanstead) (Lab):** You mentioned a few times earlier on—you seemed to be talking about the construction industry more than anything else—that some companies are taking people on directly. Does that not have some advantages in that people get more security at work? Regulations are easier to enforce if people are employed directly.

**Kevin Green:** One of the models that we have seen grow since the legislation is the EDM model. It is quite a clever wheeze where the worker is employed for tax purposes but self-employed for all other purposes. That is a clever way of getting the financial benefits without ending up with the employment responsibilities. We can see, and have seen, employers being absolutely explicit that that is the model that they want their intermediaries to use. I can point to organisations that have lost large, million-pound contracts because they will not engage in that activity but other companies will. That is a classic example of where you end up with creative activity to avoid attempts to do what we are trying to do, which is to tackle false employment—we are very supportive of that—and increase the tax take, and to do so in a way that is consistent across the labour market.

**Q41 John Cryer:** Is that split model in which people are directly employed but are not really directly employed quite a recent development?

**Kevin Green:** It is a recent development. It was to do with the original piece of regulation in the summer, the Finance Act, which dealt with income tax. It was a clear response to that and it is growing; it is pervasive now. You can start to see them doing exactly the same with income tax, where these models are just going to grow. For me, it is quite a fundamental issue: it is not about the wording of the regulation but about how we tackle the fundamental issue we are trying to get at, which is false employment and non-payment of tax that is due. How do you do that? We are being clear that you need a different approach. That would be our suggestion, but we understand that that is quite significant at this stage.

**Q42 The Chair:** Would Mr Ben-Nathan like to make a few general comments? We will then return to questions.

**Colin Ben-Nathan:** The issue of agency workers is clearly not new, although when I read the original consultative document that was issued I was intrigued to note that the amount of perceived avoidance in relation to agency workers from a pay-as-you-earn and national insurance perspective was estimated to be in the order of £2.5 billion over the next four or five years. It is clearly on the Government's mind and agenda, so it is unsurprising that they would want to take action in this area.

The legislation on agency workers has been around for many years. The Finance Act tightened that legislation in a number of areas, but as Kevin has pointed out, the legislation in the Finance Act is tax legislation. Similar legislation was enacted for national insurance but it is not employment law legislation. One can obviously see two strands here: the tax collection and whether someone has the rights of a worker or, more particularly, an employee.

The structure of the legislation from a tax point of view and the question of whether it is effective—we are going back to the tax rules that are modelled for national insurance purposes—is governed by supervision, direction and control. That is a different test from the general test we use for tax purposes, which is geared to employment more generally.

Whether that model is effective for dealing with agency workers, it is difficult in that you have three words: supervision, direction and control. That is admirably succinct but if you look at the guidance that has been prepared in relation to those three words, it extends to about 18 pages, with numbers of examples. In terms of whether it is easy or difficult to apply, it will not always be straightforward. The CIOT has sympathy with the objective, which is to deal with false self-employment.

The next point that is raised is where the liability should arise in the supply chain. Should it be everybody, the end user, the intermediary? Again, as Kevin points out, there are many different arrangements that we see in the construction industry or otherwise for how people are paid and by whom. I suspect that the reason that the intermediary, the agency, is focused on is that typically it will be the agency that makes a payment to the workers. I suspect that HMRC and the Government were looking at that aspect to say, "Who can we therefore pin the liability on? We need somewhere to go." Indeed, that is what they have done in the tax rules, and that was what was modelled in regulations for national insurance purposes.

The matter we are looking at in this Bill is plugging any gaps that arise in moving targets, different models and so on. It also looks at whether, if a particular structure is not precisely covered by the national insurance rules, there should be a targeted anti-avoidance rule that deals with that position. I heard mention of the general anti-abuse rule that raises the bar and test a little higher. The targeted anti-avoidance rule I suspect HMRC may choose to deploy if it sees such an arrangement more typically. That is the broad perspective. The question is whether the measures will be effective. Kevin has expressed his view.

The other point I would make is that there are provisions both in the income tax rules and the national insurance rules that seek to address the question of collusion, particularly in the case of the provision of

fraudulent documentation, where the liability can move away from the agency to other parties, for example, the end user.

It is a difficult area and certainly the CIOT was sensitive to the question of the time frame for when the measures should be enacted. With £2.5 billion on the table, presumably HMRC and the Government took the view that they needed to act sooner rather than later.

**The Chair:** Thank you. We will return to our questioning.

**Q43 Shabana Mahmood:** We had some discussion of the GAAR and the TAAR in the previous round of evidence. If an arrangement is not caught by the TAAR as envisaged in the Bill, would an arrangement of the type that Mr Green described be caught by the GAAR, which would plug any gaps?

**Colin Ben-Nathan:** My understanding of how the GAAR operates—although I have not seen any cases as such, just the examples given—is that it is a general anti-abuse rule as opposed to a targeted anti-avoidance rule. On anti-abuse, my understanding is that the level and threshold for triggering the GAAR would be somewhat higher than in relation to the TAAR. Let me give you an example. It is something that the CIOT has been a little concerned about. There will be arrangements involving agency workers and end users where the individual, instead of making themselves available personally, do so through their personal service company. That is quite typical: many individuals have personal service companies. Indeed, that is typically a model for provision of services generally, not just in the construction industry but for technology and other IT implementations for large organisations.

If you look at a personal service company, that is effectively a third party; it is not the individual. To give credit to the Revenue, it has gone to some lengths to make its position clear that the agency rules are not intended to apply in a situation where we have a personal service company in normal circumstances, because we have rules that deal with personal service companies of which the Committee may be aware—the IR35 rules, for example. The Revenue wrote a technical paper on that, which was commendably clear. That was in relation to the specific measures enacted in the Finance Act and which have been enacted already by regulation for national insurance purposes. The question that we might look at now, which the CIOT has raised, is, “So you are not technically caught by the rules; we know that and the Revenue has confirmed it. However, we now have a targeted anti-avoidance rule”. So the question for all these people who are potentially affected is, where do they stand in relation to proffering their services through the vehicle they have always used, which is a personal service company? The Revenue has commented on that and you will probably hear from it later. It has said that it would not intend to apply a TAAR where the motive for establishing the personal service company was not tax avoidance but, for example, limitation of liability or some other commercial rationale. That is fine. On the other hand, if it clearly was tax avoidance then it would potentially deploy the TAAR.

As with all measures to do with anti-avoidance, the problem is that it is rarely black and white. The reality is that it is often somewhere in between. For example, if

one contracts individually—if one were permitted to do so, because typically there is insistence on using a personal service company, for other reasons—and one was a higher-rate or additional rate taxpayer, one would be paying tax at 40% or 45% in the first instance. However, if one was using a personal service company the reality is that one would not be paying income tax. The payments would be paid to the company and therefore one would be paying a corporate tax rate that is significantly less. That may not be the sole motivation but it may be a consideration.

By the way, we have sympathy with all this. We have suggested that at the very least it would be helpful for HMRC to elaborate on the guidance it has issued on that matter, which is good guidance, and comment on the grey area and on where it would go and where it would not. That is an example of where the TAAR could bite, but perhaps it would be unfortunate if thousands were caught—as I am sure is not intended by the TAAR—or were uncertain.

**Q44 Jonathan Evans:** Can I take up the point mentioned by Mr Green? I understood his concern about having a situation with people who are employed seeking to avoid making the appropriate national insurance contributions, in collusion with their employers. I did not quite understand why it would not be caught by this targeted anti-avoidance provision here. Mr Ben-Nathan has just been talking about the impact in relation to taxation that there has already been through the Finance Act. In the context of the position concerning national insurance contributions it seems to me that the agency workers directive, requiring as it does the same level of pay whether you are employed or in an agency arrangement, might act as an incentive for people to try to find a way around making the appropriate tax and national insurance contributions. In that context, surely the TAAR would be applied to the mechanisms that you are saying proliferate since the passing of the Finance Act?

**Kevin Green:** The first thing to say is that if you take out the intermediary, the agency workers do not apply, so if the end user is a civil engineering company which has an in-house team and takes on the workers directly, my understanding is that the provision in the Bill and the other Bill do not apply, and certainly agency workers do not apply. Agency workers regulations only apply where there is a tripartite system. What we see on the ground is that a tripartite system is not being used. What is happening, because of the ability to mitigate tax and national insurance, is that end users are going directly to the workers. They know the workers, they understand them, many of them are in personal services companies, as Colin mentioned, so they will not be caught by this legislation. This legislation targets the intermediary and if there is no intermediary, how do you go about it? It is a significant point.

**Jonathan Evans:** We can raise that matter with the Minister.

**Q45 Shabana Mahmood:** You mentioned the elective deduction model as one of the key developments since the Finance Act was passed. Are there any other significant models of that order?

**Kevin Green:** Another that we picked up recently is a contractual restrictive model, where people are asked not to subject the worker to supervision, direction and control and to maintain eligibility for the construction

industry scheme. What the end user is doing is contractually trying to take out the mechanism in terms of clarity around employment status. We have also seen a growth in travel and subsistence. There is a consultation out at the moment being used, again, to get commercial benefit for the end user organisation and the intermediary, which we think is quite significant. So the travel and subsistence elective deduction model and the contractual restrictive model are the ones we are seeing starting to emerge.

**The Chair:** If there are no further questions, I thank both witnesses. We now move on to the final session. The witnesses are welcome to stay and listen to the Minister and his officials.

#### Examination of Witnesses

*David Gauke, Clare Sheehan, David Edney, Robert Burton and Jane Edwards gave evidence.*

10.34 am

**Q46 The Chair:** We will now hear oral evidence from our colleague David Gauke, Financial Secretary to the Treasury, and from officials from Her Majesty's Revenue and Customs and the Department for Work and Pensions. We have until 11.25 am for this session. First, I ask the witnesses to introduce themselves for the record, and to indicate their department in the case of the civil servants. This room has an acoustic problem, so if possible please do not let your voices drop.

**Jane Edwards:** I am Jane Edwards. I am a policy adviser at DWP.

**Robert Burton:** Good morning. I am Robert Burton. I am the policy adviser for employment status at HMRC.

**Mr Gauke:** David Gauke, Financial Secretary.

**David Edney:** David Edney, policy adviser on counter-avoidance at HMRC.

**Clare Sheehan:** Clare Sheehan, also from HMRC. I am a policy adviser for the reform of class 2 national insurance contributions.

**Q47 Shabana Mahmood:** Thank you, Mrs Brooke, and thank you to all the officials for coming to speak to us this morning. We have just had a very useful discussion about the targeted anti-avoidance rule, starting with clause 5 of the Bill. I know the Minister certainly heard—and I hope that the official response will also have heard—a discussion with Mr Green in the previous session, about ways that end-users are already manipulating the rules. They are adopting different models, such as the elective deduction model or the contractual restrictive model, and also making use of travel and subsistence rules. It would be helpful to know what action HMRC is taking on those areas, and whether you are aware of what is happening. It would also be helpful to hear your view on the effectiveness of the TAAR or targeted anti-avoidance rule to deal with this. What thought has been given to the possibility of putting liability all through the supply chain, as opposed to it sitting only with the intermediary?

**Mr Gauke:** Perhaps I may start the response, and then bring Robert in to answer on some of the details. It is worth making the point that it is necessary for us to address the role of the intermediary in this process. This

can be a complicated matter, and there can be many parties to the arrangements that are in place. However, we are talking about a targeted anti-avoidance rule, which is designed for artificial and contrived arrangements. We believe that in order to address this it is necessary to deal with the intermediary, which is the thinking behind the legislation which we debated earlier this year that was contained in the then Finance Bill. By and large, that is what the Bill in front of us seeks to replicate. Of course, it is always the case that, as you deal with a problem in one area, there are risks of changes in behaviour and further matters then arising. Certainly, as a Government we are very much alive to that. Let me bring in Robert on this issue.

**Robert Burton:** When we consulted on this during the summer, we discussed many questions about what our intentions were and whether such a TAAR would be required. We tried to deal with taxes and NICs in the primary legislation introduced in the Finance Act 2014, and to ensure that it was sufficient and robust enough initially to counter any such avoidance. However, we were mindful that parties were possibly looking for ways to circumvent the intention of the legislation. This is why we asked one of the questions in the consultation document, about whether a TAAR would be appropriate. We received quite a lot of responses stating clearly that, yes, parties who were involved in this area thought that a TAAR would be needed.

The second part of your question asked whether we are aware of such things as the elective deduction model. Yes, we are. We speak to stakeholders and parties on the ground throughout the whole process, and continue to do so and to listen to what they say to us. Clearly, we are fact-finding on each of these occasions. We cannot assume straight away that something that has passed in front of us is an avoidance scheme. We have to listen and then establish the facts, and we continue to do so. It may be that a vehicle such as the one being referred to here could circumvent the legislation. I say “it may be”, and that is one of the reasons why we feel that it is appropriate that the targeted anti-avoidance rule is there. It covers such instances, and gives reassurance to those who have complained that there is a race to the bottom, who have said that they require the levelling of the playing field.

**Q48 Shabana Mahmood:** Much of the discussion we had on the Finance Act 2014 and the previous National Insurance Contributions Bill was around offshore intermediaries and the different ways people use those to circumvent the rules. However, Mr Green's point was that people get very smart and start doing things along the supply chain once you point the liability at one place. What thought has been given to something that catches everyone? If the Government have acted on a specific issue with intermediaries, but those measures—although we support them all—only push problems into other areas of the supply chain, it might be better to take a broader view and introduce something that catches everyone. That would say, “We're on to you. You're not going to be able to get away with circumventing in this way.”

**Robert Burton:** It is clearly a difficult question. Where do we take action? We have to consider business efficiencies and administration burdens. Where is the best place? Who are the most knowledgeable parties involved in

this chain? When the legislation applies, the intermediaries are the instrumental parties involved in this. They have a clear relationship with and understanding of the end clients and also of employment law and tax law in terms of employment. We considered them to be key. Throughout this process, we have tried to reduce the administrative burden and bring in legislation that will affect such avoidance but, at the same time, not add to businesses' burdens.

**Q49 Jason McCartney** (Colne Valley) (Con): Minister, can you update the Committee on the accelerated payments policy? Does HMRC have the resources it needs to implement this new regime?

**Mr Gauke:** We legislated for accelerated payments earlier this summer with the Finance Bill. The plan from HMRC has always been to start off relatively cautiously in terms of numbers and ramp it up. The first notices went out at the end of August. Something like 600 notices have been sent out, covering tax liability of up to £250 million. The notices give the parties concerned 90 days in which to settle and make the payment, so one would not expect us necessarily to see the money coming in until the end of November. I can inform the Committee that, up until now, over £25 million has been paid as a consequence of the accelerated payments project. There is clearly much more to come.

The other point I would make—Andrew Hubbard touched upon this—is that we are seeing changes in behaviour. I might ask David Edney to come in, because there has been a significant change in the economics of tax avoidance. There was always the argument that someone could engage in a tax avoidance scheme and, even if they lost, they sometimes had the benefit of the money for many years. Some of the high-profile cases reported in recent months and which have now been addressed go back to schemes that were put in place in 2004, 2005 and 2006. This fundamentally changes the economics, and the business case for pushing these artificial, contrived tax avoidance schemes therefore becomes much less attractive.

**David Edney:** We set up a dedicated helpline for people to contact us. It was noticeable that, as soon as accelerated payments were talked about and the first notices went out, the calls started coming in. They first asked, “What is this all about and am I affected?” and then minds started to concentrate and people said, “I really want to get out of this. I see now that I cannot hold on to the money any longer. What do I have to do to settle?” As well as the advisers we have in place to issue the notice, we have advisers to settle their liabilities without even receiving a notice.

**Q50 Jason McCartney:** Are there new resources for the helpline or are people just reallocated to man it?

**David Edney:** This is all part of setting up our new counter-avoidance directorate, which came into being almost a year ago to tackle all forms of counter-avoidance. There is a small amount of extra resource and, as the Financial Secretary explained, this is a slow build-up. We have added a little bit of resource to issue the first tranche of notices. We will build up the staffing into the new year as we build up to full capacity. As the reaction builds in, we will then look at resources on our debt management teams, for example, and our legal teams. Rather than recruiting very large numbers up front, we are taking it in stages as the programme unfolds.

**Q51 Mr Robathan:** This very much follows on from the last two questions. I am very conscious of the administrative burden, which I think Mr Burton mentioned. One does not want to pile administrative burden on. May I take you back to the comments of Mr Green of the Recruitment and Employment Confederation? He talked about a huge amount of resources, which Mr McCartney has just mentioned. His solution to enforcing this was to have reporting by everybody in the supply chain who should be accountable. I understand what he was saying, but would that be a huge administrative burden? Why do you think he is wrong?

**Robert Burton:** Would it be a huge administrative burden? Any client or any party involved in that chain would have to make a report—I think that is what Mr Green is suggesting—to HMRC. Clearly, that is a large burden for businesses that are not set up for making such returns. And on what basis and how regularly would they do that? We are bringing in a quarterly return in 2015, which will be made from the employment intermediaries who are affected by the legislation, and we have worked closely with them to simplify that. Because they are the key relationship holder in this chain and they are placing the workers with the end clients, they should have the majority of the information already there with them. We have tried to ensure that what we are asking for is what they are already required to keep elsewhere.

**Q52 Shabana Mahmood:** I just want to go back to the issue around accelerated payment notices and the point made by the CIOT in its written evidence about HMRC needing a power to be able to repay the NICs that might have been found to have been overpaid in connection with an APN. The CIOT mentioned that there had been correspondence with HMRC, which was of the view that such a power is not needed. It would be helpful to get clarification and to understand why nothing is needed in the Bill.

**Mr Gauke:** Yes, that is a fair description of the communication. It is the view of HMRC and the Government that it is not necessary for there to be a power in the Bill. If the courts determine that the amount that has been paid under an accelerated payments notice, whether in respect of tax or national insurance contributions, ultimately does not need to be paid, and if the scheme in question, for example, was legal and effective, HMRC would be obliged to make that repayment. Although it is not in the Bill, I am grateful for that question and I am happy to make that statement and to make it clear that that is the view of HMRC and the Government, having looked at it very closely. Do you want to add anything, David?

**David Edney:** We did look at this and we took legal advice. When a court decision or an agreement is reached that national contributions are not payable, we are advised to repay them.

**Q53 Shabana Mahmood:** Ms Edwards, in the early part of our session this morning we had a discussion about the interplay between universal credit and the simplification in the Bill for those on very low incomes who are self-employed. What discussions have you had with colleagues in HMRC about the impact on those with very low incomes who will be paying their NICs slightly differently as a result of the Bill, and on their eligibility for benefits as well as universal credit?

**Jane Edwards:** HMRC and DWP have worked together quite closely to make sure that benefit claimants are not disadvantaged by the move to self-assessment. One of the founding principles of universal credit is financial responsibility. That is why the minimum income floor may be applied to the lower income claimant. There will be a method for them to make in-year payments, if they want to do that, or for them to take financial responsibility themselves, so that they are not disadvantaged by a massive outgoing at the end of the year when self-assessment is due.

**Q54 Shabana Mahmood:** How are you going to make sure that this cohort of people properly understand the rules and know exactly how they are affected? The rules can be a bit of a minefield for many people to navigate, even without any changes. Do you know what the size of that cohort is going to be? How many people will you have to thoroughly explain this to, so that they do not get caught out?

**Jane Edwards:** We understand that communication is a very important part of any change. HMRC and DWP are working together to make sure that we have a comprehensive and far-reaching communications strategy, so that all claimants will be aware of the change, from the self-employment communications from HMRC or from DWP. We are going to make sure that people know about the change to class 2, so that they can take account of it for themselves. We are going to make them aware. We do not want any disadvantage to fall on any of our claimants.

**Q55 Shabana Mahmood:** Will you make sure that the communication is oral as well as written? Will there be help to take claimants through the changes on the phone, at a job centre or in some other DWP arena? Somebody should explain how the rules work; a letter may be a bit more difficult for claimants to get their head around.

**Jane Edwards:** There will be online guidance and helpline assistance in certain instances. We have also got an extensive communication network with stakeholder groups, and we intend to use those avenues as well to promote awareness. We will see how it impacts as it goes along and, if necessary, we will adapt accordingly to make sure that people are aware of the need, so that nobody loses out.

**Q56 Mike Crockart:** I am sorry to go back to the subject of intermediaries, but I am simply not convinced by the answer. It is certain that there is a problem there. You talk about artificial and contrived arrangements. It is certainly the case for a proportion of the intermediaries that they were effectively set up as arm's length companies solely to avoid tax and national insurance implications. This will no doubt frighten them into going into a different arrangement. Surely, we will potentially damage an industry that has good players in it and good intermediaries who are providing a service within the law in order to get to the bad players who are going to come up with a different model that ends up not falling within the powers in the Bill. You say that that is why the TAAR is there, but the evidence is that the TAAR will not now apply, because there will be no intermediary and there will be a new model that will take that out of the equation. So I am not convinced about how you are dealing with this.

**Mr Gauke:** Let me start, and then I will let Robert respond as well. The first point to make is that an abuse was clearly in place which was making use of intermediaries and artificial arrangements which cost the Exchequer considerable sums of money. It is right that we deal with that abuse. A lot of employment intermediaries were very keen that we should deal with this issue, because it meant that those who were abiding by the rules and intentions of Parliament were finding themselves at a competitive disadvantage. So it is right that we try to address that point. If the point being made here is that that does not solve the problem for ever in every respect, I am not denying that, but it is right that we take the action that we can take. This is a targeted anti-avoidance rule and that first point—targeted—is relevant here. The rule is addressing a particular matter.

The next point is whether it moves the problem on to somewhere else. Well, HMRC is very much alive to that issue and continues to analyse the evidence as it comes forward, with a view to taking action as and when that is necessary. None the less, we have made it much more difficult to contravene the system that is in place. We have made it much more difficult for people to engage in the type of artificial arrangement that has existed up till now.

**Robert Burton:** We clearly listened to what we were being told by intermediaries who were compliant and who were spending time and money to ensure that they abided by the legislation. They told us that there was a race to the bottom. They could no longer stand aside while others, who ignored the legislation and did not adhere to what was required of them, drove prices down to where they just could not compete any more; they wanted action there. So we have tried to bring in the action to support those who are compliant, without adding to the administrative burden, at the same time ensuring that we have the powers that we need to take action against those who choose deliberately to try to circumvent the legislation.

**Q57 Mike Crockart:** But the evidence that we have heard today is that, far from supporting those who were complying, the measure would give an incentive to the end users—the companies that were using intermediaries—to do away with those intermediaries entirely. The evidence that we heard was that it had effectively halved the number of people on their books because the end user had subverted them and gone into direct arrangements with the contractors rather than using an intermediary.

**Robert Burton:** Clearly, the agency legislation has acted against the intermediaries. There are many models out there. Some of the evidence that has been given is that in some circumstances end clients who may be driving some of these avoidance measures have decided to engage their own staff directly. We identified that there were some key weaknesses in the agency legislation which we rectified in the Finance Act 2014. We did not identify such a large loophole with employment status that needs to be addressed. It is an argument that we can address directly with that engagement. It is an argument about the status of that worker. Therefore, we already have compliance in that area and we will ensure that that continues to address those who are trying to engage people directly but, again, not as required in the legislation to ensure that tax and NICs are not avoided.

**Mr Gauke:** And just to be clear, when we say we have acted against intermediaries, we have acted against intermediaries who engage in artificial and contrived behaviour. This is not designed to be anti intermediaries per se. It is about addressing intermediaries where the structure is artificial and designed to reduce tax or national insurance contributions liability. But, of course, we remain alive to any threats to our tax base and any attempts to reduce payments of tax or NI as a consequence of artificial behaviour.

**Q58 Mike Crockart:** Equally, you have to be mindful of the potential for unintended consequences upon that very industry.

**Mr Gauke:** Indeed.

**Q59 Jonathan Evans:** My question is directed at the Minister. Is he personally comfortable with the level of resource that he has available, particularly within the national insurance section of his responsibilities? That follows on from my sharing some of the concerns outlined by the hon. Member for Birmingham, Ladywood on budgeting and the impact on lower paid workers of their benefit entitlement. There may be people who will be excluded by the lower floor, as it were, who will have to opt back in to bring their record of contributions up. We have already seen that that will probably involve disproportionate engagement with such individuals.

In explaining my concern, I want to refer to a conversation I had with the authorities on national insurance in Newcastle. People who have more than one employment are likely to overpay their national insurance contributions during the course of any one year and get a refund. I am in the happy position of getting a refund each year, but I want to relate to the Minister a conversation that I had 18 months ago when there was a rather long delay in getting my refund. I rang up—you can get through to people, which is good—but the person I spoke to pointed out that my letter would not be responded to for three weeks because, owing to the volume of work that they were dealing with, it was in the pile to be responded to in three weeks' time.

That was a straightforward matter, but when we look at the complication in the situation of lower paid workers and the impact that the Bill may have on them, I do not think it is enough to expect that, by accessing the internet, they will be able to understand these matters. Will sufficient resource be available so that those of us who are concerned can be satisfied that the officials dealing with national insurance can ensure that lower paid workers are not disadvantaged?

**Mr Gauke:** There are a couple of issues here: one is a general point about HMRC resources and its ability to respond to letters and phone calls; the other is the additional demand on HMRC's resources as a consequence of the changes we are making here. First, HMRC's resources and its service standards are higher than they were four years ago. The percentage of letters that HMRC responded to within the three-week target is higher than it was and I think it is meeting its targets on phone calls dealt with first time round. I would like the numbers to be higher, and HMRC is making considerable efforts to improve its response numbers and times for telephone calls, but again those are significantly higher than four years ago. We need to look at how HMRC can design its systems so that people do not have to

phone up or write as often as they do. In that sense, the tax system could be simpler and not require as many communications.

In terms of this measure and the change for class 2 national insurance contributions, the first point to make is that this is a simplification: it will be easier for the self-employed to comply with the tax system. They now have one payment system rather than two and they are able to deal with their class 2 national insurance contributions as part of the self-assessment system, which is a step forward that has been widely welcomed.

We have discussed this morning and you alluded in your question to the interaction with universal credit. I come back to Shabana Mahmood's question a little earlier. Clearly, communication is very important here. As we have heard, DWP and HMRC are working closely together. HMRC is writing to all of the self-employed, informing them about this issue. In the context of universal credit, people can pay by instalments through a budgeted payment programme, which means that they do not get the spike that can cause a particular problem in terms of the minimum income floor. That is the best way of trying to deal with that.

A point that the Committee made, and we fully accept, is that communication is important. We take that on board. More broadly, HMRC has carried out a review of the resources required and is committed to ensuring that the appropriate resource is in place to introduce the new changes. You ask a fair question, but HMRC would come back strongly in terms of what is, after all, a simplification. Clare, is there anything you would like to add?

**Clare Sheehan:** Just to reiterate the point: the reforms to class 2 are very much intended as a simplification, meaning that customers will not need to contact us or to have the sort of interventions that they found complex and confusing in the past. An example of that, specifically for the low paid, is the current small earnings exception, where someone who has low profits and does not want to pay class 2 has to apply in advance for a small earnings exception certificate. They have to try to forecast what their future profits might be, which is sometimes quite complicated. We have designed the new system to make that much simpler so that if a person has profits below a certain level, they can make a decision to pay voluntarily or choose not to. That decision will be built into the self-assessment form so that they can make an informed decision as they are filling in their SA return; there is no longer a need for that specific separate process.

**Q60 Shabana Mahmood:** I just want to go back to a point raised by Mr Hubbard. I raised it because I was not immediately sure what the answer was myself, without going away to check. I hope that the Minister or one of his team can help us. What does the voluntary class 2 contribution entitle you to, as opposed to the class 3, for NICs? Do we know?

**Clare Sheehan:** The main thing that voluntary class 3 contributions entitle you to is pension entitlement, whereas the benefits associated with voluntary or liable payments of class 2 are wider than that, and include maternity allowance, employment support allowance and bereavement benefits. For the purposes of benefits, there is no difference between what a voluntary payment of class 2 would give you and what a compulsory payment of class 2 would give you.

**Q61 Shabana Mahmood:** So it is just the pension bit that is different.

**Clare Sheehan:** In class 2, you get pension as well, but class 3 is predominantly about securing pension entitlement.

**Q62 Mike Crockart:** I have a very quick question, which will need a very quick answer as long as it is the right answer. It is about foster carers and shared lives carers, in particular the definition of a worker and ensuring that the definition does not, whether by design or accident, exclude people who previously paid class 2.

**Clare Sheehan:** Yes, I can reassure you on that point. The population, for class 2 purposes, is not changing; foster carers will still be able to pay class 2 national insurance.

**Q63 Mike Crockart:** Will there need to be any changes in the Bill to make that clear, or will there be guidance?

**Clare Sheehan:** I do not think there is any need to make changes to make that clear. The guidance will certainly be clear on that point.

**Q64 Mike Crockart:** It is just that the new definition refers to being “in employment” as a self-employed earner. It is difficult to see how you would class a foster carer as being in employment.

**Clare Sheehan:** The key point is being a “self-employed earner”. The way that the categorisation works for national insurance is that you are either an earner or a self-employed earner—that is effectively everybody else who is gainfully employed.

**Q65 Mike Crockart:** The key point is that there is no intention to change that?

**Clare Sheehan:** No.

**The Chair:** As there are no further questions from Members, I thank the final witnesses for their evidence. That concludes our business for the morning.

*Ordered,* That further consideration be now adjourned.  
—(*Harriett Baldwin.*)

11.10 am

*Adjourned till this day at Two o'clock.*