PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONAL INSURANCE CONTRIBUTIONS BILL

Second Sitting

Tuesday 21 October 2014

(Afternoon)

CONTENTS

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

£5·00

PBC (Bill 080) 2014 - 2015

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Saturday 25 October 2014

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

The Committee consisted of the following Members:

Chairs: Annette Brooke, † Dr William McCrea

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

Matthew Hamlyn, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 21 October 2014

(Afternoon)

[Dr William McCrea *in the Chair*]

National Insurance Contributions Bill

2 pm

The Chair: I have a few preliminary announcements. Members are welcome to remove their jackets if they wish, as I see some have already done. I ask Members and others in the room to ensure that all electronic devices are turned off or switched to silent mode. Tea and coffee are not permitted in Committee.

Before we begin our line by line consideration of the Bill, some brief explanation may be useful to those who are relatively new to Public Bill Committees. The selection list for this afternoon's sitting is available in the room and shows how the amendments selected for debate have been grouped for discussion. Grouped amendments are generally about the same or a similar issue. The Member who has their name to the lead amendment in a group is called first. Other Members, including the Minister, are then free to catch my eye to speak on any or all amendments in the group. A Member may speak more than once in a single debate. At the end of the debate on a group of amendments, I will call the Member who moved the lead amendment to speak again. If any Member wishes to seek a vote on any other amendment in the group, they should let me know. Please note that decisions on amendments do not take place in the order they are debated, but in the order that they appear on the amendment paper. There is no set time for the Adjournment of the Committee; it is in the hands of the Whips. An Adjournment at around 5 pm is conventional, that is, if we have not concluded proceedings before then. I hope that explanation is helpful to the Committee. We now begin our line by line consideration of the Bill.

Clause 1

Reform of Class 2 contributions

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

The Chair: With this it will be convenient to discuss the following:

Government amendments 1 to 8.

That schedule 1 be the First schedule to the Bill.

The Financial Secretary to the Treasury (Mr David Gauke): It is a great pleasure to serve under your chairmanship this afternoon, Dr McCrea. We note your guidance on timings. Let us all hope that the Whips are not forced to make a decision at around 5 o'clock.

Clause 1 and schedule 1 set out the changes required to reform class 2 national insurance contributions. Perhaps it would be useful if I remind the Committee why we are proposing the changes. Currently, the self-employed have to navigate two completely different processes for two separate classes of NICs. Class 2 NICs are collected via a flat rate charge of £2.75 a week, paid through six-monthly billing or by direct debit, while class 4 NICs are a percentage charge on profits paid through self-assessment, alongside income tax. The changes contained in schedule 1 are aimed at simplifying NICs for the self-employed and will enable them to deal with their class 2 NICs, income tax and class 4 NICs in one go through their self-assessment.

The aims of clause 1 and schedule 1 are to change the way that class 2 NICs are structured; to change the means by which class 2 NICs are collected by moving collection into self-assessment alongside income tax and class 4 NICs; to change the means by which class 2 are enforced, with changes to associated appeal rights to broadly mirror those for class 4 NICs and income tax; and to make consequential changes to legislation relating to maternity allowance to allow women to continue to be eligible for it after the reform.

A class 2 liability will arise at the end of the tax year, and the amount due will be assessed on an annual basis, although it will still be based on the number of weeks an individual has been self-employed in that tax year. Liability for class 2 will be determined by whether a person's class 4 profits exceed a set threshold—the new small profits threshold. The SPT will be set at the current class 2 small earnings exception level. Those with profits below the SPT will no longer be liable for class 2 under the new arrangements, but they will be given the option to pay class 2 voluntarily to protect their benefit entitlement.

For those who are liable for class 2 under the new arrangements, penalties and appeals will be more closely aligned with those for self-assessment, so that they are not subject to two different regimes. For voluntary payers and those outside of the SA process, existing penalties and appeal provisions will be retained.

Schedule 1 makes amendments to allow women to continue to become eligible for maternity allowance following the class 2 changes. Where a woman has not yet had the opportunity to file an SA return and pay class 2 NICs for the period necessary to establish her eligibility for MA, she will be able to pay the necessary class 2 contributions through a simple exception process. That process will also be available to eligible pregnant women who are neither employed nor self-employed but who participate in the business of their self-employed spouse or civil partner, to allow them to continue to have access to the lower rate of MA if their spouse or civil partner has paid the necessary class 2 NICs. Schedule 1 makes various other changes required as a result of the reform, including to allow for the continuation of the annual uprating of NICs; and to maintain the current treatment of married women with a reduced rate election.

The hon. Members for Birmingham, Ladywood and for Newcastle upon Tyne North (Catherine McKinnell) raised important points on Second Reading and, if I may, I will take this opportunity to provide some reassurance. There was a concern that the process being

put in place to allow pregnant women to pay class 2 contributions, if they have not yet filed their SA return, would be "impractical" and require

"a high level of forward planning".—[*Official Report*, 8 September 2014; Vol. 585, c. 687.]

I reassure hon. Members that that will not be the case.

Her Majesty's Revenue and Customs and the Department for Work and Pensions have worked closely together to develop a simple and straightforward process. Self-employed women who have not yet submitted an SA return will be able to choose to make a one-off payment to HMRC for the requisite number of class 2 contributions needed to secure the standard rate of MA. Some pregnant women may already be making regular payments through a budget payment plan, which they could use for that purpose.

The exception process does not require any forward planning beyond that which a pregnant woman has to undertake currently under the MA application process. A self-employed woman who wishes to make a claim for MA and has not already submitted her SA return will be able to pay for any shortfall in contributions at the time of her claim through the exception process.

It is also worth noting that self-employed women with low earnings will no longer face the additional burden of having to apply for a small earnings exception certificate to secure the lower rate of MA; they will simply have to be registered as self-employed for 26 weeks in the test period. The current SEE process requires a person to apply in advance for an exception and forecast their earnings level for the coming year, which requires a much higher level of forward planning.

It was suggested that the Government should review the impact of the changes to MA after two years. As the first payment of class 2 through self-assessment will not have to be made until the end of January 2017, a two-year review date is unfeasible. However, DWP and HMRC are committed to ensuring that this group of women is not disadvantaged by the reforms. DWP already monitors the number of MA claims on a routine basis and that will continue post-reform.

On how the changes will interact with universal credit, the move to annual collection of class 2 NICs would create a single annual spike in outgoings, which could push a claimant's reported earnings below their minimum income floor—that point came up in this morning's evidence session. However, DWP believes that the effect of the proposed changes will be light as the facility to make budgeted payments to HMRC within the SA system already exists and, therefore, claimants have the option to mitigate such an effect themselves. That aligns with the UC core principle of financial responsibility. Regular monthly payment towards NICs liabilities will be reflected in their award as it is based on a net figure.

The question was asked about why the facility to make monthly payments of class 2 was referenced in the tax information and impact note published alongside the Bill, but there is no provision for it in the Bill itself. That is an excellent question and one that I am pleased to be able to clarify today. It is not legislated for in the Bill because the option to make budget payments already exists in the SA system.

The Committee may be interested to know that that is a more flexible system than under the current class 2 direct debit system. It allows an individual to set up a direct debit for the amount and at the frequency of their choosing. They are free to vary or cancel the arrangement at any time, or indeed ask for any money they have paid to be returned to them, so it is particularly useful for those whose profits fluctuate throughout the year, which can often be an issue for those with low profits.

I hope that those answers are helpful to the Committee, although I dare say that the hon. Member for Birmingham, Ladywood was already prepared with those points. I hope that the answers are helpful to her in particular.

Government amendments 1 to 8 set the weekly rate of class 2 NICs and the small profits threshold for the 2015-16 tax year. They also set the special rate of class 2 NICs paid by share fishermen for the 2015-16 tax year.

I remind members of the Committee that the policy on indexation of NICs rates and thresholds for this Parliament was set out in the Budget on 23 March 2011, where we announced that, from the 2012-13 tax year, the basis for indexation of most NICs rates and thresholds would be the consumer price index, instead of the retail price index—the rate of inflation. These amendments are in accordance with that policy.

The NICs rates and thresholds for the 2015-16 tax year are calculated using the September CPI and RPI figures published in October. They are announced in the autumn statement and legislated for early in the new year to take effect from the beginning of the following tax year.

When the Bill was introduced in July, it included the 2014-15 tax year rate of class 2 NICs and set the small profits thresholds at the level of the small earnings exception for the 2014-15 tax year. That was because the timing did not allow us to include the 2015-16 tax year values of the weekly class 2 rate and small profits threshold in the Bill.

Amendment 1 sets the weekly rate of class 2 NICs for the 2015-16 tax year for those who are self-employed and have profits at or above the small profits threshold. The weekly rate will increase by CPI from £2.75 to £2.80.

The small profits threshold is the level of profits at or above which class 2 NICs have to be paid. The Bill sets the small profits threshold at the same level as the current small earnings exception. As the small profits threshold replaces the small earnings exception, it makes sense to apply the same rules for indexation.

Amendment 2 increases the small profits threshold by CPI from £5,885 to £5,965 for the 2015-16 tax year. Under the new regime, if profits are at or above the small profits threshold class 2 NICs will be due. Those self-employed earners with profits below the small profits threshold will still be able to pay class 2 NICs voluntarily.

Amendment 3 sets the weekly rate of class 2 NICs for the 2015-16 tax year for those who are self-employed and have profits below the small profits threshold and who decide to pay class 2 NICs voluntarily. The weekly rate will increase from £2.75 to £2.80. Amendments 4, 5 and 6 make similar provision in respect of Northern Ireland.

Share fishermen pay a slightly higher weekly rate of class 2 NICs, which allows them to claim contributory jobseeker's allowance when unemployed. The class 2 contributions that they pay is increased by 65p per week to reflect this additional entitlement. As the special rate

[Mr David Gauke]

of class 2 NICs paid by share fishermen is so closely linked to the class 2 NICs rate, we are making that change at the same time.

Amendment 7 makes changes to paragraph (c) of regulation 125 of the Social Security (Contributions) Regulations 2001 to increase the weekly rate of class 2 contributions paid by share fishermen from £3.40 to £3.45 per week from 6 April 2015. Amendment 8 removes unnecessary wording as a consequence of the changes made by Amendment 7.

By announcing these figures early and making the necessary legislative changes in this Bill, we are ensuring that they are in place in good time for the start of the 2015-16 tax year, particularly as this is an entirely new regime in terms of the collection of class 2 NICs and how that liability is assessed.

2.15 pm

If necessary, I am happy to take the Committee through schedule 1 paragraph by paragraph, although the provisions are set out in the explanatory notes. Otherwise, I commend clause 1 and schedule 1 to the Committee.

The amendments set the weekly rate of class 2 NICs at £2.80, the small profits threshold at £5,965, and the weekly rate of class 2 NICs paid by share fishermen at £3.45, all for the 2015-16 tax year. The increases follow the policy on indexation announced in the 2011 Budget. The changes are being made early to ensure that they are in place in good time for the start of the 2015-16 tax year, as they constitute a new collection and assessment regime for class 2 NICs. The remaining NICs rates and thresholds will be announced in the usual way in the autumn statement on 3 December.

Given that explanation of the amendments, I hope that the Committee will agree that they should be made.

The Chair: Before I call the next Member, I welcome Liz McInnes to the Committee. It is a pleasure to have you here and I trust that you will enjoy this afternoon's sitting.

Shabana Mahmood (Birmingham, Ladywood) (Lab): It is a pleasure to serve under your chairmanship, Dr McCrea. I welcome all Committee members to this afternoon's deliberations, particularly my hon. Friend the new Member for Heywood and Middleton. I hope that she will get a flavour of proceedings on finance matters, although the amount of time that we take might not reflect the length of other debates in which the Minister and I have been engaged in the past few weeks and months.

I suspect that this afternoon's deliberations will be as efficient as those on Second Reading. To that end I am grateful to the Minister, his officials and all the other witnesses who gave evidence this morning in what was a very useful and helpful oral evidence session that dealt with many of the technical points about the legislation that were raised by various stakeholder groups, including the Chartered Institute of Taxation and the Low Incomes Tax Reform Group. They were concerned about some of the effects of the simplification measures; we heard good clarification on those points. I am grateful to the Minister for his introduction to clause 1 and schedule 1, along with the Government's amendments.

For self-employed people—the Office for National Statistics believes there to be about 4.6 million of them—the existence of two separate systems for the collection of class 2 and class 4 NICs is undoubtedly an administrative burden that they could do without. Most self-employed people are already juggling a huge number of balls, so we welcome proposals that aim to make their business lives easier. This is not a new area of debate, and the proposed changes we are discussing today follow a change in April 2011 that sought to ease the administrative load by aligning the dates on which payment of class 2 NICs is due with the dates for tax under self-assessment—moving them to 31 January and 31 July. The changes before us build on what has gone before.

The particular change that we are discussing today was raised by the Office of Tax Simplification in its review of small business taxation. In various work in 2011-12, the OTS noted the advantages of making the simplification change, the foremost of which was that reforming how class 2 NICs were assessed and collected would alleviate problems for many self-employed persons who find that they are obliged to apply for a refund of overpaid national insurance at the end of the tax year. The OTS also found that there could be simplification and cost reductions for HMRC and small businesses in combining the collection process and the self-assessment return. HMRC estimates that collecting class 2 NICs in that way should cut the administrative burden on businesses by around £19 million a year, thereby directly benefiting 4.6 million self-employed people.

After the legislation was published, a number of concerns were raised, particularly by taxation stakeholder groups, about the maternity allowance and the interplay between the changes and universal credit. I am very grateful to the Minister for dealing with all the points that were raised on Second Reading, some of which came up this morning in the oral evidence session. He provided some helpful clarification on the issues raised, including some reassurance that pregnant women will not miss out and that people will not find themselves disadvantaged, particularly in relation to universal credit. The point that remains outstanding from our discussions this morning relates to how these changes will be communicated, both to the wider group of the self-employed, who will have to get used to doing things differently—it is simpler, but they will still have to have the impact of the change communicated to them—and to pregnant women and people on very low incomes, who will have to think about the impact this will have on universal credit.

Witnesses who gave evidence this morning all pointed out that the rules can seem quite complex and are not well understood by members of the public, including, sometimes, the rules on eligibility for different types of benefits from voluntary contributions under class 2 and class 3. As we heard from Mr Hubbard, it is not immediately obvious what the different voluntary payments entitle people to. The Minister's officials helped us out with that, but it shows that even the experts struggle to navigate this landscape. It would be helpful if the Minister would build a bit on some of what we heard this morning in relation to communication.

Ms Edwards, the DWP official who attended the session this morning, provided some information in outline about how these changes will be communicated to those on very low incomes and those on benefits. I was a little worried that some of what she referred to related to online communications. We know that self-employed people on very low incomes and those on benefits are often digitally excluded. Online communication is a method of choice in the modern age, but it means that those who are excluded might not be able to access the information they need. I was not completely convinced that the helpful oral advice that is sometimes necessary will be available, rather than just something in writing or on the internet. It would be helpful if the Minister would set out some further thinking and more practical information about what is going to happen for the people who will be affected in that way.

Similarly, I am very grateful for the clarification about the working of the maternity allowance as a result of these changes. It would be helpful to hear more detail from the Minister on communication to pregnant women. There is a wider point about communication to everybody who is going to be affected. Mr Whiting from the Office of Tax Simplification suggested that his dream scenario for communication of these changes would involve at least three separate letters to all self-employed people by HMRC. Is that something that the Minister is planning? Have letters already been prepared? Has anything gone out already to tell people that these changes are coming? Will he take steps to ensure that people understand some of the complexity around voluntary contributions and what they entitle people to? As the rules engage a bit more, we do not want people to miss out because they fail to understand the impact of the simplification.

As I say, it would be helpful to hear more detail from the Minister, particularly on communication, but he has helped on many technical issues, for which I am grateful, and we support the simplification measures in the Bill.

Mr Gauke: I thank the hon. Lady for her questions and, on behalf of the Committee, for not pursuing those questions that I managed to anticipate. She raised the issue of communications, which came up this morning. We acknowledge that that is an important point. HMRC has already started work with self-employed customers to inform them of the change. It is using existing communication forums and relationships with agents and accountancy organisations and other intermediary representative groups. In addition, as we heard, HMRC is working with DWP to develop its communications about this change. A lot of this is in the context of universal credit and, therefore, DWP is actively engaged in communicating with those likely to be affected.

I acknowledge—and HMRC and DWP recognise—the point made by the hon. Lady that not everyone can or will access information online. That is why HMRC is writing to all payers of class 2 national insurance contributions, to tell them that the changes are coming and will write again at the time of the changes. Both online and written guidance will be updated and key messages are always tested before they go out en masse, to ensure that they are clear.

I hope that provides a degree of reassurance. The hon. Lady is right to raise the issue of communication because it is important, but HMRC and DWP are focused on it.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Schedule 1

Reform of Class 2 contributions

Amendments made: 1, page 8, line 14, leave out "£2.75" and insert "£2.80"

This amendment changes the rate of Class 2 contributions that a self-employed earner is liable to pay, to take account of indexation in accordance with Government policy announced at Budget 2011. The new rate of £2.80 will be applicable for the 2015-16 tax year.

Amendment 2, page 8, line 21, leave out "£5,885" and insert "£5,965"

This amendment changes the small profits threshold ("SPT"), below which no Class 2 contributions are payable, to £5,965 for the tax year 2015-16, to take account of indexation in accordance with Government policy announced at Budget 2011 for the small earnings exception (which the SPT replaces).

Amendment 3, page 8, line 27, leave out "£2.75" and insert "£2.80"

This amendment changes the rate of Class 2 contributions that a self-employed earner may pay voluntarily, to take account of indexation in accordance with Government policy announced at Budget 2011. The new rate of £2.80 will be applicable for the 2015-16 tax year.

Amendment 4, page 11, line 21, leave out "£2.75" and insert "£2.80"

This amendment makes provision corresponding to amendment 1, in respect of Northern Ireland.

Amendment 5, page 11, line 28, leave out "£5,885" and insert "£5,965"

This amendment makes provision corresponding to amendment 2, in respect of Northern Ireland.

Amendment 6, page 11, line 34, leave out "£2.75" and insert "£2.80"

This amendment makes provision corresponding to amendment 3, in respect of Northern Ireland.

Amendment 7, page 15, line 36, at end insert—

31A The Social Security (Contributions) Regulations 2001 are amended as follows.

31B (1) In regulation 125 (share fishermen), in paragraph (c), for "section 11(1) of the Act (Class 2 contributions), be £3.40" substitute "section 11(2) and (6) of the Act (Class 2 contributions), be £3.45".

(2) The amendment made by sub-paragraph (1) is without prejudice to any power to make regulations amending or revoking the provision amended."

This amendment changes the Share Fishermen's rate of Class 2 contributions to £3.45, in line with the changes to the normal rate, to take account of indexation.

Amendment 8, page 15, line 37, leave out "of the Social Security (Contributions) Regulations 2001"

This amendment is consequential upon amendment 7, which makes this reference to the Social Security (Contributions) Regulations 2001 superfluous.—(Mr Gauke.)

Schedule 1, as amended, agreed to.

Clause 2

Consequential etc power

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

Shabana Mahmood: Clause 2 would provide the power to

"make consequential, incidental or supplementary provision in connection with the provision made in Schedule 1."

That includes enabling regulations made by statutory instrument under the clause to modify any provision in primary or secondary legislation and to make different provisions for different cases or classes. It would be helpful if the Minister could set out the type of technical changes envisaged in the clause.

Mr Gauke: It is expected that this power will be used to update references in legislation—for example, references to new section 11, which has different numbering from its predecessor. Minor changes follow from the reform of class 2 NICS in the Bill, such as changes to the due dates for payment of class 2 NICS for benefit purposes. The draft regulations have been provided to the Committee. Therefore, more information has been provided on what to expect.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

APPLICATION OF PARTS 4 AND 5 OF FA 2014 TO NATIONAL INSURANCE CONTRIBUTIONS

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

The Chair: With this it will be convenient to discuss the following:

Government amendment 9.

That schedule 2 be the Second schedule to the Bill.

2.30 pm

Mr Gauke: Let me begin with a few introductory remarks. As I set out in earlier debates, these measures are an important part of our drive to stamp out tax and national insurance contributions avoidance. It cannot be right for those who go in for these schemes to be able to sit tight and hold on to the money while the dispute is settled; nor can it be right that they can simply ignore the evidence of a tribunal or court decision in another case that quite clearly resolves their dispute. These measures address those situations, and introduce important powers for HMRC to tackle the behaviour of a small but persistent group of promoters who devise avoidance schemes that have little or no chance of succeeding.

The main purpose of clause 3 is to apply to NICs the rules on follower notices, accelerated payments and high risk promoters that have already been put in place for tax by the Finance Act 2014. Clause 3 introduces schedule 2, which contains the detail, so I will focus on the schedule.

For the most part the schedule applies the tax legislation to NICs, with modifications, to create a single set of anti-avoidance rules that applies to both tax and national insurance contributions. Therefore, I would like to focus on some specific points where there is more of a difference compared to the equivalent tax rules.

In relation to follower notices and accelerated payments, the first point to note is that paragraph 6 of schedule 2 introduces the concept of a "relevant contributions dispute". For tax, we have made it clear that a notice can be issued only where there is an open inquiry or appeal. Where the arrangements involve an employer, it is likely that both PAYE and NICs will be in dispute. For PAYE the issue of a regulation 80 determination is the trigger for an appeal that can lead to a notice.

The equivalent of a PAYE determination for NICs is a determination under section 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999—or article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999—which I shall simply refer to from now on as a section 8 decision. A section 8 decision is issued very late in the process, whereas a regulation 80 determination has to be issued earlier in order to meet statutory time limits. By introducing a "relevant contributions dispute" we will enable notices to be issued for PAYE and NICs at the same time, removing the need for two separate processes.

The second point I would like to emphasise in relation to follower notices and accelerated payments is in respect of paragraph 17, which makes clear that the accelerated payment is a payment of the national insurance contribution itself, and not a separate payment on account. Among other things, that enables the amounts collected to be paid into the National Insurance Fund and used by employees to qualify for future benefits.

Finally, in respect of paragraphs 17 and 18, entitlement to benefit cannot be based on any accelerated payment that is subsequently repaid. The only exception to that is where payments of benefits have already been made. Those will not be affected by any repayment made of an accelerated payment.

In relation to the promoters of avoidance schemes, the Bill before the Committee applies the tax legislation included in part 5 and schedules 34 to 36 of the Finance Act 2014 to NICs so that the legislation operates as one unified measure that covers both tax and NICs. The Bill introduces no new concepts; it merely seeks to secure that coherent result.

I will now turn to amendment 9, which is a minor technical amendment that will ensure that the legislation works as intended. The legislation on promoters of tax avoidance schemes introduces a higher standard of reasonable excuse and reasonable care for monitored promoters and their clients. Generally speaking, it is open to taxpayers to claim that they have taken "reasonable care" to avoid failing to comply with an obligation under the Taxes Acts. In relation to errors in a return, a taxpayer may point toward having obtained legal advice when seeking to construct an argument that they have taken reasonable care to avoid such an error.

However, section 276 (2) of the Finance Act 2014 introduces a higher standard of reasonable care for tax returns and accounts of clients of monitored promoters, specifically those listed at paragraph 1 of schedule 24 of the Finance Act 2007. The Finance Act 2014 ensures that, in relation to tax, if a client is liable for a penalty under schedule 24 of the Finance Act 2007, and has relied on legal advice as to the operation of the scheme which has been provided by a monitored provider, that advice cannot be taken into account in relation to a defence of reasonable care.

The promoters of tax avoidance schemes legislation do this to ensure that a client does not blindly rely on advice provided by a high-risk promoter for a defence

of reasonable care. Removal of this defence in these circumstances encourages the clients of monitored promoters to obtain independent advice from alternative sources, not just monitored promoters who may seek to misrepresent the likely success of an avoidance scheme. This amendment, to part 2 of schedule 2 to the National Insurance Contributions Bill, ensures that the reference to schedule 24 of the Finance Act 2007 in section 276 of the Finance Act 2014 will also include that schedule as applied to NICs. It ensure that the higher standard of reasonable care provided for by section 276 of the Finance Act 2014 applies to clients of monitored promoters of NICs avoidance schemes when submitting returns to HMRC.

I hope that by now those who engage in tax avoidance have got a clear message. We have introduced a general anti-abuse rule and extended it to NICs, and we have taken steps to close down loopholes. The anti-avoidance measures in this Bill are the next step in building up the pressure on those who market and those who use tax avoidance schemes. But promoters and avoiders should be under no illusion that we will stop there. As long as they continue to try to frustrate the tax system and try to pay less tax than the law clearly intends, we will continue to act against them. Extending these provisions to NICs is an important step to increase the pressure on the tax avoidance industry. I therefore hope that the clause, schedule and amendment will be accepted by the Committee.

Shabana Mahmood: I am grateful to the Minister for his introduction to clause 3 and schedule 2. He and I have debated at length the measures relating to follower notices, accelerated payment notices and high-risk promoters of avoidance schemes. He will know that the Opposition have supported the measures that were introduced in the Finance Act 2014 and continue to be supportive of all these measures and what they seek to do to tackle tax avoidance. One of the most controversial aspects in our debates on these issues concerned accelerated payment notices and the whole issue of retrospection as put forward by some of the campaigners on this. There was a vocal campaign across social media, and many business people were getting in touch with their Members of Parliament.

I agreed, and continue to agree with the Minister, that issues of retrospection are not engaged because we are not talking about a new tax liability being created. Instead the issue is where the tax that is in dispute should sit. I agree with the Minister that it is entirely right and proper that that should sit with HMRC, particularly given the ways in which some people have sought to frustrate the process by using the legislative framework to extend the length of time it takes to deal with these matters, holding on to the tax for all that period and denying it to HMRC. As HMRC win around 80% of those cases, most of it has to be paid over at some point. So the measures to speed that up are very welcome. They have to be applied to national insurance just as much as to income tax.

In the evidence session this morning we asked some of the witnesses how they felt the provisions on income tax that have already been made in the Finance Act are working in practice. The experts felt unable to make a judgment yet about how those changes are bedding in. They made the point, which is important for the Committee to recognise, that the measures are having an effect. We welcome that fact, and I am sure the Minister does as well. I was struck by Mr Hubbard's statement that they have encouraged people to sort matters out and err on the side of caution. They have certainly had the welcome behavioural effect of concentrating minds, which will help ensure that the provisions work successfully for income tax and, after the Bill is passed, national insurance.

Somebody—I cannot recall whether it was the Minister or one of his officials—said that 600 notices have been issued since August. The acoustics in the room this morning made it difficult to hear what was being said. Given that a reasonably large number of notices have been issued, will the Minister say a bit more about how the changes are working in practice? Will he talk about the internal governance procedures that have been put in place by Her Majesty's Revenue and Customs? Many of the stakeholders said that the changes give the impression that HMRC will be the judge, jury and executioner. The internal safeguards introduced in the Finance Act go some way towards allaying that concern, but it would be helpful to hear from the Minister how they are working in practice in HMRC and the team responsible for issuing the notices.

A concern was raised about the fact that the changes may affect the successful disclosure of tax avoidance schemes regimes, and that some people might be unwilling to disclose schemes they have used if they fear that an APM may be issued. The Government are conducting a review and looking at strengthening DOTAS. It would be helpful if the Minister updated the Committee about those important things.

Another point that the Minister and I have debated at length when we have discussed these issues is the resourcing at HMRC. This morning we heard more about the counter-avoidance directorate, and we were told that 100 or so staff are working on this issue. As this change is relatively new, it would be helpful if the Minister set out how the directorate is getting on and how it is operating. What is his assessment of the staffing, the work load and the skill sets of its staff members? Does he think more needs to be done to bring the staff up to a sufficiently high level of seniority so they can make judgment calls about follower notices, in particular, for which there is an internal review procedure in HMRC?

Finally, we heard this morning from Mr Haskew of the Institute of Chartered Accountants about the potential effect on the ability of tax advisers to access indemnity insurance from their insurers. We were given a sense that insurers are tightening up the questions they ask of advisers before offering them insurance. I must declare to the Committee that in my previous life as an employed barrister I was a specialist in professional indemnity litigation, although I have never acted on an accounting negligence case.

The issue of indemnity insurance is important, because it pertains to the wider point of whether there should be more wholesale regulation of tax advisers. I get representations from both sides of the argument on a semi-regular basis, as I am sure the Minister does, both now and when he was the shadow spokesman. It would be unhelpful for indemnity insurers to act as creators of a de facto regulation regime. Has the Minister had more representations on that issue or given more thought to it? There is not much time left in this Parliament, but regulation comes up regularly. It would be helpful to

[Shabana Mahmood]

hear how the Minister thinks those things will change as a result of the behavioural change of both the stakeholders—the institutes themselves—and their insurers on tax advice and liability for it.

2.45 pm

Mr Gauke: Again, I thank the hon. Lady for her comments. This is familiar territory for both of us, having debated this subject at some length over the summer in the Finance Bill Committee. I appreciate her support on these measures and, in particular, that she shares our view that they are not about retrospective taxation. The liability is ultimately determined by the courts interpreting the law as applied at the relevant time. It is a question of where the money sits in the interim, and I am grateful to her for reiterating her point.

The hon. Lady touched on some of the evidence I gave this morning on the early stages of accelerated payments. The first notices went out in late August. Some 600 notices were sent out, which cover sums in dispute of £250 million. The notices give the recipients 90 days in which to pay, so it is too early to give a success rate, as it were, but already more than £25 million has come in to HMRC, some time in advance of the expiry of that 90-day deadline. The early signs are encouraging.

I will address some of, but ideally all of the questions that the hon. Lady has raised. On governance and HMRC's capability, it is worth highlighting that HMRC has put strong governance procedures in place to handle a range of complex issues with significant amounts of tax involved. Therefore, as with any of its responsibilities, HMRC has put in place appropriate governance for follower notices and accelerated payments. The case team, advised by litigation specialists and solicitors, is responsible for analysing the decision to be used as the basis for a follower notice, identifying the relevant principles and reasoning and setting out how those apply to potential follower notice cases. The recommendation is signed off by all relevant parties in the Department before being submitted for approval, and the report is presented to a governance body to consider whether to give approval. The taxpayer can make representations that the judicial ruling is not relevant to their arrangements and must do so within 90 days of receiving the notice. The representations will be covered by an independent HMRC officer, who is unconnected with the team that issued the follower notice and the governance panel that decided that the judicial decision relied upon was relevant.

That is particularly relevant for the follower notice points, but there is a wider point to be made on ensuring that HMRC has the resources to be able to pursue these policies. It is clear to me that it is in a position to do that. Although HMRC is reducing in size in line with efficiencies, the Government have provided significant reinvestment of £1 billion specifically to combat revenue lost and at risk through non-compliance. That means that while most of HMRC's lines of business are reducing in size, the number of roles in compliance is increasing.

HMRC has brought all its work to tackle avoidance together in a new counter-avoidance directorate. As we heard this morning from an HMRC official, around 100 staff have been recruited into counter-avoidance to deal with the issue of accelerated payment notices, and another 100 will be added in 2015. In addition, HMRC is deploying additional staff to handle collection work. HMRC is taking a flexible approach on additional legal staff, which will depend on the number and nature of legal challenges.

Her Majesty's Courts and Tribunals Service is recruiting additional tribunal judges to handle the cases involving accelerated payments and follower notices and to accelerate the number of cases going through the tribunal generally. The Government have invested extra funds into HMRC's work to tackle avoidance and evasion. That is bearing fruit, with compliance in 2013-14 bringing in £23.9 billion up substantially from where it was when we came to office.

The hon. Lady raised the question of whether this measure will put pressure on compliance with DOTAS, given the particular treatment that applies to schemes put forward in DOTAS. As I made clear in Finance Bill Committee, HMRC will take robust action against those who choose not to disclose when they should. Our new measures against high-risk promoters will be part of tackling that behaviour. We have been consulting over the summer on improvements to DOTAS and what may be needed to further strengthen its effectiveness and compliance with its rules. That consultation closes on Thursday. There has been a good level of interest and engagement and HMRC and the Government will evaluate the responses in the usual way before deciding how to proceed. We certainly will do everything we can to ensure that DOTAS is properly complied with.

I hope that those points of clarification are helpful to the Committee and that the clause, schedule and amendment can stand part of the Bill.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Schedule 2

Application of Parts 4 and 5 of FA 2014 to national insurance contributions

Amendment made: 9, in page 22, line 30, at end insert—

"Limitation of defence of reasonable care

28A In section 276 (limitation of defence of reasonable care), the reference in subsection (1) to a document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 includes a document, relating to relevant contributions, in relation to which that Schedule applies (and, accordingly, the reference to that Schedule in subsection (2) of that section includes that Schedule as it so applies)." *—(Mr Gauke.)*

This amendment inserts a modification of section 276 of the Finance Act 2014, to ensure that the higher standard of reasonable care provided for by that section applies to clients of monitored promoters of national insurance contributions avoidance schemes when submitting returns to HM Revenue and Customs.

Schedule 2, as amended, agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5

Categorisaton of earners etc: anti-avoidance

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

Shabana Mahmood: Clause 5 will introduce a new targeted anti-avoidance rule to cover the payment of national insurance contributions, which sits alongside the provisions in this year's Finance Act aimed at tackling the issue of employment intermediaries who falsely label workers as self-employed to reduce their tax liabilities.

For workers falsely badged as self-employed, particularly those who do not know that that is the case, the impact is that they are not eligible for many of the benefits available for employed earners, such as holiday and sickness pay. This year's Finance Act amended legislation directly to address the issue in relation to the payment of income tax. A worker will now be designated as an employee if they are under the supervision, direction or control of someone else, and in that case they must be paid through PAYE, rather than as self-employed people. That is a change from the previous designation, under which a worker was deemed to be an employee if they provided their services personally. It was found that many intermediaries could exploit the test by claiming that there was no obligation for the worker to provide their services personally, and to get around that, a clause was often inserted into a worker's contract stating that they could send someone else to do their work, even though the employee in reality wanted that specific worker.

The role of the targeted anti-avoidance rule in this Bill is to ensure that the new measures cannot be circumvented, and that workers who would be employed earners if it were not for the intermediary arrangements are treated as employed earners. The targeted anti-avoidance rule—the so-called TAAR— will allow HMRC to consider both the motive for setting up such an arrangement, including whether it was set up with the motive of avoiding NICs, and what was achieved, including whether it resulted in less NICs being paid. As such, during debates on the Finance Bill, we supported the new measures and the corresponding TAAR for income tax, and we will be supporting this measure in relation to NICs today.

The problem of bogus self-employment is widespread and complex. We heard about that complexity in the oral evidence session this morning, and it is not least because of the prevalence of the use of offshore intermediaries within the process. A Government review found that at least 100,000 individuals working in this country were employed through an intermediary company that had no presence, residence or place of business within the UK. In many cases, the employee was unaware that their payroll was located offshore and that tax was avoided on their earnings.

Recent legislative changes now mean that if an offshore intermediary directly supplies a UK-based client with a worker, the client is treated as the worker's employer. If a UK-based intermediary is involved, they are treated as the worker's employer. Onshore employment intermediaries have also been found to be engaged in the labelling of workers as self-employed using contrived contractual terms. In their consultation, the Government noted that the practice started in the construction industry but has now spread to a number of other sectors including driving, catering and the security industry. Intermediaries were successfully avoiding tax by exploiting the test that agency workers should provide their services personally. These proposals are designed to prevent that.

The Minister and I have had a number of debates on bogus self-employment. We have debated an alternative proposal that might make a difference in this difficult and complex area, which focuses on the criteria for workers in the construction industry, where there is a particular problem with avoidance and false employment. From the evidence given by Mr Green this morning, it is clear that this is a complex area. When we take action in one area, we only see problems move elsewhere. The Minister and I have debated the merits—or demerits, as he may say—of taking action sector by sector. I take on board his point that actions specific to the construction industry leave other sectors exposed. While there is a growing problem in other sectors, the construction industry has a particular problem and there is a case for considering specific and targeted action.

What Mr Green told the Committee this morning was worrying. Although we support the placing of liability on intermediaries—there was a specific problem with employment intermediaries and the Government needed to act—that has had the impact of shifting avoidance behaviour further down the supply chain. The Minister and his officials said that they are alive to some of the other ways in which avoidance activity is taking place in other parts of the supply chain. Will he give further reassurance that those gaps will be closed as they appear?

Taking action in this area is difficult and it often feels that we are simply playing catch-up with some of the rules. That is worrying and is an indication of the complexities we are dealing with. What thought have the Minister and his officials given to the extent to which—if at all—the general anti-abuse rule will be engaged? The thresholds for falling foul of the GAAR are quite high; that was deliberately done to provide certainty, so that people know exactly what they are dealing with. That argument has some merit, but what assessment has been done of the abusive practices we are seeing with false self-employment? Do they fall foul of the GAAR? Is that worth pursuing in terms of litigation?

Mr Green told us about some of the models being adopted by end users and clients to continue avoiding tax and treating workers as self-employed when that is not the case. Those sounded like cases where the GAAR could be engaged, but I do not have the details to make a judgment call on that. It would be helpful to hear about any assessment that has been done of the relationship between the GAAR and avoidance activity in false self-employment.

Specifically on the TAAR, will the Minister provide an update on the guidance that will be provided to ensure that the large numbers of people affected by the changes are aware of their new obligations and absolutely clear about the penalties for non-compliance? I note that advance notice of the legislative changes for employment intermediaries and of the required reports and record keeping has been published online, but the penalties for non-compliance are less clear. The online guidance states:

> "You may get a penalty if your reports are late, incomplete or incorrect. HMRC will publish more information on these penalties soon."

Will the Minister reassure us not only that the penalties will be published sooner rather than later, but also that

[Shabana Mahmood]

it will be made much clearer that people will be expected to comply and that action will be taken against those who choose to ignore the new arrangements?

3 pm

Mr Ben-Nathan from the Chartered Institute of Taxation made an important point, which the Minister and I have debated previously, about the growing differences in the definitions used in different parts of our legislative framework for who is and who is not employed. The tests are different for working out whether someone is employed or self-employed for taxation law and for employment law, meaning that it is possible for workers to be treated as employed for tax purposes and self-employed for other purposes. That might not have an impact on taxation liabilities, but it will have an impact on workers' rights, which they may not be in a position to know that they have been deprived of. Has the Minister held discussions with other Departments—I imagine that it would be the Department for Business, Innovation and Skills in relation to employment rights—to consider the potential unintended consequences of those different treatments? We should stick to the same definitions wherever possible, because even though the different areas of law can seem well-defined on paper, it is still just one legal system. We should not introduce different treatments if they can be avoided.

Finally, we had a lengthy discussion about the TAAR and the views of the Institute of Chartered Accountants in England and Wales and Chartered Institute of Taxation, which feel that including a TAAR in the legislation over-complicates things and is "superfluous". Mr Hubbard and Mr Haskew suggested this morning that having both the GAAR and the TAAR and this particular TAAR might cause complexity or confusion that enables something to slip through the cracks. If the TAAR and GAAR are working as they ought to be, there should be no cracks for something to fall through. It would be helpful for the Minister to explain how he sees the two things sitting alongside each other and whether there is a risk that some of what the ICAEW and CIOT say is true. I would not have thought so, but it will be helpful to hear from the Minister.

Mr Gauke: Again, I thank the hon. Member for Birmingham, Ladywood for her questions. She rightly makes the point that the whole area is complex and that Governments of all parties have wrestled with it for some time. She made reference to the "deeming" approach that the previous Government considered. When we came to office, we concluded that it was not practicable to have a series of tests to define somebody, particularly within the construction industry, as either employed or self-employed. It would have led to a situation where for a bricklayer to be categorised as self-employed, he or she would have to supply their own bricks, which we felt was not practical. There are some difficulties in terms of making easy announcements in this area when there are some knock-on effects and not all of the proposals necessarily work as they should.

Let me address some of the points that the hon. Lady made about the clause. First, there was the point that came up this morning about what HMRC is doing about new schemes that appear to have been set up in response to the measures introduced in the Finance Act. HMRC has opened inquiries and is establishing and testing the facts to ascertain whether the schemes successfully circumvent the legislation and therefore whether the TAAR would be appropriate to use in each instance. There is much work that needs to be done in these circumstances. First, there is the question whether the new arrangements work and reduce the tax or NICs bill under the existing legislation. If they do work, it is a question of evaluating the options to address the matter and seeing whether that can be done without significant unintended consequences. That is work that HMRC is pursuing at the moment.

On the whole issue of the interrelationship between the TAAR and the GAAR, the targeted anti-avoidance rule has been created to support the recent changes included in the Finance Act 2014 and National Insurance Contributions Act 2014 to tackle false self-employment facilitated by intermediaries and the off-shoring of payrolls used to pay UK-based workers working for UK-based businesses. During the consultation stage external interested parties, including intermediaries, were asked whether a TAAR was required. There was strong support for the TAAR as it would ensure that those complying with the legislation have further support to ensure that there is a level playing field in the sector.

When the general anti-abuse rule was introduced by the Government we made it clear that it is targeted at abusive avoidance schemes and that future anti-avoidance legislation may still be envisaged to tackle arrangements that do not fall within the scope of the GAAR. I agree with the point that the hon. Lady made about this not creating cracks that can be slipped through. One can make the point that this is belt and braces, but at least belt and braces tend to be effective in keeping trousers up. In that sense we are making sure that we are dealing with this issue.

The hon. Lady asked whether sufficient guidance would be in place to assist those affected by the changes. A considerable amount of such guidance has been produced. HMRC has worked closely with customer groups and has produced specific guidance for a range of different groups and will continue to add to this. Customer groups include accountants, intermediaries and agencies, workers and the end clients. Specifically on the point about guidance on penalties, penalties guidance is a work in progress and is due to be published in the near future following discussion with external interested parties.

The hon. Lady also asked about working with other Departments, particularly the Department for Business, Innovation and Skills. HMRC continues to explore with other Government Departments, including BIS, ways of providing clarity in the definitions produced across Government. Returning to the TAAR and GAAR issue, the GAAR is used against abusive schemes. The provisions of the TAAR provide support for compliant intermediaries to ensure that action can be taken against non-compliant intermediaries in a short period of time, when required. Therefore, it is not the case of the TAAR being overly complicated; the TAAR and the GAAR are two distinct things. I hope those points of clarification, and our session this morning, were helpful to the Committee, and that this clause can stand part of the Bill.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clauses 6 to 8 ordered to stand part of the Bill.

Question proposed, That the Chair do report the Bill, as amended, to the House.

Mr Gauke: On a point of order, Dr McCrea. It is customary when we debate matters relating to taxes—the hon. Member for Birmingham, Ladywood and I have been through this on a number of occasions—to stand and talk about the proceedings over the previous few weeks or months, as happened with the Finance Bill. Today, I want to briefly make a couple of points after a useful few hours of scrutiny of the Bill.

First, I thank you, Dr McCrea, for your chairmanship, and Mrs Brooke for hers this morning. She ran the evidence session very effectively in a room that was acoustically challenging. None the less, I hope that the Committee was able to learn much from it. I thank the Whips—my hon. Friend the Member for West Worcestershire, and the hon. Member for Houghton and Sunderland South. I thank my hon. Friend the Member for Harlow for stepping in to perform as Parliamentary Private Secretary this afternoon, and all hon. Members for their contributions, particularly the hon. Member for Birmingham, Ladywood for her searching questions. A number of hon. Members asked questions this morning in the evidence session, which elicited quite a lot of information and helped the Committee to scrutinise the Bill more effectively. I also thank the witnesses whom we saw this morning for everything they did, the Clerk of the Committee for dealing with a Bill that I hope has been less challenging than some he has had to deal with over the years, *Hansard* and, of course, the police and attendants for their support.

I look forward to returning to some of the issues that we debated this afternoon when the Bill returns for its remaining stages. No doubt a large amount of parliamentary time will be allocated to that, and we look forward to filling it as appropriate. I conclude by thanking all members of the Committee for their assistance.

Shabana Mahmood: Further to that point of order, Dr McCrea. May I follow up what the Minister said by thanking you and Mrs Brooke for your chairmanship. I have to say, particularly to my hon. Friend the Member for Heywood and Middleton, that it is not usual for deliberations on a Treasury matter to be quite so efficient, but I hope that the efficiency of these proceedings encourages her to take part in future ones. I also add my thanks to the Whips and the other members of the Committee, particularly those who engaged in the oral evidence session this morning, which was genuinely very helpful. It showed that evidence sessions have a real role to play in helping Members understand the impact of legislation. I thank the Minister and his team, as well as the other witnesses, for coming to speak to us. The Minister was able to answer so many questions that my speeches were much shorter this afternoon than they might otherwise have been. I thank the Clerk and his team, *Hansard*, the police and the doorkeepers for looking after us in the usual way. With that, Dr McCrea, I thank you too.

The Chair: I apologise for hastening on. I was about to deny the Minister his big moment of thanking everyone, but it has certainly ended well.

Question put and agreed to.

Bill, as amended, accordingly to be reported.

3.16 pm

Committee rose.

Written evidence reported to the House

NI 01 Low Incomes Tax Reform Group

NI 02 Chartered Institute of Taxation

NI 03 Chartered Institute of Taxation (supplementary)

NI 04 Office of Tax Simplification and Administrative Burdens Advisory Board

NI 05 Institute of Chartered Accountants in England and Wales

NI 06 Recruitment and Employment Confederation