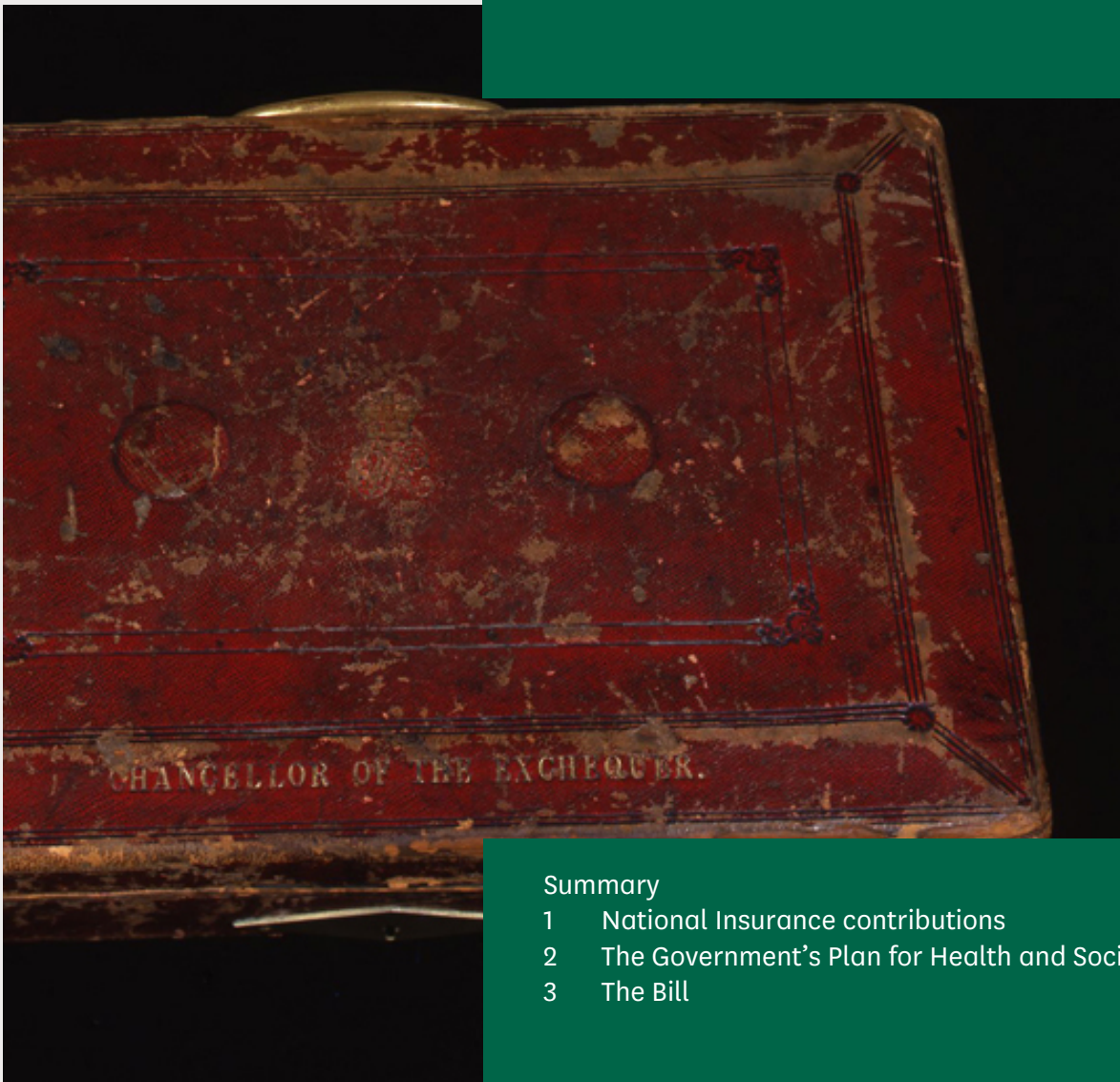


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7 October 2021

Health and Social Care Levy Bill 2021-22



Summary

- 1 National Insurance contributions
- 2 The Government's Plan for Health and Social Care
- 3 The Bill

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Summary

The Bill

The Health and Social Care Levy Bill 2021-22 was introduced on 8 September 2021. The Bill, with its explanatory notes, is published on the [Bill's page on Parliament.uk](#), which also provides details of its parliamentary progress.

[In a statement to the House on 7 September](#), the Prime Minister announced plans to substantially increase funding for health and social care over the next three years, to be funded by a new tax: the Health and Social Care Levy.

The Levy is to be based on National Insurance contributions (NICs), which is paid by employees, employers and the self-employed. The majority of receipts from NICs are paid into the National Insurance Fund, to pay for contributory benefits (primarily the state pension). A single portion of the income from NICs is not paid into the Fund, but is allocated to the National Health Service.

The Levy will be introduced in two stages:

- In 2022/23 the rate of primary Class 1 NICs for employees charged on their earnings, the rate of secondary Class 1 NICs for employers charged on their employees' earnings, and the rate of Class 4 NICs for the self-employed charged on their trading profits, will be increased by 1.25 percentage points.
- In 2023/24 a separate Levy set at 1.25% will be introduced, replacing this temporary increase in NICs rates. Liability to the Levy will be extended to individuals in employment who are over State Pension age. At present pensioners are not liable to pay NICs on any earnings they receive from employment.

The Health and Social Care Levy Bill would provide for the temporary increase in NICs rates for 2022/23, and their replacement with the Levy from April 2023.

The Bill also makes provision for the Treasury to determine the allocation of the receipts from the Levy between health care and social care, and the amounts to be split between England, Wales, Scotland and Northern Ireland. NICs is not a devolved tax. The Bill extends and applies to the whole of the UK.

Statutory provisions regarding NICs [are not included](#) in the annual Finance Bill, so changes to National Insurance in recent years have been made by the introduction of relatively short bills (for example, the [National Insurance Contributions Act 2014](#), and the [National Insurance Contributions Act 2015](#)).

Financial impact

The Government has published a [Command Paper](#) on its health and social care plans on 7 September 2021. Paragraphs 81 to 86 state that the Levy will raise an additional £11.4 billion a year for health care and social care, for the next three years.

HM Revenue & Customs has published [an impact assessment to the Bill](#). This states that the Office for Budget Responsibility will publish a final costing of the amounts of extra tax revenue the Levy is estimated to raise alongside the Autumn Budget, which is to be on 27 October.

Parliamentary procedure

Following the Prime Minister's statement on 7 September, the Leader of the House announced that the House would consider a motion to approve a Ways and Means Resolution, to enable the Government to [bring forward legislation to introduce the Levy](#). This was approved on 8 September, after which the Health and Social Care Bill was published ([Votes and Proceedings No.43, 8 September 2021](#)). In the Business Statement on 9 September, the Leader of the House said all stages of the Bill would be taken [on 14 September](#).

A Commons Library briefing on [public bills receiving their second and third readings on the same day](#), provides a list of examples of public bills being 'fast-tracked' in this way. A recent example of expedited legislation in the field of tax law was the [Stamp Duty Land Tax \(Temporary Relief\) Act 2020](#). This introduced a temporary relief for residential house sales, as part of a package of measures announced by the Chancellor in June 2020 to boost job creation in the context of the Covid-19 pandemic. Initially the Government's decision to 'fast-track' the Health and Social Care Levy Bill was not addressed in the explanatory notes to the Bill, published alongside the Bill on 8 September 2021. An updated version of the notes, with an additional section relating to fast-track legislation, was published [on 13 September 2021](#).

In turn, on 14 September the House approved a motion for all of the Bill's stages in the Commons to be taken that day, and the Bill was agreed, unamended ([Votes and Proceedings No.47, 14 September 2021; HC Deb 14 September 2021 cc837-947](#)).

This briefing provides a short overview of the National Insurance system, before discussing the Government's plan for health and social care, its proposal for a new tax to fund this plan, and the content of the Bill.

Further reading

Several Commons Library briefings provide background to the Government's plans for health and social care:

- [Proposed reforms to adult social care announced in September 2021](#), CBP9315, 10 September 2021

- [Paying for adult social care in England](#), CBP01911, 27 August 2021 (provides an overview of how individuals currently access social care funding support from their local authority).
- [Adult Social Care Funding \(England\)](#), CBP7903, 11 December 2020 (examines the key funding pressures facing adult social care and sets out the additional funding provided since 2016/17).
- [Reform of adult social care funding: developments since July 2019 \(England\)](#), CBP8001, 12 May 2021.
- [Social care: Government reviews and policy proposals for paying for care since 1997 \(England\)](#), CBP8000, 23 October 2017 (section 5 provides information on the proposals of the Dilnot Commission in 2011).

1

National Insurance contributions

National Insurance contributions – NICs, for short – is paid by employees, employers and the self-employed, and used to fund contributory benefits: the state pension, contributions-based jobseeker’s allowance, contributory employment and support allowance, maternity allowance, and bereavement benefits. In turn entitlement to contributory benefits is based on someone’s National Insurance payment record. ¹ The majority of receipts from NICs are paid into the National Insurance Fund, which is separate from all other revenue raised by taxation. The Fund operates on a 'pay as you go' basis; broadly speaking, this year’s contributions pay for this year’s benefits. Retirement pensions account for over 90% of benefit expenditure from the Fund. ² The Government has no powers to use NICs to fund anything else. ³

The current structure of NICs

Class 1 NICs rates for employees and employers for 2021/22

Earnings ^a £ per week	Employee NIC rate (per cent)	Earnings £ per week	Employer NIC rate (per cent)
Below £120 (LEL)	0%	Below £120 (LEL)	0%
£120 to £184 (PT)	0%	£120 to £170 (ST)	0%
£184 to £967 (UEL)	12%	Above £170	13.8%
Above £967	2%		

^a The limits are defined as LEL - lower earnings limit; PT - primary threshold; ST - secondary threshold; and UEL - upper earnings limit. ⁴

Employees are liable to primary Class 1 NICs on their earnings if they exceed the lower earnings limit (LEL). The LEL is set at £120 per week for 2021/22.

A zero rate of NICs is charged on earnings between the LEL and the primary threshold (PT), which is set at £184 per week. In effect those earning between these two thresholds do not pay any tax, but they are treated as if they have made a contributory payment, which maintains their entitlement to

¹ For details see, HMRC, [What National Insurance is for](#), retrieved September 2021

² GAD, [Report by the Government Actuary on: The draft Social Security Benefits Up-rating Order 2021](#), January 2021 ([Table 2.2](#))

³ Part XII of the Social Security Administration Act 1992 contains the statutory authority for the Fund; section 163 specifies that payments out of the Fund may only be made to finance a list of specified benefits.

⁴ HM Treasury, [Budget 2021: overview of tax legislation and rates](#), March 2021 ([Annex A: Rates and Allowances](#)). These thresholds are set by Order ([SI 2021/157](#)).

contributory benefits. Earnings above the PT are charged NICs at a rate of 12%, subject to a cap at the upper earnings limit (UEL), which is set at £967 per week. Earnings **above** the UEL are charged NICs at a rate of 2%.

Employers pay secondary Class 1 NICs on employee earnings at a rate of 13.8% on earnings above the secondary threshold (ST). The ST is set at £170 a week for 2021/22. Employers are also liable to pay Class 1A NICs on benefits provided for employees, and Class 1B NICs on PAYE Settlement Agreements (PSAs) at a rate of 13.8%.⁵

Employers may be entitled to one of three tax reliefs on their payment of employer NICs.

- The **Employment Allowance**, which was announced in the 2013 Budget, to apply from April 2014.⁶ This provides a flat rate deduction for businesses and charities against their annual employer NICs bill. Initially the Allowance was set at £2,000, but was increased to £3,000 from April 2016, and to £4,000 from April 2020.⁷ From April 2020 the Allowance may only be claimed by employers with an employer NICs below £100,000 in their previous tax year, a change announced in the 2018 Budget.⁸ Further details on the operation of the Allowance are published by HMRC.⁹
- An **Upper Secondary Threshold (UST) for under 21s**, which was announced in the 2013 Autumn Statement.¹⁰ From April 2015 a zero rate of secondary Class 1 NICs has been charged on earnings up to the UST set in line with the UEL (which, as noted above, is £967 per week for 2021/22). In effect employers only pay secondary Class 1 NICs for employees under 21 on earnings above this threshold.¹¹
- An **Apprentice Upper Secondary Threshold (AUST)**, which was announced in the 2014 Autumn Statement.¹² From April 2016 a zero rate of secondary Class 1 NICs has been charged on earnings up to the AUST, which is also aligned with the UEL. In a similar fashion to the UST for

⁵ A PSA is an agreement an employer may make with HMRC to pay tax on a lump sum on certain expenses and benefits in kind provided to employees (for details see, HMRC, [Employer further guide to PAYE and National Insurance contributions 2020/21](#), 12 May 2021).

⁶ [Budget 2013, HC 1033, March 2013 para 2.41](#). Statutory provision for the new allowance was made by [ss1-8 of the National Insurance Contributions Act 2014](#).

⁷ These increases in the Allowance were made by Order: [SI 2016/63](#), and, [SI 2020/273](#)

⁸ [Budget 2018, HC 1629, October 2018 para 3.11](#). This change was made by Order : [SI 2020/218](#). See also, HMRC, [Employment Allowance: excluded persons regulations 2020](#), 24 January 2020

⁹ HMRC, [Employment Allowance](#), ret'd September 2021

¹⁰ [Autumn Statement, Cm 8747, December 2013 para 1.195](#). Statutory provision for the UST by [s9 of the National Insurance Contributions Act 2014](#).

¹¹ HMRC, [Employer National Insurance contributions for under 21s](#), December 2014

¹² [Autumn Statement, Cm 8961, December 2014 para 2.53](#). Statutory provision for the AUST was made by [s1 of the National Insurance Contributions Act 2015](#).

under 21s, employers only pay secondary Class 1 NICs for apprentices aged under 25 on earnings above this threshold.¹³

Two further employer reliefs are in the process of being introduced: a zero rate of secondary Class 1 NICs for employers taking on employees in a Freeport, and a zero rate of secondary Class 1 NICs for employers who hire an armed forces veteran during their first year of civilian employment after leaving the armed forces. Statutory provision for these new reliefs is made by the [National Insurance Contributions Bill 2021-22](#), which is before the House at present.¹⁴

Self-employed people pay a weekly flat rate Class 2 NIC (set at £3.05). They may apply for exemption from paying Class 2 contributions if their annual profits are less than the level of the ‘small profits threshold’ (SPT), set at £6,515. In addition they may be liable to pay a separate Class 4 profits related contribution. Class 4 NICs are charged at a rate of 9% on profits between a lower annual profits limit (£9,568) and an annual upper profits limit (£50,270). All these thresholds are for 2021/22. Profits above the upper limit (UPL) are charged NICs at a rate of 2%.

Further to these categories, individuals may be entitled to make voluntary Class 3 contributions to ensure that they qualify for the state pension and bereavement benefits. Class 3 NICs are charged at a weekly flat rate, set at £15.40 for 2021/22.

NICs are charged on earnings from employment and self-employment only. By comparison income tax is charged on a person’s total income which includes savings and investment income, state and occupational pensions as well as earnings-replacement benefits. UK residents in the UK and others with income in the UK are liable to pay income tax, whereas only people over 16 and under state pension age working in the UK are liable to pay NICs.¹⁵ An employer’s liability to pay secondary Class 1 NICs in respect of earnings paid to or for the benefit of an employed earner is **unaffected** by the employed earner’s attainment of pensionable age. In effect, employers continue to pay NICs on earnings of employees who have reached this age.

Employees’ contributions entitle them to the range of contributory benefits, including contributions-based jobseeker’s allowance, incapacity benefit, retirement pensions and bereavement benefits. The flat rate Class 2 NICs paid by the self-employed entitle them to all benefits apart from jobseeker’s allowance, though Class 4 contributions do not count towards benefit entitlement.

Further background on the National Insurance system is given in, [National Insurance contributions: an introduction, Commons Library briefing](#), 16 December 2019.

¹³ HMRC, [Employer National Insurance contributions for apprentices under 25](#), February 2021

¹⁴ see, [National Insurance Contributions Bill 2021-22](#), Commons Library briefing, 25 June 2021

¹⁵ Further details are given in, Chartered Institute of Taxation, [NICs – an explainer](#), 28 July 2021.

NICs receipts: size, composition & the NI Fund

National Insurance contributions (NICs) are forecast to raise £146.8 billion in 2021/22. This compares with forecast Exchequer receipts of £198.2 billion from income tax, and £127.9 billion from VAT.¹⁶

A majority of the receipts from NICs are paid into the National Insurance Fund, which is separate from all other revenue raised by taxation. The Fund is used exclusively to pay for contributory benefits. A single portion of the income from NICs is not paid into the Fund, but goes to the National Health Service. For example, in the case of Class 1 NICs, the NHS allocation is 2.05% of earnings between the primary threshold and UEL, and 1% of earnings above the UEL. In January 2021 the Government Actuary's Department estimated that NICs would raise £138 billion in 2020/21, of which £112 billion would go into the NI Fund and £26 billion would go to the NHS.¹⁷

Great Britain, £ million		2020-2021	2021-2022
National Insurance Fund			
Class 1 ¹	Primary	43,377	45,148
	Secondary	64,049	65,551
	Total	107,426	110,699
Classes 1A and 1B		1,688	1,563
Class 2		350	416
Class 3		111	111
Class 4		2,146	2,145
Total National Insurance Fund contributions^{2,3}		111,721	114,934
National Health Service			
Class 1	Primary	10,123	10,560
	Secondary	15,057	15,333
	Total	25,181	25,894
Classes 1A and 1B		269	250
Class 2		64	76
Class 3		20	20
Class 4		818	831
Total National Health Service contributions³		26,352	27,071
All contributions			
Class 1 ¹	Primary	53,500	55,708
	Secondary	79,106	80,884
	Total	132,607	136,592
Classes 1A and 1B		1,957	1,813
Class 2		414	493
Class 3		132	132
Class 4		2,964	2,976
Total contributions³		138,073	142,006

Notes: ¹ All figures are gross of recoveries by employers of Statutory Maternity Pay, Statutory Paternity Pay including Additional Statutory Paternity Pay, Statutory Adoption Pay, and Statutory Shared Parental Pay. ² These figures appear in Table 2.1 in the main report. ³ Figures may not sum to totals shown due to rounding.

¹⁶ OBR, *Economic & Fiscal Outlook*, CP 387, March 2021 p103 ([Table 3.4](#))

¹⁷ GAD, [Report by the Government Actuary on: The draft Social Security Benefits Up-rating Order 2021](#), January 2021 (Table F.1). Appendix C to the report sets out the current rates of NICs in full, including the NHS allocation.

2 The Government's Plan for Health and Social Care

2.1 The Government's announcement of its Plan

[In a statement to the House on 7 September](#) the Prime Minister Boris Johnson announced plans to substantially increase funding for health and social care over the next three years, to be funded by a new tax: the Health and Social Care Levy:

From next April we will create a new UK-wide 1.25% health and social care levy on earned income, hypothecated in law to health and social care, with dividends rates increasing by the same amount. This will raise almost £36 billion over the next three years, with money from the levy going directly to health and social care across the whole of our United Kingdom.

The Prime Minister went on to make the case that this approach to funding was “right, reasonable and fair”:

Some will ask why we do not increase income tax or capital gains tax instead, but income tax is not paid by businesses, so the whole burden would fall on individuals, roughly doubling the amount that a basic rate taxpayer could expect to pay, and the total revenue from capital gains tax amounts to less than £9 billion this year.

Instead, our new levy will share the cost between individuals and businesses, and everyone will contribute according to their means, including those above state pension age. So those who earn more will pay more, and because we are also increasing dividends tax rates, we will be asking better-off business owners and investors to make a fair contribution too. In fact, the highest-earning 14% will pay around half the revenues. No one earning less than £9,568 will pay a penny, and the majority of small businesses will be protected, with 40% of all businesses paying nothing at all.¹⁸

The Prime Minister went on to explain how the funds raised by the Levy would be allocated across the UK ...

Although Scotland, Wales and Northern Ireland have their own systems, we will direct money raised through the levy to their health

¹⁸ [HC Deb 7 September 2021 cc153-4](#)

and social care services. In total, Scotland, Wales and Northern Ireland will benefit from an extra £2.2 billion a year and, as this is about 15% more than they will contribute through the levy, it will create a Union dividend worth £300 million.

... and set out plans to reform adult social care in England:

We know we cannot rely solely on private insurance because demand would be too low for insurers to offer an affordable price, and a universal system of free care for all would be needlessly expensive when those who can afford to contribute to their care should do so.

Instead, the state should target its help at protecting people against the catastrophic fear of losing everything to pay for the cost of their care, and that is what this Government will do. We are setting a limit on what people can be asked to pay, and we will be working with the financial services industry to innovate and to help people insure themselves against expenditure up to that limit.

Wherever you live, whatever your age, your income or your condition, from October 2023 no one starting care will pay more than £86,000 over their lifetime, and no one with assets of less than £20,000 will have to make any contribution from their savings or housing wealth—up from £14,000 today. Meanwhile, anyone with assets between £20,000 and £100,000 will be eligible for some means-tested support. This new upper capital limit of £100,000 is more than four times the current limit, helping many more people with modest assets.¹⁹

Alongside the Prime Minister's statement the Government published a Command Paper giving more details of its plan, and in particular, how the new Health and Social Care Levy would be introduced over the next two years ...

The Health and Social Care Levy (the Levy) will apply to employees and employers liable for Class 1 NICs and self-employed individuals liable for Class 4 NICs. It will be introduced from April 2022.

In 2022-23, given the time it takes to prepare HMRC systems, that will be done through an increase in NICs rates by 1.25 per cent. All revenues generated by the increase in rates will be ringfenced and sent directly to NHS England and Improvement, and equivalent in Scotland, Wales and Northern Ireland.

Once systems have been updated in 2023-24, a formal legal surcharge of 1.25 per cent will replace the increase in NICs rates and

¹⁹ HC Deb 7 September 2021 cc154-5. See also, Prime Minister's Office press notice, [Record £36 billion investment to reform NHS and Social Care](#), 7 September 2021; Prime Minister's Office, [Letter to the First Ministers of Scotland, Wales and Northern Ireland and Deputy First Minister of Northern Ireland](#), 7 September 2021

apply to those working above State Pension age; the underlying NICs rates will return to their previous level. From April 2023, receipts from the Levy will go to those responsible for health and social care in the devolved administrations, including NHS Scotland, NHS Wales and Health and Social Care (HSC) in Northern Ireland. The Levy will appear on payslips and a generic message could appear on payslips in the next tax year.

Table 1. Health and Social Care Levy rates

	Employee Main / higher rate	Employer	Self-employed Main / higher rate
Current NICs rates (2021-22)	12% / 2%	13.8%	9% / 2%
2022-23 NICs rates	13.25% / 3.25%	15.05%	10.25% / 3.25%
2023-24			
NICs rates	12% / 2%	13.8%	9% / 2%
Levy	1.25%	1.25%	1.25%
Charged on all earnings/profits above: (2021-22 thresholds)	£9,568	£8,840	£9,568

Existing NICs reliefs to support employers will apply to the Levy.

The 2021-22 thresholds are used as an illustration: the Levy will apply to earnings/profits above the respective thresholds in future years.

... alongside the increase in the rates of income tax charged on income from dividends:

From April 2022, all rates of dividend tax will increase by 1.25 per cent. This change will apply UK-wide. It will be scored at the Budget and legislated for in the next Finance Bill.

Table 3. Dividend Tax Rates

	Basic Rate	Higher Rate	Additional Rate
Current dividend tax rates (2021-22)	7.5%	32.5%	38.1%
2022-23 dividend tax rates	8.75%	33.75%	39.35%

Dividend tax is charged on taxable dividend income an individual receives that falls outside of the personal allowance (£12,570 in 2021-22) and the dividend allowance (£2,000 in 2021-22). Taxable dividend income excludes, for example, dividends on assets held in ISAs.²⁰

²⁰ HM Government, [Build Back Better: Our Plan for Health and Social Care](#), CP 506, September 2021 para 80, para 91-92

In a press conference following the Prime Minister's statement the Chancellor Rishi Sunak reiterated the Government's case that the new Levy represented "the best way to raise the funds we need":

It is fair: the more you earn, the more you pay. It is honest: it is not a stealth tax or borrowed - the Levy will be there in black and white on people's payslips. And it is UK-wide, so people in England, Scotland, Wales and Northern Ireland will all pay the same amount. To make sure everyone pays their fair share, we will also increase dividend tax rates by the same amount. And, from 2023, people over the age of 66 will be asked to pay the Levy on their earnings too.²¹

2.2 Earlier debate on the case for raising NICs to pay for social care

Prior to the Prime Minister's statement on 7 September there was considerable speculation over the summer that the Government would announce plans to reform the funding of social care through an increase in National Insurance contributions.²² An editorial in the Times noted that "a hypothecated fund designed specifically for health and social care could at last be politically feasible, and there is a precedent with Gordon Brown imposing such a tax."²³

This is a reference to the decision by the then Labour Government in its 2002 Budget to increase the main rate of NICs paid by employees, employers and the self-employed by 1 percentage point, and to introduce a new 1% NICs rate for both employees and the self-employed on earnings/ profits above the UEL/UPL.²⁴ By amending the formula for allocating a proportion of NICs receipts to the NHS the Government ensured that all of this extra money went to the NHS.²⁵ It is worth adding that a second 1 percentage point increase in NICs rates for employees, employers and the self-employed that was introduced from April 2011 was not allocated in this way.²⁶

²¹ HM Treasury, [Health and social care press conference – Rishi Sunak](#), 7 September 2021. See also, [PQ48299](#), 21 September 2021

²² For example, "Boris Johnson puts social care reform on ice until autumn", Times, 21 July 2021; "Higher taxes look like only way to fix UK's social care crisis", Guardian, 20 July 2021; and more recently, "Boris Johnson to unveil £10bn-a-year tax rise to fund NHS and social care", Financial Times, 6 September 2021.

²³ "Leader: Age Concern", Times, 21 July 2021. See also, "Why national insurance is being used to fund our care", Times, 24 July 2021.

²⁴ Budget 2002, HC 592 April 2002 p121, pp154-5.

²⁵ [HC Deb 6 October 2003 c1092](#). See also, [National Insurance Contributions Bill \(Bill 130/2001/02\)](#), Commons Library Research Paper 02/32, May 2002. Appendix 2 to Government Actuary's Department, [Report on the 2003 Up-rating Order](#), February 2003 illustrates the change in this formula.

²⁶ For details of this see, [National Insurance contributions : changes from April 2011](#), Commons Library briefing, 8 November 2013

In a short paper published by the Resolution Foundation Torsten Bell and Adam Corlett argued that “an increase in Income Tax would be fairer between rich and poor, and young and old”, setting out four reasons for this view: that, “younger people bear more than their share because NI is only paid by the working-age population”, that “lower earners pay more under a NI rise than they would from an Income Tax rise, that “the focus on lower and younger earners is made worse by the fact that all sources of income other than earnings are exempt”, and that, “increasing National Insurance will increase the tax gap between employees and the self-employed.” The authors went on to conclude, “the fact that NI is still being considered reflects one view of the politics of the problem. This holds that an NI rise is less visible to most workers (if part of the rise is on employers) and that the public has historically seen a more direct connection between NI and funding the health service, a connection that in any practical sense does not exist.”²⁷

An editorial in the Financial Times raised similar objections, arguing that if the Government was determined to raise extra revenues through NICs, it should extend its scope to those over pension age. Even so the “better option” would be basing the Levy on the income tax system even if “political practicalities mean it must be called something else.”²⁸ Writing in Taxation magazine the editor, Andrew Hubbard, noted that the NI exemption for those over state pension age, “dates back to an era of compulsory retirement ages and lower life expectancy. I was shocked to be reminded that, at the time of the 1942 Beveridge Report, the average life expectancy of a man after retirement was one year”, before going on to add, “it would be a brave chancellor who abolished the exemption. But we do need a grown up debate about this.”²⁹

Many commentators noted that an increase in either income tax rates or NIC rates, or indeed in VAT rates, would contravene the Conservative Party’s 2019 General Election manifesto,³⁰ though a leader in the Times suggested that the Prime Minister’s “best strategy is to make a virtue of fixing the social care system by a one-off levy, promising to reduce taxes again as soon as conditions allow.”³¹

Although many economists and tax practitioners raised many objections to using NICs to increase funding for social care, Health Self (Blick Rothenberg) suggested NICs was the obvious candidate. In her view the significant sums required to properly finance social care could only be raised through an increase in the rates of one of the three ‘big’ taxes – VAT, income tax or NICs – and since putting up any of these would contravene the manifesto, the

²⁷ Torsten Bell & Adam Corlett, [A caring tax rise?: The impacts of a potential increase in National Insurance](#), Resolution Foundation, 21 July 2021. See also, Torsten Bell et al., [To govern is to choose: the choices facing the Chancellor this autumn](#), 6 September 2021 (pp22-24).

²⁸ “Editorial: How to fund Britain’s social care system”, Financial Times, 22 July 2021. See also, Chris Giles, “Social care reforms are another missed chance for change”, Financial Times, 19 August 2021.

²⁹ “National Insurance conundrum”, Taxation, 29 July 2021

³⁰ Conservative Party, [2019 Election Manifesto](#), November 2019 p17. For example, William Hague, “Boris Johnson risks being defined by a broken promise”, Times, 6 September 2021

³¹ “Leader: Promises Postponed”, Times, 7 September 2021

decision would be shaped by which could be raised “with less political pain”. This meant a raise in NICs rates “probably spun as ‘paying more insurance to fund health and social care for everyone’”, though at the same time the Government could also improve the base of NICs – say, by extending it to pensioners’ earnings, raising the LEL up to the level of the personal allowance, or increasing the NI rate applied to higher-earning self-employed individuals.³² Writing in the *New Statesman* in early August former Treasury Minister David Gauke commented “NICs is ... fundamentally, a con. It is not an insurance contribution; it is just another tax. Many members of the public, however, think otherwise and seem relatively relaxed about paying more of it. A cynic might argue that it is difficult to raise revenue and the temptation to exploit the delusions and ignorance of the public is hard to resist.”³³

2.3 Initial responses to the new Levy

Following the Prime Minister’s statement, initial responses in the press focused on the amounts the new Levy were estimated to raise, and the impact that this would have on the tax burden.³⁴ In the Institute for Fiscal Studies’ first response, IFS director Paul Johnson said, “today’s announcements constituted a Budget in all but name”:

£14 billion of tax raised through a supposedly new tax, equivalent increases in spending on health and social care, and an announcement of spending totals for the next three years certainly constitute a major fiscal event ...

It is disappointing that the government did not find a better package of tax measures to fund these spending increases. A simple increase in income tax would have been preferable. But overall much needed reforms to social care are being introduced and unavoidable pressures on the NHS are being funded through a broad based and broadly progressive tax increase. That is better than doing nothing.³⁵

Writing the following day in the *Times* Mr Johnson noted that taking this tax rise with the tax increases announced in the March 2021 Budget would “mean an increase in the UK’s tax burden of about 1.5 per cent of national income” with the result that “it will hit its highest sustained level in peacetime.”³⁶

³² Heather Self (@hsselftax), [Twitter](#), 21 July 2021

³³ “The young should not foot the social care bill – pensioners must contribute too”, *New Statesman*, 5 August 2021

³⁴ “[Boris Johnson stakes reputation on £12bn fix for health and social care](#)”, *Guardian*, 7 September 2021; “[Boris plays catch-up: what the papers say](#)”, *Guardian*, 8 September 2021; “Johnson’s £12bn tax gamble: big-state Conservatism or expedient politics?”, *Financial Times*, 10 September 2021.

³⁵ Paul Johnson et al, [An initial response to the Prime Minister’s announcement on health, social care and National Insurance](#), Institute for Fiscal Studies 7 September 2021

³⁶ “Comment: Covid’s the cover for this inevitable rise”, *Times*, 8 September 2021

In a follow-up piece on health and social care funding, Ben Zaranko at the IFS suggested that it was quite possible that in future years most if not all Levy proceeds would just go to the NHS:

The plan seems to be for the £12 billion raised from the tax rise to be increasingly channelled into social care as the parliament goes on, to meet the growing costs of the government's new 'cap and floor' plan for social care funding. But that would require the government to stick to these NHS spending totals – something which history teaches us is unlikely. Instead, the experience of the past 40 years shows that NHS spending plans are almost always topped up. If history repeats itself, the 'temporary' increases in NHS funding announced this week could end up **permanently** swallowing up the money raised by the tax rise.³⁷

In this context it is worth noting that in his statement to the House the Prime Minister referred to the Levy being “hypothecated in law to health and social care.”³⁸ As the legal commentator David Allen Green noted on Twitter the term ‘hypothecated in law’, just as the terms ‘enshrined in law’ or ‘ringfenced in law’, should be treated with some caution given the fact that “anything in a UK statute can be undone by a UK statute” so that “no statutory provision is any more hypothecated or enshrined than any other.”³⁹

The BBC's economic editor Faisal Islam commented on the advantages to basing the new Levy on NICs:

It is pretty clear that one of the rationales here is to be able to present a National Insurance increase of 1.25% as lower than the 2% rise in income tax that would have been required to raise such funds. The argument is almost entirely presentational and relies on a general public lack of familiarity with how National Insurance works. The tax rise on working is effectively 2.5%, with the direct burden shared between workers and their bosses. As the Treasury acknowledges, however, firms may reduce wages, or raise prices to pay the extra bill.⁴⁰

In this context it is striking that the organisation FullFact, in a piece on the implications of this tax rise for the tax burden, referred to the Government's plans “to raise National Insurance by **2.5 percentage points** for employees (split between employers and their staff) and 1.25 percentage points for the self-employed” (**emphasis added**).⁴¹

³⁷ Ben Zaranko, [An ever-growing NHS budget could swallow up all of this week's tax rise, leaving little for social care](#), IFS Observation, 8 September 2021

³⁸ [HC Deb 7 September 2021 c153](#)

³⁹ David Allen Green (@davidallengreen), [Twitter](#), 7 September 2021

⁴⁰ “[Analysis: a very significant tax rise](#)”, BBC News, 8 September 2021. See also, “[National Insurance: What's the new Health and Social Care tax and how will it affect me?](#)”, BBC News, 9 September 2021

⁴¹ FullFact, [What the National Insurance rise means for the tax burden](#), 8 September 2021. See also, Chris Giles (@ChrisGiles), [Twitter](#), 8 September 2021; Paul Johnson (@PJTheEconomist), [Twitter](#), 7 September 2021

The Guardian’s economics editor Larry Elliott observed that, “in theory, there were alternative ways of raising money that avoided breaking the manifesto pledge not to increase NICs, VAT or income tax. In practice it had to be one of the “big three” to raise £12bn a year. While a one-point rise in employee NICs and income tax raises around £5bn a year, similar increases in inheritance tax or capital gains tax raise around £100m.”⁴²

A leader in the Times noted that the Government had sought to avoid imposing this new tax burden disproportionately on younger workers “by extending the new charge to those in work above state pension age, increasing dividend tax and limiting pension increases” but “even so, those living off pensions or property income will be less liable for the cost of a reform of social care from which they may be the biggest beneficiaries.”⁴³

In the Chartered Institute of Taxation’s response, the Institute’s Director of Public Policy John Cullinane observed, “looked at in the round, today’s announcement represents a significant increase in tax on employment and business, in order to, among other things, help more people keep their homes and other assets in old age and pass them on to their descendants when they die. That is, taxing working age people more to protect the property wealth of older people. That is of course a legitimate policy choice for an elected government to make, if it is intended.”⁴⁴

An editorial in the Observer focused on the impact the new Levy would have on marginal tax rates, comparing the situation of a graduate paying off their student loan and a pensioner on the same income “It is shocking that a recent graduate earning more than £28,000 will from next year lose more than 48% of their earnings, including NI and their 9% graduate levy, while a 70-year-old on the same pay will contribute less than 24%.”⁴⁵ In a piece which appeared the same day the paper’s chief political correspondent, Andrew Rawnsley argued, “Care workers, whose median pay is just £8.50 an hour, will be asked to sacrifice some of their very low income so that the property wealth of much richer people is ringfenced for the benefit of their heirs. There are several words you can use to describe this arrangement. Unfair would be one of them. Brave is not.”⁴⁶

There were also some concerns raised about the potential impact of the Government’s decision to raise NICs would have on business and employment.⁴⁷ Writing in the Times Simon Nixon observed that increasing

⁴² [“PM’s social care fix meant he had to break a promise to fulfil a pledge”](#), Guardian, 7 September 2021

⁴³ “Leader : Johnson’s Gambit”, Times, 8 September 2021

⁴⁴ CIOT press notice, [CIOT comments on Health and Social Care Levy announcement](#), 7 September 2021

⁴⁵ [“The Observer view on the weaknesses of Boris Johnson’s social care levy”](#), Observer, 12 September 2021. Chris Giles, the Financial Times economics editor, also noted that the new levy meant a 50% marginal tax rate for graduates: “UK graduates face 50% tax rate on additional pay from next April”, Financial Times, 8 September 2021

⁴⁶ [“Opinion: Boris Johnson’s generation game: the young and poor pay for the old and rich”](#), Observer, 12 September 2021

⁴⁷ [“Dismayed business groups warn tax rises will harm recovery”](#), Guardian, 7 September 2021; “Tax on jobs comes at worst time, say businesses”, Times, 8 September 2021; David Smith, “After this dog’s dinner, can we sustain record taxes?”, Sunday Times, 12 September 2021.

NICs rates for employers might have been “the most politically palatable way to raise the money needed”, but “this tax will pile costs on businesses just as they are emerging from the pandemic and grappling with the consequences of Brexit.” Moreover “it comes on top of a giant £17 billion tax raid in the budget in the form of an increase in corporation tax to 26 per cent from 2023.”⁴⁸ Writing in the Financial Times Helen Thomas noted that by contrast with corporation tax, NICs “isn’t levied on profits: it is a tax on activity, argues Neil Carberry at the Recruitment & Employment Confederation, which could fall hardest on those labour-intensive sectors worst hit by the pandemic.”⁴⁹

In a second piece in the paper Nicholas Macpherson, former permanent secretary to the Treasury, noted the decision to base the Levy on NI followed a long trend in tax reform, that had seen the main NI rate paid by employees rising from 5.75% (in 1977) to 13.25% (from April 2022), while the basic rate of income tax had been cut from 34% to 20%.⁵⁰ Even while the operation of the National Insurance Fund was “more apparent than real”, Chancellors had been “only too happy to exploit this quirk of taxpayer psychology.” Mr Macpherson also noted businesses would bear 2/3rds of the £40bn increase in taxes the Chancellor had announced over the year: “that may be good politics but ... it is almost certainly bad economics.”⁵¹

Torsten Bell, Chief Executive of the Resolution Foundation, noted that while Gordon Brown, when Chancellor, “gained in popularity after raising NI during the 2000s”, the decision to use the same tax rise twenty years later “might face more of a backlash today”:

NI is fundamentally a badly designed Income Tax, covering only one kind of income (workers’ wages) and treating different types of people very differently (the self-employed and pensioners are both partially exempt). These gaps create real problems – and crucially these have only grown over time ...

Raising NI is deeply problematic because it further increases the tax gap between employees and the self-employed ... The scale of these risks wasn’t apparent at the start of this century, but the growth in self-employment since then shown in the chart means they can’t be ignored today.

Similarly, the fact that NI falls largely on the working age population not pensioners was less problematic two decades back. Then worries about high pensioner poverty dominated policy debates, while earnings were growing fast in the late 1990s and early 2000s. But

⁴⁸ “Comment: Taxing jobs now imposes another unnecessary shock to the system”, Times, 9 September 2021. For details of the increase in corporation tax announced in the 2021 Budget see, [Corporate tax reform](#), Commons Library briefing CBP9178, 1 July 2021.

⁴⁹ “Comment: Business bleating on UK tax plan looks merited”, Financial Times, 7 September 2021

⁵⁰ HMRC publishes details of the main features of income tax (since 1948) and NICs (since 1975) here: <https://www.gov.uk/government/collections/tax-structure-and-parameters-statistics>

⁵¹ “Opinion: Raising UK national insurance levy is good politics but bad economics”, Financial Times, 11 September 2021

wages have stagnated since, while pensioner incomes have grown significantly. Indeed, the average pensioner household is now, for the first time ever, better off than the average working age household. Against that backdrop there's no reason for asking working age households to pay more but while most pensioners will have to contribute nothing.

The big picture here is that trying to be clever on the politics by raising NI rather than Income Tax creates all kinds of other problems, with very visible unfairness built in that's much more visible today than in previous eras when NI rose.⁵²

Commentators also noted that while, as Ministers underlined, those on higher earnings would pay more in terms of the Levy, NI as a whole was not as progressive a tax as income tax.⁵³ Andy Summers, associate professor at the London School of Economics, noted that a standard definition of the progressivity of a tax schedule is one in which the proportion of income taken in tax rises with income – that the *average* rate of tax should increase with income. From this perspective, NICs would be classed a regressive tax. The average rate of NICs paid decreases, if one looks at income increasing above £50,000 – the level of the Upper Earnings Limit/Upper Profits Limit, when the marginal rate drops from 12% to 2%.⁵⁴

Professor Summers was one of the authors of a report, published at this time by the Cage Research Centre based at the University of Warwick, arguing that structural reform of NICs – as opposed to this increase in NI rates – would be a fairer approach: extending the tax base to investment income; removing the exemption for those of pension age (while continuing to relieve pension income from NI); and, reforming the rate schedule so that the main rate applied to earnings above the UEL/UPL.⁵⁵

In a subsequent piece which appeared in the Times, IFS director Paul Johnson commented, “as the past week has demonstrated, you can't understand present policy unless you understand history”:

National insurance contributions were first introduced in 1911 and were, in the 1940s, central to Beveridge's idea of a contributory pension and benefit system. I still recall NICs being referred to as “the stamp” (perhaps they still are) after the stamp cards that recorded flat-rate contributions on the basis of which entitlement to flat-rate benefits were earned.

⁵² Torsten Bell, [Social Care Budget Special: Top of the Charts](#), Resolution Foundation, 10 September 2021. The tax gap that NICs creates between employment and self-employment is examined further in the discussion of the potential economic impact of the Levy below.

⁵³ For example, Jo Maugham (@JolyonMaugham), [Twitter](#), 9 September 2021

⁵⁴ Andy Summers, [Twitter](#), 9 September 2021

⁵⁵ Cage Research Centre, [Fix our existing National Insurance system instead of adding a new Levy. urges new report](#), 8 September 2021. See also, “[If national insurance must fund social care, at least make it fair](#)”, Guardian, 10 September 2021

The remnants of that flat-rate system remain today in the form of the upper earnings limit. The historical relationship between contributions and entitlements is now just that: historical. No such relationship now exists, yet the folk memory lingers on, one of the reasons that national insurance is, supposedly at least, still a relatively popular tax. Which, in large part, is why it was effectively NICs that were raised to pay for last week's announcements.⁵⁶

2.4

Assessing the impact of the new Levy

Amount raised from change

The levy is set to raise around £13.2 billion per year, with the increase in the dividends tax to raise a further £0.6 billion.⁵⁷

Health and social care will receive around £10 billion of the income while the devolved administrations will receive around £2 billion through the Barnett formula. The remaining £1.8 billion or will meet the cost of the tax rises on the public sector.⁵⁸ Public sector employers will need to make larger NICs payments, which the Government intends to compensate them for.⁵⁹

The Government has said that the tax rises will mean around £12 billion of additional funding for Health and Social Care. £0.6 billion of this is from the increase in the dividends tax. The remaining £11.4 billion is the amount raised by the levy (£13.2 billion) less the compensation for public sector employers (£1.8 billion).

These figures are a first estimate, published alongside the Prime Minister's announcement. At this time the Government stated that the final costing would be subject to scrutiny by the Office for Budget Responsibility, and will be set out on 27 October, at the upcoming Autumn Budget.⁶⁰

⁵⁶ Paul Johnson, [The mess of our present health and tax systems is a product of history](#), IFS, 13 September 2021

⁵⁷ This includes the indirect effects on the tax and welfare system of the increase to NICs and the dividends tax. For instance, increasing NICs will mean an increase in welfare payments as some recipients incomes will be lower.

⁵⁸ HM Government, [Build back better: our plan for health and social care](#), 7 September 2021, [Table 2](#). Resolution Foundation. [Nationally insured?](#) 8 September 2021, [page 8](#)

⁵⁹ HM Government, [Build back better: our plan for health and social care](#), 7 September 2021, [para 86](#)

⁶⁰ HMRC, [Health and Social Care Levy](#), 9 September 2021. See also, Treasury Committee, [Correspondence from the Financial Secretary to the Treasury relating to the Health and Social Care Levy \(14/9/2021\)](#), 15 September 2021

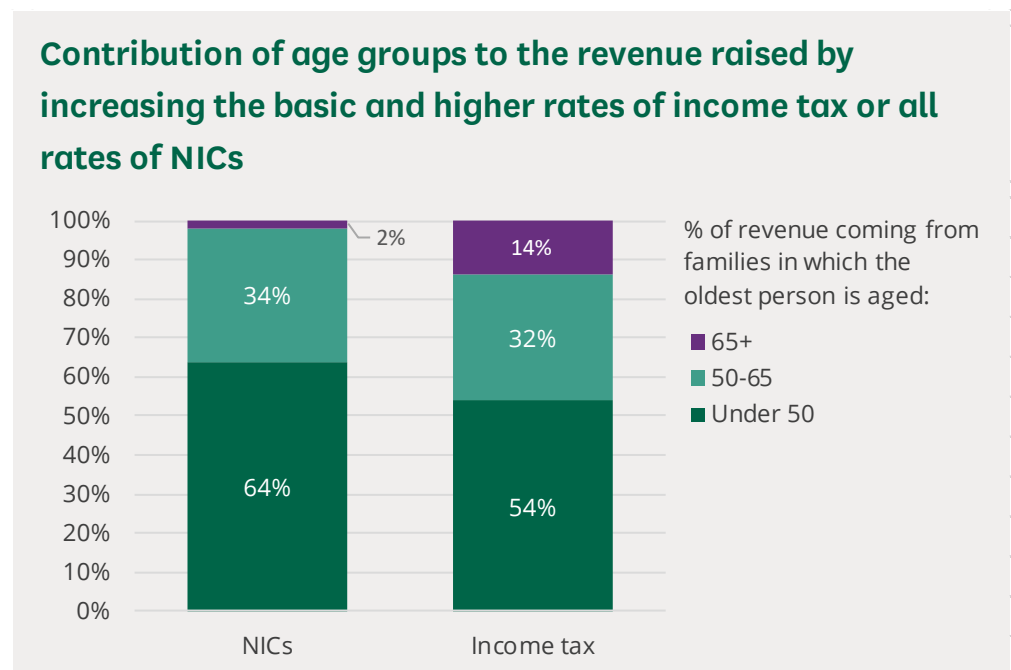
Number of people and businesses affected

People

The Government say that around 29 million individuals will be worse off from the increase to NICs, in 2022/23. Of these, 15.6 million are male and 13.4 million are female. An individual earning the median basic rate taxpayer's income of £24,100 would be expected to pay an additional £180; and an individual earning the median higher rate taxpayer's income of £67,100 would be expected to pay an additional £715.⁶¹

From April 2023, those in employment over state pension age will pay the Health and Social Care Levy. There are around 1.3 million people aged 65+ in employment in the UK.⁶² Not all of these will earn enough to pay the Levy once it is introduced.

The Institute for Fiscal Studies estimate that “only about 2% of the overall tax rise comes from pensioner families, with about two-thirds coming from families aged under 50.”⁶³ The majority of pensioners incomes come from private or state pensions, to which the Levy will not apply.



Source: IFS. [An initial response to the Prime Minister's announcement on health, social care and National Insurance](#), 7 September 2021

⁶¹ HMRC, [Health and Social Care Levy Policy Paper](#), 8 September 2021

⁶² ONS. [AQ5 SA: Employment, unemployment and economic inactivity by age group \(seasonally adjusted\)](#), 17 August 2021

⁶³ IFS. [An initial response to the Prime Minister's announcement on health, social care and National Insurance](#), 7 September 2021. See also, “Who are the winners and losers from the UK's £12bn social care tax raid?”, *Financial Times*, 9 September 2021

Businesses

The NICs measure is expected to have a “significant impact on over 1.6 million employers who will be required to introduce this change”. This covers the administrative burden on employers, such as familiarisation with the change and the updating of payroll systems.⁶⁴ It isn’t just the number of businesses who will pay the Levy.

The Government has not published a precise estimate of the number of businesses that it thinks will pay the Levy, but it appears to be a little under 1 million. It is expected that around 640,000 businesses (40% of employers) won’t pay the Levy as they are eligible for the [Employment Allowance](#).⁶⁵ The next 40%, around 665,000 businesses, will face an average increase of £450 per year.⁶⁷ This suggests that another 20%, around 320,00 businesses, will face a larger increase.

Commentators have pointed out that, while employer NICs will be paid by businesses, the economic impact (or incidence) of the increase will ultimately fall on people.⁶⁸ The [economic incidence](#) of a tax describes which people are ultimately made worse off by the tax (and can be different from those who are legally liable to pay the tax). As the Institute for Fiscal Studies (IFS) point out:

When a tax is paid by businesses, as with employer NICs, it could be felt by the firm’s owners/shareholders (via reduced profits from the business) or could be passed on to the firm’s workers (via lower wages), customers (via higher prices) or suppliers (via lower input prices). In practice, it will almost always be a combination of these.

Simple economic theory suggests that the **incidence** of employer NICs and employee NICs should be the same, at least in the long run. It is likely that the long-run **incidence** of both employer and employee NICs is predominantly on employees, but the empirical evidence is not clear-cut.⁶⁹

Writing in the Tax Journal, former Treasury Minister David Gauke observed, “when explaining why he had increased NICs rather than income tax, the prime minister argued that ‘income tax is not paid by businesses, so the whole burden would fall on individuals, roughly doubling the amount that a basic rate taxpayer could expect to pay’. This provoked some gnashing of

⁶⁴ HMRC, [Health and Social Care Levy Policy Paper](#), 8 September 2021

⁶⁵ The Employment Allowance allows eligible employers to reduce their annual employer National Insurance liability by up to £4,000.

⁶⁷ HM Government, [Build back better: our plan for health and social care](#), 7 September 2021 [para 90, para 66](#)

⁶⁸ Paul Johnson (@PJTheEconomist), [Twitter](#), 10 September 2021 ; David Gauke (@DavidGauke), [Twitter](#), 10 September 2021

⁶⁹ Institute for Fiscal Studies, [“Incidence”](#), TaxLab, ret’d September 2021

teeth from those who understand tax incidence, but it is likely to have had many viewers (including quite a few MPs) nodding along.”⁷⁰

For its part in its analysis of the impact of the Government’s health and social care package, the Treasury state that it is unclear, how, and when employers will pass on the impact of the increase in employer NICs, particularly in the short-run. They suggest, for example, that “businesses may choose to adjust wages, prices, or profits.”⁷¹

Distributional impact

The Treasury has analysed the impact of this tax increase in 2022/23 across the income distribution, finding that the increases are broadly [progressive](#): that is, the increase to employee NICs and self-employed NICs have a greater impact on higher income households. This is the case whether the Treasury look at the impact relative to households’ net income or in £s per week. Including the dividends tax, over a third of the tax increases “will come from the top 10% of households, with the majority coming from the top 20% of households”.⁷²

Charts from the Treasury’s analysis are reproduced overleaf.

They include an estimate of how much households might benefit from the extra health and social care spending. The charts don’t include the increase in employer NICs, which gives the impression of more being spent on health and social care than is being raised. As discussed above, the Treasury isn’t clear how employers will pass the additional employer NICs onto households, so it can’t be included in their analysis. They say, however, that “even if we were to assume that employer NICs impacts pass wholly through to wages, we expect that the poorest households still stand to benefit the most as a proportion of income”.⁷³

⁷⁰ “Funding health and social care – or the art of plucking the goose”, Tax Journal, 17 September 2021. An editorial in the Economist at this time also noted “in the long run the burden of payroll taxes, even those paid by companies, falls on workers, whose wages fall as their employers’ tax bills rise” (“Leader: Age and enlightenment”, Economist, 11 September 2021).

⁷¹ HM Treasury, Illustrative analysis of the impact of “Building Back Better: Our Plan for Health and Social Care” on households, September 2021, [para 3](#)

⁷² op.cit. [para 6](#)

⁷³ op.cit. p2 ([footnote 2](#))

Chart 1.A: Impact of tax and spending decisions on households in 2022-23, as a percentage of net income, by income decile

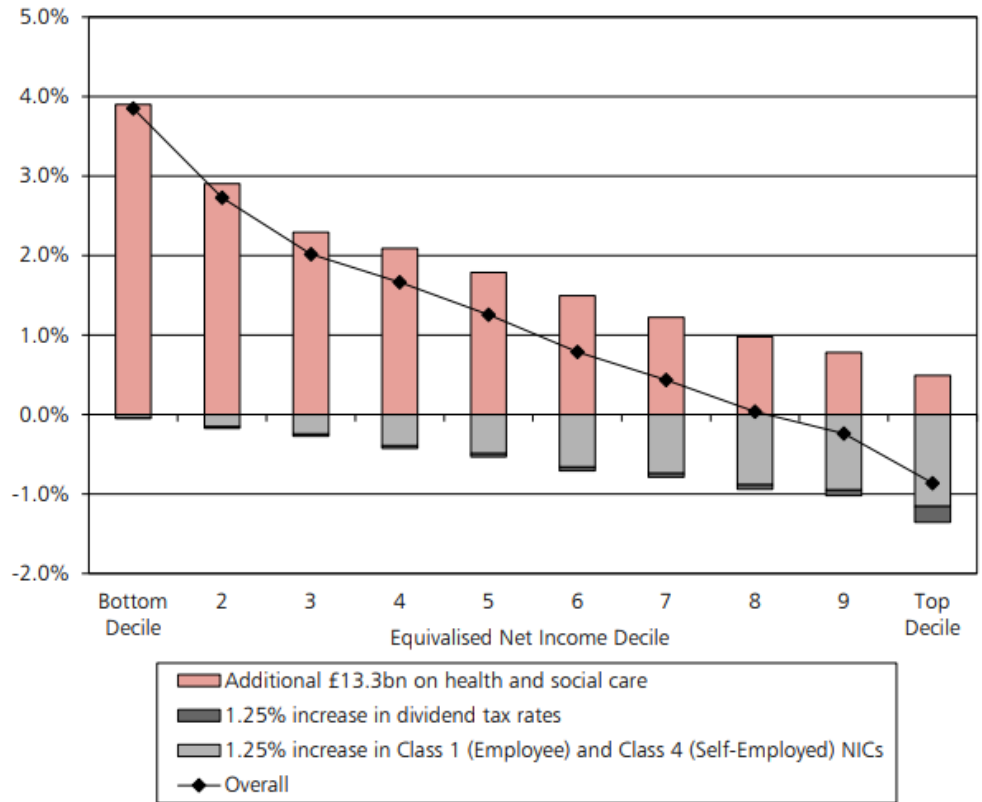
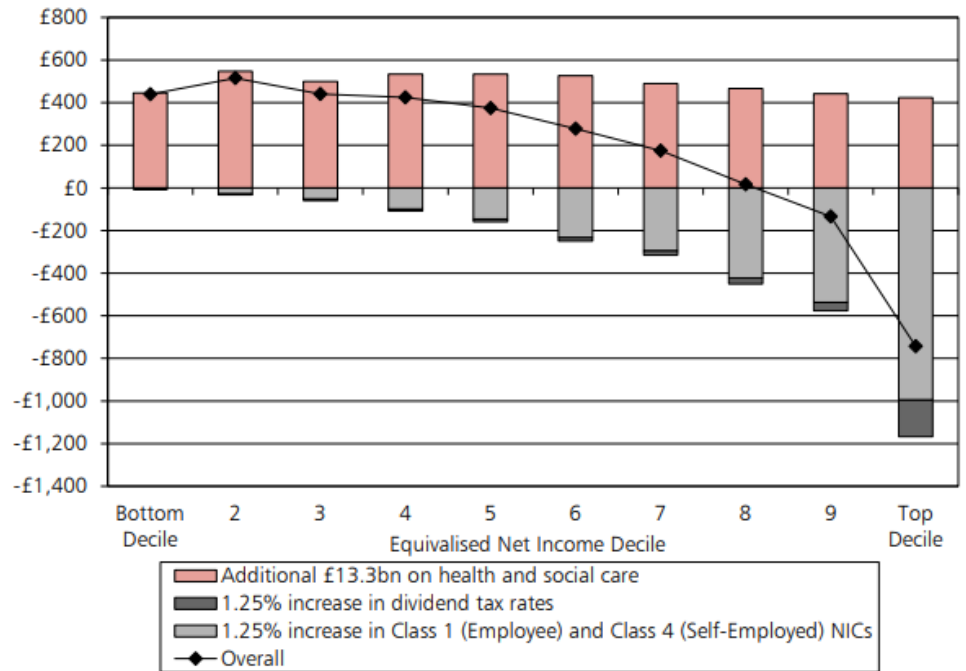


Chart 1.B: Impact of tax and spending decisions on households in 2022-23, in cash terms (£ per year), by income decile



In their analysis of the new Levy both the Resolution Foundation (RF) and Institute for Fiscal Studies (IFS) agreed with the Treasury's view that these tax rises were broadly progressive.⁷⁴ But, as the RF noted, the tax rises would be predominantly borne by workers, with very little coming from pensioners:

Pensioners with earnings will have to contribute something, but only 17 per cent of pensioner families are in that position (compared with 65 per cent of pensioner families who receive some private pension income, which is exempt from NI and will not attract the dividend tax either.... Pensioners are more likely to hold shares, but many will be unaffected by the change in dividend taxation given that there is a dividend allowance exempting the first £2,000 a year of income, and the fact that dividends on shares held in ISAs are tax exempt.⁷⁵

The RF also pointed out that focusing on NICs and dividends tax rates means that other incomes will be excluded: “rental income stands out in this regard. And that income is heavily concentrated amongst higher income households ... 67 per cent of the 1.9 million adults who own buy-to-let properties are in the top fifth of the income distribution.” In their view these issues could “have easily been overcome with an increase in Income Tax”, which is charged on a wider range of incomes than NICs.⁷⁷ The RF had examined the impact of raising tax revenue either through NICs or income tax in a report published some months before.⁷⁹

Economic impact

The government's Tax Information and Impact note says that the economic impact of the levy will be significant:

The measure is anticipated to have a significant macroeconomic impact, with consequences including but not limited to for earnings, inflation and company profits. Behavioural effects are likely to be large, and these will include decisions around whether to incorporate or not, and business decisions around wage bills and recruitment.⁸⁰

Increasing NICs rates may encourage more self-employment at the expense of employment. There is already a tax incentive for doing so and increasing NICs rates deepens that incentive. This is because while both employee NICs and self-employed NICs are being increased by 1.25 percentage points, there is no equivalent to employer NICs for the self-employed. Incomes of the self-

⁷⁴ Resolution Foundation, *Nationally Insured?*, 8 September 2021, [p5](#); IFS, [An initial response to the Prime Minister's announcement on health, social care and National Insurance](#), 7 September 2021

⁷⁵ Resolution Foundation, *Nationally Insured?*, 8 September 2021, [p5](#)

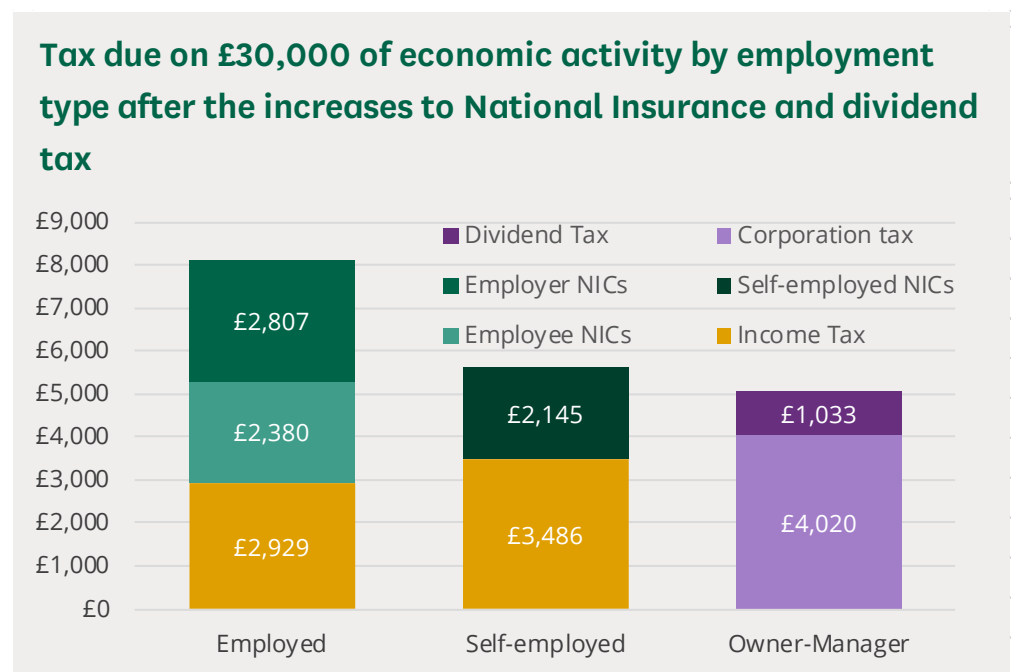
⁷⁷ [ibid.](#)

⁷⁹ Resolution Foundation, [A caring tax rise? The impacts of a potential increase in National Insurance](#), July 2021

⁸⁰ HMRC, [Health and Social Care Levy](#), 9 September 2021

employed are already taxed more lightly than those of employees and increasing the NICs rates exacerbates this further.

The Office for Budget Responsibility has previously discussed the consequences for tax receipts of an individual switching the way they choose to be taxed on their income from work. They have flagged it as a risk for the public finances.⁸¹ The RF observed that the Government’s policy package “deepens the tax incentive for firms to use self-employed labour – something the Chancellor promised during the pandemic to address, rather than exacerbate.” (This is a reference to the Chancellor’s statement in March 2020, announcing the Self-Employed Income Support Scheme. At the time the Chancellor said that in crafting a support package for the self-employment alongside the Government’s furlough scheme for employers and employees, “it is now much harder to justify the inconsistent contributions between people of different employment statuses. If we all want to benefit equally from state support, we must all pay in equally in future.”⁸²) The RF went on to argue this would “encourage more self-employment at the cost of employment, which is bad for the public finances and for ensuring workers receive proper employment rights”.⁸³



Source: Resolution Foundation, *Nationally Insured?*, 8 September 2021, [figure 4](#)

For its part the IFS noted that “levying lower rates of tax on the incomes of the self-employed than of employees is unjustified, unfair and inefficient ...

⁸¹ OBR. [Fiscal risks report](#), July 2019 paras 4.19-4.24, [para 5.16](#)

⁸² HM Treasury press notice, [Chancellor outlines new coronavirus support measures for the self-employed](#), 26 March 2020. For further details see, [Self-Employed Income Support Scheme](#), Commons briefing paper, 2 August 2021 (Section 3.3: Commentary on the prospects for future tax reform).

⁸³ Resolution Foundation, *Nationally Insured?*, 8 September 2021, [p7](#)

today's NICs increases increase the gap and therefore move the tax system further in the wrong direction.⁸⁴

In his piece in the Tax Journal quoted above, David Gauke concluded by saying “increasing NICs is less unpopular with voters than increasing other taxes and public misunderstanding concerning the nature of the tax additionally allows some room for political manoeuvre. The end result, though, is three taxes on income – income tax, NICs and the HSC levy – with three different bases and a UK tax system that is both unnecessarily complex and further tilted to favour the self-employed.”⁸⁵

⁸⁴ IFS. [An initial response to the Prime Minister's announcement on health, social care and National Insurance](#), 7 September 2021

⁸⁵ “Funding health and social care – or the art of plucking the goose”, Tax Journal, 17 September 2021. See also, “Leader: The Times view on the health and social care levy: Taxing Problem”, Times, 13 September 2021

3

The Bill

The Bill is comprised of seven clauses.

Clause 1 establishes the new Health and Social Care Levy. **Clause 1(1)** sets the Levy at 1.25% on the earnings or profits on which someone would be liable to pay primary Class 1, secondary Class 1 or Class 4 NICs. In addition **Clause 1(1)(b)** provides that the Levy applies if someone were liable to pay NICs if the exemption which applies to those over pension age were ignored. The Levy will apply from 6 April 2023 : **Clause 1(6)**. Notably **Clause 1(5)** specifies that in assessing liability to the Levy earnings that are subject to a zero rate of secondary Class 1 NICs are to be ignored. This means that in cases where relief is provided from secondary Class 1 NICs by way of a 0% rate (for example, in relation to certain apprentices), that relief will also apply to the Levy ([Bill 160-EN](#) para 19).

Clause 2 provides for the distribution of the proceeds from the Levy. **Clause 2(2)** provides for the Treasury with a ‘discretionary power’ to determine how these proceeds are to be allocated between health care and social care, and between England, Wales, Scotland, and Northern Ireland. It is notable that this provision makes no mention of how and when these allocations would be determined. HMRC may deduct expenses associated with either the collection of the Levy or the recovery of related penalties and interest, from the proceeds of the Levy : **Clause 2(2)**.

As noted above, in response to the Prime Minister’s statement some commentators suggested that the continuing pressure on NHS services in future years meant that it was quite possible that in future years most if not all Levy proceeds would go to the NHS.¹⁰⁵ Commenting on Twitter David Gauke, one-time Treasury Minister, observed that while an NI increase to fund social care had been expected, the Government had delivered “an NI increase + other tax rises (dividends/over 66s) that made it a bit more like an income tax increase but with added complexity to fund the NHS + some unfunded commitments on a care costs cap & means testing.”¹⁰⁶ An editorial in the Financial Times argued the new Levy would “do little to address the chronic underfunding of social care”, in part the commitment to increase the allocation of receipts for social care would require taking money away from “the ever-popular health service is credible.”¹⁰⁷

¹⁰⁵ For example, Ben Zaranko, [An ever-growing NHS budget could swallow up all of this week’s tax rise, leaving little for social care](#), IFS Observation, 8 September 2021; Isabel Hardman, “The red herring at the heart of Boris’s tax hike”, *The Spectator*, 7 September 2021.

¹⁰⁶ David Gauke (@DavidGauke), [Twitter](#), 8 September 2021. See also, [“Treasury to decide how much of social care levy goes to NHS after 2025”](#), *Guardian*, 9 September 2021.

¹⁰⁷ “Editorial: Johnson will face more hard choices after tax rise”, *Financial Times*, 10 September 2021

In a commentary on the Bill the Hansard Society raise concerns about the way in which Parliament will be able to scrutinise the way in which the Levy is spent ...

The government estimates that the new 1.25% Levy will raise almost £36 billion over the next three years. However, the Bill does not specify how the money raised is to be distributed between health and social care or between the four nations, particularly in the longer term. Clause 2(2) of the Bill gives the Treasury discretionary power to determine this. What criteria will the Treasury use to determine the allocation?

Clause 2 of the Bill also stipulates that the funds raised from the NICs Levy will go direct to the Department of Health and Social Care, with any deductions made by HM Revenue and Customs to cover the costs of the system paid into the Consolidated Fund (the government's current account). Health revenue raised via NICs has its own legislative cover – in this case, the current Bill – and so is not subject to scrutiny via the [Estimates Cycle](#). The onus in future will therefore be on the Health and Social Care Select Committee, and/or possibly the Treasury Select Committee, to undertake scrutiny of the Levy via analysis of Departmental Resource Accounts and the Department of Health and Social Care's Annual Report.

On the one hand, under this arrangement, the Select Committee Members concerned will have the power to call Ministers to give evidence before them about the operation of the Levy. On the other hand, backbenchers may find it difficult to secure debating time in the Chamber to enable all MPs to discuss the way in which the Levy revenue has been spent. (This is compared to the Estimates process which, while a weak form of scrutiny, does enable backbench MPs to bid to debate departmental Estimates of interest to them.)¹⁰⁸

... and the implication for the devolution settlement:

The Bill has potentially important constitutional implications for devolution. National Insurance is a reserved revenue matter. The transfer mechanism that is used to allocate the funding to the devolved nations matters because, as [Professor David Bell of the University of Stirling has set out](#), it could give rise to circumstances in which there was a transfer of funding from England to Scotland, thus undermining the government's proposition that the new Levy is hypothecated. Are the devolved nations to receive the actual amount of National Insurance raised within their borders, or are they to receive a share of the entire pot based on their population?

¹⁰⁸ Dr Ruth Fox & Dheemanth Vangimalla, [The Health and Social Care Levy Bill: four questions about scrutiny and accountability](#), Hansard Society, 13 September 2021

There is also no requirement in the Bill for the Treasury or the Health Secretary to consult the devolved administrations about any aspect of the process. This once again sets up the prospect of inter-governmental problems. In the absence of any substantive mechanism for inter-parliamentary relations, the Westminster Parliament will have little oversight of such issues if and when they arise.¹⁰⁹

Clause 3 provides for the application of NIC legislation for purposes of operating the Levy. Notably **clause 3(3)** specifies that payment of the Levy does **not** give rise to entitlement to contributory benefits, unlike NICs ([Bill 160-EN](#) para 27).

Clause 4 provides the Treasury with regulation-making powers to make general provision for the purposes of the Levy. **Clause 4(2)** provides a number of examples of provisions that may be covered by any regulations. **Clause 4(3)** provides that in addition to this, regulations may make ‘different provision for different purposes’, ‘supplementary, incidental and consequential provisions’, or ‘transitional or transitory provision and savings.’ Notably **clause 4(5-6)** specifies that any such regulations would be subject to [the affirmative procedure](#) if they ‘have the effect of limiting the application of (or reducing or removing) any existing relief or exemption’. **Clause 4(6)** specifies that all other regulations would be subject to the [negative procedure](#) ([Bill 160-EN](#) para 32).

In their commentary on the Bill mentioned above, the Hansard Society argued that this regulation-making power “is concerning for its width and its inconsistent application of parliamentary scrutiny procedures”:

Clause 4 of the Bill confers a regulation-making power on the Treasury that is concerning for its width and its inconsistent application of parliamentary scrutiny procedures.

Clause 4(1) allows the Treasury to make regulations that make provision “generally for the purposes” of the Levy. When it scrutinised the Taxation (Cross-Border Trade) Bill in 2017 (a Bill that was also brought in upon a Ways and Means resolution), the [House of Lords Delegated Powers and Regulatory Reform Committee \(DPRRC\) described such wording as atypical](#) and warned that, although seemingly benign, such a provision “might take on a wholly new significance in practice”.

In the current Bill, clause 4(2) lists specific matters that may be imposed through regulations made under clause 4(1). However, the list is not exhaustive: these are ‘examples’ only. The [DPRRC has](#)

¹⁰⁹ [ibid.](#) On the potential implications on health and social care spending in Scotland see, Nicola Hudson, [Health and social care: who pays, who decides?](#), Scottish Parliament Information Centre, 14 September 2021.

[previously highlighted](#) how non-exhaustive lists do not have the effect of narrowing a wide power.

Moreover, the examples listed in clause 4(2) are themselves wide. Regulations may:

- make provision about reliefs or exceptions from the Levy (clause 4(2)(a));
- disapply or modify the application of National Insurance contributions legislation which, as a result of clause 3(1) of the Bill, is applicable to the operation of the Levy (clause 4(2)(b) and (c)); or
- make provision about the application of, or modify the application of, any provision of ‘the Tax Acts’ in relation to the Levy (clause 4(2)(d)).

The drafting of the clause 4 power closely resembles some of the regulation-making powers in the [Taxation \(Post-transition Period\) Act 2020](#). Supporters of the clause 4 power might therefore point to precedent. However, MPs should question whether this is by itself a sufficient justification for conferring such a wide power on Ministers. Powers conferred by a Bill, and the degree of parliamentary scrutiny applied to their exercise, [should be considered on their own merits](#).

Moreover, the Taxation (Post-transition Period) Bill was introduced and passed at speed in December 2020 to [prepare for the end of the post-Brexit Transition Period](#). It is not clear that similar urgency – which might justify taking a similar broad power – exists in the present case.

Under clause 4, regulations that have the effect of limiting the application of, reducing or removing any existing relief or exception to the Levy are to be subject to the [affirmative scrutiny procedure](#) (clause 4(4) and (5)). Any other regulations made under clause 4(1) are subject only to the [negative scrutiny procedure](#) (clause 4(6)). Therefore, regulations that create new reliefs or exceptions to the Levy, or otherwise modify the application or operation of the Levy, will not require House of Commons approval so long as they do not limit, reduce, or remove an existing relief or exception to the Levy.

The justification for this approach is unclear. As of 13 September 2021, no Delegated Powers Memorandum (DPM) – which would set out the government’s arguments for taking powers – has been published for the Bill. A DPM is produced for the attention of the DPRRC. The much-reduced scrutiny role of the House of Lords in relation to finance matters means that MPs are once again at a

disadvantage, because less information is provided to them in the elected House to support the scrutiny process.

Powers are traditionally judged not on how the government says that it will exercise them, but on their actual scope and how they are capable of being used. Government policy can change, and it is therefore important that powers are considered on the basis of what they will in fact allow, rather than on the basis of what it is said they will be used for.¹¹⁰

On 14 September the then Financial Secretary Jesse Norman wrote to the Deputy Speaker and Chairman of Ways and Means, Dame Eleanor Laing, on the powers contained in **clause 4**. An extract is reproduced below:

Clause 4(1)(b) confers a power on the Treasury to make provision generally for the purposes of the Levy. This is relevant to Clause 3(1) which provides that any provision made by or under an enactment that applies in relation to a qualifying National Insurance contribution is to apply in relation to payments of the Levy corresponding to the contribution. However, the Treasury may want to make provision regarding the direct application of NICs legislation to the Levy, for example where such application causes administrative difficulties for HMRC. This power may also be exercised to modify the effects of primary legislation.

Clause 4(2) provides some examples where the power may be used:

- provision about reliefs or exemptions from the Levy;
- provision that disapplies any relevant provision so far as it would otherwise (as a result of clause 3(1)) apply to the Levy;
- provision modifying the application of any relevant provision in relation to the Levy; and
- provision about (including provision modifying) the application of any provision of the Tax Acts (that is not otherwise relevant provision) in relation to the Levy.

Clause 4(3) provides that regulations under clause 4(1)(b) may:

- make different provision for different purposes;
- make supplementary, incidental and consequential provision; and
- make transitional or transitory provision and savings.

¹¹⁰ Dr Ruth Fox & Dheemanth Vangimalla, [The Health and Social Care Levy Bill: four questions about scrutiny and accountability](#), Hansard Society, 13 September 2021

This power is considered appropriate to ensure the effective operation of the Levy and to avoid the need for separate primary legislation each time a change is needed to be made. Clause 4(2) lists indicative cases where the power can be used. The range of provisions which may be made under Clause 4(3) broadly follow precedents applying to NICs and the Apprenticeship Levy; for example, sections 175(3) to (5) of the Social Security Contributions and Benefits Act 1992, section 5(2) of the National Insurance Act 2014 and section 121 of the Finance Act 2016.

Clause 4(5)(b) provides that regulations that have the effect of limiting the application of, or reducing or removing, any existing relief or exemption which may increase the amount of Levy payable by taxpayers cannot be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons. Where regulations under this power reduce the amount of Levy payable or are beneficial in other ways, the Government believes that the negative procedure is appropriate.¹¹¹

Clause 5 provides for a 1.25 percentage point increase in the rates of primary and secondary Class 1 NICs, and the rates of Class 4 NICs, for 2022/23 only. Notably **clause 5(5)** amends the allocation of NICs receipts from Class 1 and Class 4 NICs to ensure that the proceeds of this temporary rate increase go to the NHS.

Clauses 6 & 7 cover interpretation – defining various terms used in the Bill – the Act’s short title and its Crown application.

HMRC have published [an impact assessment to the Bill](#). As noted above, this tax information and impact note (TIIN) does not provide figures for the amount that the Bill is anticipated to raise in additional tax receipts. The Office for Budget Responsibility is to publish its costing alongside the Autumn Budget, which is to be on 27 October.¹¹² HMRC’s TIIN on the Levy addresses its impact on the economy ...

The measure is anticipated to have a significant macroeconomic impact, with consequences including but not limited to for earnings, inflation and company profits. Behavioural effects are likely to be large, and these will include decisions around whether to incorporate or not, and business decisions around wage bills and recruitment.

... and on individuals, households and families:

The impact analysis that follows relates specifically to the impact of the legislative provisions outlined above. Losses are presented

¹¹¹ [Letter from Jesse Norman MP to Eleanor Laing MP regarding delegated powers](#), Deposited Paper DEP2021-0735, 14 September 2021 para 5-9

¹¹² HMT press notice, [Chancellor launches vision for future public spending](#), 7 September 2021

compared to the National Insurance contributions individuals would have faced if the rate remained unchanged.

The levy will be paid by employed and self-employed individuals earning above the Primary Threshold and Lower Profits Limit (£9,568 in 2021 to 2022 tax year). In 2022 to 2023 tax year an individual earning the median basic rate taxpayer's income of £24,100 would be expected to pay an additional £180; and an individual earning the median higher rate taxpayer's income of £67,100 would be expected to pay an additional £715.

Actual losses for individual taxpayers will vary according to individual circumstances.

There may be an impact on family formation, stability or breakdown as individuals, who are currently just about managing financially, will see their disposable income reduce.

HMRC's assessment goes on to note that the levy "is expected to have a significant impact on over 1.6 million employers who will be required to introduce this change" and its introduction "will require changes to HM Revenue and Custom's IT systems" and create "extra staff costs supporting customers and ensuring compliance with the new system", although "those costs are currently being quantified."¹¹³

The administrative costs associated with the Levy were raised by the Institute of Chartered Accountants in their Autumn 2021 Budget submission to Treasury, published after the Bill's scrutiny by the Commons:

HSCL is a new tax which will impose additional compliance costs on employers (owing to having thresholds and rules which are similar to but not quite the same as those already in force for, for example, national insurance contributions (NIC), auto-enrolment and apprenticeship levy). It will require the completion of additional boxes on payslips and on self assessment tax returns and impose costs of changing IT systems to collect the tax on both businesses and HMRC. The HSCL will also further exacerbate the fiscal imbalance for businesses and workers between different employment statuses.

HSCL is twice as expensive for employers/employees as for the self-employed or those receiving dividend income because there is both an employee and an employer component. It will therefore exacerbate the fiscal disadvantages for businesses and workers of taking on or being an employee or deemed employee over being self-employed or being a service provider. To discourage arbitrage and reduce distortive behaviours, Matthew Taylor in his Good Work report of July 2017 recommended that 'Over the long term, in the interests of innovation, fair competition and sound public finances

¹¹³ HMRC, [Health and Social Care Levy](#), 9 September 2021

we need to make the taxation of labour more consistent across employment forms...’. However, the proposed structure of the HSCL is moving in the opposite direction.

HMRC’s tax information and impact note (TIIN) was not published until two days after Parliament voted on the HSCL Bill so that the anticipated outcomes cited in the TIIN could not be considered. We believe that a simpler approach could have been considered had there been proper advance consultation, including using the Office of Tax Simplification (OTS), and other official bodies such as the Administration Burdens Advisory Board, and, we suggest, on a confidential basis, professional bodies whose members work at the coalface and have practical experience of dealing with payroll.

We believe it would have been simpler and less costly to introduce a new NIC letter to raise the charge. The compliance cost saving could then be used to fund the NHS rather than the implementation of the levy.¹¹⁴

In a letter to the Treasury Committee published the day after the Bill’s consideration by the Commons, the then Financial Secretary Jesse Norman noted that HMRC’s TIIN “set out that the operational costs to HMRC for the Levy were being quantified. It is not unusual for TIINs to be updated, and the Government will publish final estimates before the measure comes into effect in April 2022”, going on to add, “the current estimate of HMRC operational costs is in the range of £40-50 million including IT costs and resource.”¹¹⁵

In his letter the Minister also emphasized the limitations of the analysis provided in TIINs; that they are “technical documents which **only** consider the tax impacts and do not look at the cumulative picture”:

In this instance, that means the document is not a full and proper picture of the impact on families or the economy since it does not consider the around £12 billion a year for three years that the Levy will enable the Government to spend on health and social care. This spending will stimulate the economy.

That is why it is important to note that HMRC’s language in the Levy TIIN is deliberately conditional; HMRC have not modelled the macro-economic impacts or impact on family formation, and the assessment is based on a judgment considering only some elements of the tax points in isolation. The increase in dividend tax rates, which is highly progressive, was also not taken into account. ...

¹¹⁴ ICAEW, [Autumn Budget 2021 representations: building a modern tax system](#), 5 October 2021 pp7-8.

The ICAEW’s reference to Parliament’s vote preceding publication of the impact assessment is to the debate [on the Ways and Means Resolution on 8 September](#).

¹¹⁵ Treasury Committee, [Correspondence from the Financial Secretary to the Treasury relating to the Health and Social Care Levy \(14/9/2021\)](#), 15 September 2021 p3

[The OBR] will certify full policy costings in the usual way at the next fiscal event, which the Chancellor has confirmed will be the Budget on 27th October. As their remit requires, and in contrast to HM Treasury, which does not offer economic forecasts, the OBR will consider the economic effects of the levy and the additional spending that it funds in light of their updated economic and fiscal forecast, which they will publish alongside the Budget. The full costing will also rely on economic determinants from that forecast.¹¹⁶

Fast track procedure

Following the Prime Minister's statement on 7 September, the Leader of the House [announced](#) that the House would consider a motion to approve a Ways and Means Resolution, to enable the Government to bring forward legislation to introduce the Levy. This was approved on 8 September, after which the Health and Social Care Bill was published ([Votes and Proceedings No.43, 8 September 2021](#)). In his [Business Statement on 9 September](#) the Leader of the House announced that on Tuesday 14 September the House would be asked to approve a motion so that the Bill would be subject to the 'fast track' procedure – that is, all of its stages of the Bill would be taken that same day.

In 2009, the House of Lords Constitution Committee published a report on this type of legislation – that is, “bills ... which the Government of the day represents to Parliament must be enacted swiftly ... and then uses its power of legislative initiative and control of Parliamentary time to secure their passage.”¹¹⁷ The Committee recommended that the Government should explain the reasons for fast-tracking legislation; what consultation had taken place with interested parties; the steps taken to maximise parliamentary scrutiny; and mechanisms in place for post-legislative scrutiny. It also recommended that there should be a presumption in favour of sunset clauses in fast-track legislation.¹¹⁸ The Cabinet Office's [Guide to Making Legislation](#) states that when a Bill is fast-tracked, the Government uses the Explanatory Notes for the legislation to address these questions.¹¹⁹

In a review of the legislative process in the 2017 Parliament, the Constitution Committee referred back to conclusions in its 2009 report on the justification for fast-tracking:

We considered the circumstances in which it may be reasonable for minimum intervals not to apply in our report, [Fast-track legislation: constitutional implications and safeguards](#), in 2009. We concluded that legislation should be fast-tracked only when it was “a proportionate, justified and appropriate response to the matter in

¹¹⁶ [op.cit.](#) p2, p1

¹¹⁷ Select Committee on the Constitution, [Fast-track Legislation: Constitutional Implications and Safeguards](#), 7 July 2009, HL 116-I 2008-09, para 27

¹¹⁸ Select Committee on the Constitution, [Fast-track Legislation: Constitutional Implications and Safeguards](#), 7 July 2009, HL 116-I 2008-09

¹¹⁹ Cabinet Office, [Guide to Making Legislation](#), July 2017, para 11.54

hand” and that “Fundamental constitutional rights and principles” should not be jeopardised.

We recommended that, for legislation subject to fast-tracking, the Government should set out its justification for fast-tracking in the explanatory notes to the bill. We welcome the fact that the Cabinet Office’s Guide to Making Legislation now requires the justification for fast-tracking to be included in a bill’s explanatory notes. We note that the Government has observed it in respect of most recent bills that have been fast-tracked.¹²⁰

HMRC’s impact assessment notes “this measure was announced on 7 September 2021 and is being implemented at the earliest opportunity to increase funds for the National Health Service”, though “the transitional increase to the main and additional rates of National Insurance contributions will take effect from 6 April 2022 and will last for the 2022 to 2023 tax year only [and] the new Health and Social Care Levy will take effect from 6 April 2023.”¹²¹

The Government’s decision to ‘fast-track’ the Health and Social Care Levy Bill was not addressed in the explanatory notes published alongside the Bill [on 8 September](#), but an **updated version** of the notes, with an additional section, was published on 13 September; an extract is reproduced below:

Fast-track legislation

1. The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards,¹²² the House of Lords Select Committee on the Constitution recommended that the Government “should provide more information as to why a piece of legislation should be fast-tracked”.¹²³ The justification for fast-tracking the Bill is explained below.

2. The legislation is required to be in place for the 2022-23 tax year, which starts on 6 April 2022. The increase in National Insurance rates for that year will require changes to be made to the systems of employers and HMRC (including those designed to facilitate Pay as You Earn). To help ensure that people are not over or under taxed it is important for both those employers and HMRC to have as much time as possible to implement the changes. This is particularly important given all employers in the UK liable for NICs will be affected.

¹²⁰ Constitution Committee, [The Legislative Process: The Passage of Bills through Parliament](#), 8 July 2019, HL Paper 393 2017-19, para 38. As noted, the Cabinet Office’s guidance on this point is set out in, Cabinet Office, [Guide to Making Legislation](#), July 2017, para 11.54

¹²¹ HMRC, [Health and Social Care Levy](#), 9 September 2021 para 3.1, para 4.1

¹²² House of Lords’ Constitution Committee, 15th report of session 2008/09, HL paper 116-1

¹²³ House of Lords’ Constitution Committee, 15th report of session 2008/09, HL paper 116-1, para 186

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

3. The Bill was introduced as soon as possible after the announcement of the intention to introduce a Health and Social Care Levy. While the Bill reflects an important and significant policy, the Bill is short (containing only 5 substantive clauses). The principle of the policy was debated in the context of the ways and means resolution on which was introduced.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

4. No consultation has taken place in relation to the Bill. This is not unusual for measures having the effect of increasing rates of taxation.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

5. The Levy is a permanent change to the tax system to ensure the increases to health and social care spending are fully funded. A separate sunset clause is therefore not appropriate.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

6. As is the case for tax policy, the Health and Social Care Levy will be continuously kept under review using information collected from internal systems, National Insurance, and Levy receipts.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

7. The Health and Social Care Levy is a new tax; there is therefore no existing legislation relating to it. The policy could have in part been achieved by a permanent increase in the rates of National Insurance Contributions. However, that would be less transparent (since none of the proceeds are payable to the National Insurance Fund) and it would not secure that payments are made in respect of earning and profits of persons over State Pension age.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

8. A European Convention on Human Rights analysis is included in these Explanatory Notes for the Joint Committee on Human Rights.¹²⁴

Further information on this procedure is provided in [Fast-track legislation](#), Commons Library briefing, 25 March 2020. A second Commons Library briefing provides a list of public bills since 1979 where the main Commons stages (Second and Third Reading) have been passed within one day.¹²⁵

A recent example of expedited legislation in the field of tax law was the [Stamp Duty Land Tax \(Temporary Relief\) Act 2020](#), which introduced a temporary relief for residential house sales, as part of a package of measures announced by the Chancellor on 8 July 2020 to boost job creation in the context of the Covid-19 pandemic.¹²⁶ The reason for introducing legislation in this way was to provide legal certainty for buyers and sellers, as the new relief applied to transactions completed on or after the day of the Chancellor's announcement. Previous reforms to this tax have also been implemented in this way.¹²⁷ One reason for this is that the tax is assessed by reference to the day a transaction is completed, rather than say income tax being assessed on an annual basis.

Normally Chancellors reserve the announcement of new tax measures to the Budget, and statutory provision to put them into effect will be made in the annual Finance Bill. Although Finance Bills will not usually be fast-tracked, on occasion the passage of the Bill may be truncated, when a Budget coincides with a General Election. In brief, this is because both income tax and corporation tax are annual taxes; the authority to levy them expires at the end of the tax year – which runs from April to March. As the Finance Act has to reimpose these taxes each year, the Government may have limited time to pass the Act before the Dissolution of the House, if the Budget is in March, and an election is called soon after. Indeed in 2005 the timing of the Budget and the General Election saw all of the Finance Bill's stages being taken on a single day – 6 April.¹²⁸

The Bill's scrutiny

On 14 September the House approved a motion for all of the Bill's stages in the Commons to be taken that day, and in turn, the Bill was agreed, unamended.¹²⁹

¹²⁴ [Bill 160-FN, 13 September 2021](#) pp4-5

¹²⁵ [Expedited legislation: Public bills receiving their Second and Third Readings on the same day in the House of Commons](#), Commons Library briefing, 9 September 2021.

¹²⁶ For further details see, [Stamp Duty Land Tax \(Temporary Relief\) Bill 2019-21](#), Commons Library briefing, 23 July 2020.

¹²⁷ For some examples see, [Stamp duty land tax on residential property](#), Commons Library briefing, 10 August 2021.

¹²⁸ For further details see, [The Budget and the annual Finance Bill](#), Commons Library briefing, 8 September 2021.

¹²⁹ [Votes and Proceedings No.47, 14 September 2021](#)

Introducing the Bill on Second Reading the then Chief Secretary to the Treasury, Steve Barclay, set out how the new Levy would be introduced ...

The levy will apply UK-wide to taxpayers liable for class 1 employee and employer, class 1A, class 1B and class 4 self-employed national insurance contributions. However, it will not apply where taxpayers pay class 2 or class 3 NICs. It will be introduced in April 2022, and from April 2023 it will also apply to those working over the state pension age. ... It takes time for Her Majesty's Revenue and Customs to prepare its systems for such a major shift. That is why, as set out in clause 5, in 2022-23 the levy will be delivered through a temporary increase in NICs rates of 1.25% for one year only.

... and its distributional impact on both individuals and businesses:

Existing NICs reliefs and allowances will also apply to the levy. That will mean that 40% of all businesses will not be affected owing to the employment allowance. When it comes to individuals, those earning more will pay more. Indeed, the top 14 per cent. of taxpayers will pay about half the revenues. Conversely, at least 6.2 million people earning less than the NICs primary threshold will not pay the levy at all ... It is not just that the first 40% will not pay anything ... The next 40% will pay less than 1% of their wage bill, and indeed 70% of the employer contribution comes from just 1% of business.¹³⁰

Speaking for the Opposition James Murray argued that increasing NICs was “not the way to raise the money [for social care] fairly”, and that there was “no guarantee that a plan for social care will be in place even when the levy comes into force.”¹³¹

In his speech Jeremy Hunt, chair of the Health Select Committee, argued the Levy was the right approach to raising funds as it would “add £12 billion every year into our health and care system”, which was “more than any wealth tax would generate” and was “more progressive than using plain NI ... because, for the first time, working pensioners will be paying this tax, as well as people who pay dividends.” Mr Hunt went on to raise concerns that “there is a risk that the NHS will continue to gobble up the lion's share after that, which is why it is essential to ring-fence the amount of money that goes to social care after those three years.”¹³²

Speaking for the SNP Alison Thewliss raised concerns that Members had been “presented with a huge additional spending commitment but no detail whatsoever as to how it will actually be spent on the other side” and that the Bill provided no details of how Levy receipts would be allocated between England, Wales, Scotland and Northern Ireland.¹³³ For the Liberal Democrats Christine Jardine argued that “the Government could have taken the time to

¹³⁰ [HC Deb 14 September 2021 cc840-2](#)

¹³¹ [op.cit. c846](#)

¹³² [op.cit. cc851-2](#)

¹³³ [op.cit. cc853-4](#)

have cross-party discussions and come up with a proper, detailed plan, which I believe would have had the support of everyone in this place ... sadly, this is not it.”¹³⁴

In the event the House gave the Bill a Second Reading, by 317 votes to 256. The House proceeded to complete the remaining stages of the Bill, which received its Third Reading, unamended, by 307 votes to 251.

The House divided on one amendment, tabled by the SNP, and two new clauses, tabled by the Opposition, rejecting each of them.

In addition Conservative backbencher Marcus Fysh tabled a probing amendment to provide that receipts from the Levy could be used in any tax year. As Mr Fysh explained, his purpose was to “give scope for the Government to think about applying some of the funds ... to help incentivise [some type of pooled savings scheme] ... that is not necessarily insurance or private insurance with a middleman; it could be national schemes or community schemes that are properly co-operative and very low-cost.”¹³⁵ Opposing the amendment the Financial Secretary said, “the levy is designed to mirror the approach of the national insurance system which has always operated on a pay-as-you-go basis”:

Indeed, that has been the case since the NHS and the National Insurance Fund were established in 1948. This means that national insurance contributions collected in one year are used to pay for the NHS and contributory benefits paid out in the same year. The pay-as-you-go basis provides a clear precedent for how the levy should operate and that also ensures simplicity and consistency across the NICs system.¹³⁶

¹³⁴ [op.cit. c863](#)

¹³⁵ [op.cit. c911](#)

¹³⁶ [op.cit. 902](#). In the event the House did not vote on the amendment as Mr Fysh withdrew it.

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