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Childcare Payments Bill

Bill No 110/14

RESEARCH PAPER 14/59 6 November 2014

This is a report of the House of Commons Committee Stage of the *Childcare Payments Bill.* A separate Library Research Paper (RP14/35) was prepared for the Bill's Second Reading debate in the Commons.

Committee Stage took place between 14 and 28 October 2014, when a number of minor and technical Government amendments were agreed to without division. Report Stage and Third Reading of the Bill are scheduled to take place on 17 November 2014.

The Bill would introduce a new tax-free childcare scheme to support eligible parents with childcare costs. Under the scheme, the Government would provide 20 per cent support on costs up to £10,000 per year for each child via an online account. The Government would top up any payments made into the account, capped at a maximum Government contribution of £2,000 a year for each child.

Manjit Gheera

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Research Paper 14/59

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The *Childcare Payments Bill* was introduced in the House of Commons as Bill 7 of Parliamentary session 2014-15 and had its First Reading on 5 June 2014. The Bill, together with its Explanatory Notes, is available on the Parliament website, where progress of the Bill can be followed.

The Bill would introduce a new tax-free childcare scheme to support eligible parents with childcare costs. Under the scheme, the Government would provide 20 per cent support on costs up to £10,000 per year for each child via an online account. The Government would top up any payments made into the account, capped at a maximum Government contribution of £2,000 a year for each child.

Tax-free childcare would be available to eligible working parents in the UK to spend on qualifying childcare. Further details of the scheme are set out in the Library research paper written for the Second Reading debate of the Bill (RP14/35).

On introducing the Bill to the House of Commons for its Second Reading on 14 July 2014, Nicky Morgan MP, the then Financial Secretary to the Treasury, explained that the tax-free childcare scheme proposed in the Bill was "very much about enabling parents to play a full part in the labour market." Opposition members, while welcoming the extra investment in childcare support offered under the Bill, raised concerns over a number of provisions where they sought further clarification, including how the scheme would be funded and delivered.

During Committee Stage, a number of minor and technical Government amendments were agreed to without division. Priti Patel, the Exchequer Secretary to the Treasury, also informed the Committee that the Government would be amending draft regulations published for consultation to take account of concerns raised by respondents. The amended regulations would change the eligibility rules for the scheme as they apply to self-employed parents, to take into account fluctuating income, and allow parents to apply to the scheme fourteen days before starting new employment, instead of seven days as originally proposed.

The Bill as amended in Public Bill Committee is Bill 110 of the 2014-15 session. The Bill's Report Stage and Third Reading are scheduled to take place on 17 November 2014.

1 Introduction

The *Childcare Payments Bill* was introduced in the House of Commons as Bill 7 of the 2014-15 Parliamentary session and had its First Reading on 5 June 2014. The Second Reading debate took place on 14 July 2014. The Public Bill Committee on the Bill met between 14 and 28 October 2014 over nine sittings. The Bill as amended in Public Bill Committee is Bill 110 of the 2014-15 session. The Bill's Report Stage and Third Reading are scheduled to take place on 17 November 2014.

The Bill, together with its Explanatory Notes, is available on the Parliament website, where progress of the Bill can be followed. A separate Library Research Paper (RP14/35) prepared prior to the Bill's Second Reading debate is also available on the Parliament website. Draft regulations[1] and guidance[2] relating to the Bill can be found on the Gov.uk website.

2 Second Reading

On introducing the Bill to the House of Commons for its Second Reading on 14 July 2014, Nicky Morgan MP, the then Financial Secretary to the Treasury, explained that the tax-free childcare scheme proposed in the Bill was "very much about enabling parents to play a full part in the labour market."[3] She explained that support would extend to self-employed parents, part-time workers and parents temporarily absent from the workplace, for example on statutory parental leave. The scheme was also designed to support couples where one member was working and the other was in receipt of Carer's Allowance, or Employment and Support Allowance.[4] She informed the House that draft regulations had been published for consultation setting out the detailed rules concerning eligibility for the scheme and its operation.[5]

Andrea Leadsom, the Economic Secretary to the Treasury, informed the House that parents would be provided with advice to choose between tax credits or Universal Credit (once rolled out) and tax-free childcare – the two sets of schemes being mutually exclusive. She added:

> We recognise the importance of providing information and support to help parents make an informed choice about which scheme to access. Therefore, alongside wider guidance and information, we will provide support and online tools for parents choosing from tax credits, universal credit and the scheme under discussion.[6]

Shadow Treasury Minister, Catherine McKinnell, while welcoming the extra investment in childcare support, argued that the Bill "still falls short of the mark when it comes to making up ground" lost under the Coalition Government in tackling and improving the life chances of children. She informed the House:

> ... we support any Government action that will help families who are struggling with the child care crunch. However, as we know, this additional support does not do nearly enough to make up some of the ground that has been lost over the past four years. For a number of reasons, there is doubt about how effective it will be even when it arrives, in about a year's time, and about how much better off families will be. The bottom line is this: the Bill confirms that there will be no help for parents who are facing a child care

1 HM Revenue and Customs (HMRC), Draft legislation: *Tax-free childcare - Childcare Payments (Eligibility) Regulations and draft Childcare Payments Regulations 2015*

2 HMRC, *Tax-free childcare: Understanding the draft guidance*, October 2014

3 HC Deb 14 July 2014 c606

4 *Ibid,* cc606-7

5 *Ibid,* c608; HMRC, Draft legislation: *Tax-free childcare - Childcare Payments (Eligibility) Regulations and draft Childcare Payments Regulations 2015.* The consultation on the draft regulations closed on 3rd October 2014

6 HC Deb 14 July 2014 c639

> crunch until after the next election, which means that there will be virtually no help with child care for an entire Parliament under the Conservatives and the Liberal Democrats.[7]

Both Ms KcKinnell and Lucy Powell, the Shadow Education Minister, called on the Government to address the problem of the lack of supply in childcare provision. Ms McKinnell queried whether the Government had considered international examples which showed that only dealing with demand, and not supply issues, increased the price of childcare rather than bringing it down.[8] Lucy Powell suggested the Government adopt some of Labour's plans to improve supply, including: enhancing the role of local authorities in childcare provision; expanding the role of Sure Start centres to include childcare; taking action on supply and on quality of staffing and teachers; and extending the free early years entitlement from 15 to 25 hours a week.[9]

Other Opposition Members also raised concerns about a number of areas concerning the Bill which they believed called for further clarification. Labour's Barbara Keely asked how the Bill would be funded as she claimed there was a lack of clarity from the Government on that issue.[10] Mark Durkan, for the Social Democratic and Labour Party (SDLP), highlighted the apparent disparities that existed between the tax-free scheme and Universal Credit; the former scheme would be available for unlimited numbers of children in a family and paid in advance of childcare cost incurred, the latter capped at two children and paid on costs incurred.[11]

Despite the Government's reassurance about online help for parents, Lucy Powell stated that further clarification was required from the Government on the IT that would underpin the scheme, as serious questions remained about deliverability.[12]

3 Committee Stage

The Bill's Committee Stage took place between 14 and 28 October 2014, with a total of nine sittings. The record of the Committee's proceedings is available on the Parliament website. A list of Committee members is set out in the appendix to this report.

During the Committee's fourth sitting, Priti Patel, the Exchequer Secretary to the Treasury informed the Committee of two changes that the Government proposed to make to the draft regulations[13] as a result of the consultation process. The first change would widen the scope of the eligibility rules as they applied to self-employed parents to take into account fluctuating incomes levels.[14] In a letter sent to the Committee Chairs, the Minister said:

> A fundamental principle of the new scheme is that it provides support only to those who are working. This is true for all parents, including those who are self-employed.
>
> The draft Regulations that have been provided to the Committee require the expected profits of a self-employed parent to meet a specified minimum amount in each quarterly period.

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7 *Ibid,* cc616-7
8 *Ibid,* c614
9 *Ibid*, c637
10 *Ibid,* c607
11 *Ibid,* c621
12 *Ibid,* c636
13 HMRC, Draft legislation: *Tax-free childcare - Childcare Payments (Eligibility) Regulations and draft Childcare Payments Regulations 2015*. Published for consultation on 14 July 2014 The consultation closed on 3rd October 2014
14 PBC 16 October 2014 Q211

> There is an exception to this rule which applies to those who have just started a business: their profits do not have to reach the minimum level for their first year of trading.
>
> Some stakeholders have expressed the concern that these rules fail to reflect the realities of self-employment.
>
> In particular, it has been pointed out that there are cases where a self-employed person works all year but for parts of that year are unable to make any profit. Those in the agriculture industry are probably the most obvious case here, but other people such as consultants and freelancers can be in the same position.
>
> Similarly, an established business can easily experience a temporary bad patch during which their profits can drop below the minimum level. In each case, the individual in question will be ineligible for the scheme for much of the year. This is not the Government's intention.
>
> I want to rectify this situation by changing the way the minimum income rule applies to self-employed parents. Instead of requiring the rule to be met every quarter, the amended rule would allow it to be met, alternatively, over a full tax year. The added flexibility this will bring will ensure that those who experience seasonal or temporary fluctuations in their profits will be able to qualify for the scheme.
>
> I will ensure that the draft regulations are amended to provide this additional flexibility.[15]

The second change to the draft regulations would extend, from seven to fourteen days, the period of time prior to starting new employment that a person could apply to the tax-free childcare scheme. In her letter to the Committee Chairs, the Minister explained the rationale for the change:

> Again, some stakeholders have made the point that this is too restrictive. It is common, for instance, for parents to get their children settled into childcare well in advance of returning to work — and this cannot always be achieved within seven days. They have also pointed out that the process for registering for the scheme, setting up a childcare account and making a payment to a childcare provider might take more than seven days. As a result, some parents might not be able to use the scheme to make their first payment to their childcare provider on their return to work.
>
> Again this is not the intention. The Government is committed to giving those who are about to start work the support they need to do so.
>
> I therefore propose to change the rule so that a parent can apply for the scheme where they are due to start a job within fourteen days.
>
> And so again, I intend to amend the draft Regulations to provide this additional flexibility.[16]

Children under 12 years of age, or in the case of a disabled child, under 17 years of age, would be 'qualifying children' for the purpose of the scheme under the Bill.[17] The extended age range for disabled children is recognition that parents of those children have higher childcare costs. Qualifying childcare for disabled children would include care regulated by

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15 Letter of October 2014 to Jim Sheridan MP and Mrs Anne Main MP from Priti Patel MP, Exchequer Secretary to the Treasury (unpublished)

16 *Ibid*

17 *The draft Childcare Payments (Eligibility) Regulations 2015*, regulation 5

the Care Quality Commission, allowing parents to use domiciliary care services.[18] The Minister informed the Committee that the Government was also exploring further options to give more support to those with disabled children, including increasing the maximum amount of support that would attract a top-up payment.[19]

3.1 Government amendments

A number of minor and technical amendments tabled by the Government were agreed without division relating to:

- The refund of top-up payments to HM Revenue and Customs (HMRC) by a childcare provider when a childcare account has closed;[20]
- Clarifying the effect of warning notices from HMRC where a person is appealing against a failure to comply with an information notice (issued by HMRC under clause 26);[21]
- The limiting of powers of HMRC to disqualify a person from the scheme;[22]
- HMRC decisions which are appealable and the duty on HMRC to inform parents of their appeal rights;[23]
- The rules which will apply to appeal tribunals dealing with appeals under clause 58;[24]
- The procedures for making regulations concerning disqualification of claimants under clauses 31 and 32;[25]
- The territorial extent of any subsequent amendments and repeals to the *Childcare Payments Act 2014;*[26]
- Requirements for childminder agencies (in England and Wales) to supply information to HMRC to help it to administer tax-free childcare.[27]

3.2 Other areas of debate and Committee divisions

Review of childcare costs

During the Committee's evidence sessions, a number of witnesses, including the Family and Childcare Trust and the National Day Nurseries Association, expressed concerns that new investment under tax-free childcare may actually lead to further price inflation in the cost of childcare provision. Due to these concerns, Lucy Powell tabled an amendment (amendment 2) to clause 1 of the Bill which would require the Chancellor of the Exchequer to review the impact of the tax-free childcare measures on the cost of childcare one year after the Act was passed and every three years thereafter. Referring to evidence given to the Committee by, amongst others, Dr Kitty Stewart, from the London School of Economics and Political

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18 *Childcare Payments Regulations 2015*, regulation 3(2)(c); see also PBC 23 October 2014, c192

19 *Ibid*

20 Amendments 18 to 20 to clauses 23 and 39 during the Committee's eighth and ninth sittings on 23 and 28 October 2014

21 Amendments 21-22 to clauses 42 and 44; PBC 28 October 2014, cc238-39

22 Amendment 23 to clause 48; PBC 28 October 2014, c239

23 Amendments 24-26 to clause 55; PBC 28 October 2014, cc242-43

24 Amendments 27 and 28 to clause 58; PBC 28 October 2014, c243

25 Amendments 29 and 30 to clauses 68 and 69; PBC 28 October 2014, cc248-49

26 Amendments 31 and 32 to clause 73; PBC 28 October 2014, cc249-251

27 PBC 251 on 28 October 2014 c251; new clause 4 which would amend section 83A of the *Childcare Act 2006*

Science[28] (LSE), and Spencer Thompson from the Institute of Public Policy Research (IPPR),[29] she stated:

> In the evidence sessions, we heard from people such as Kitty Stewart that, in Australia, the introduction of a child care rebate of 30% coincided with a rise of more than 100% in costs between 1997 and 2006, compared with general inflation of 27% over the same period. In the single year of 2008, when the child care rebate was raised to cover 50% of all remaining costs, costs rose by 10%. In its evidence, the IPPR also warned about the Netherlands experience.
>
> […]
>
> There is plenty of evidence, both domestic and from abroad, that shows that introducing additional money purely on demand-side subsidies can mean that prices rise significantly.
>
> A key aim of the Bill is to help make work pay by making child care more affordable. However, when the amount of help for families was capped at £1,200 a year, the IPPR raised concerns that that support would be eroded in a fairly short space of time. Its analysis showed that, by 2008, the gains of the scheme would be wiped out, with parents paying proportionately more of their disposable income despite that extra money going in. If we look ahead to 2018, if child care prices are uprated using the Daycare Trust averages and incorporating the £2,550 that a family would get as a benefit of tax-free child care, with the eligible amounts increasing in line with inflation, the figures rise—I realise as I am reading this that it does not quite make sense, so I will skip this bit. Plenty of analysis has been done by the IPPR and the Daycare Trust that shows that, over a period of four years, an average family would be paying more for their child care costs, despite the extra investment, than they are today.[30]

There was some disagreement between Committee Members over whether childcare costs had increased under the present Government. Ben Gummer[31] argued that average childcare costs had fallen for the first time in 10 years; however, Lucy Powell claimed that prices had increased by 30 per cent.[32] The Minister, Priti Patel, accepted that childcare costs had risen faster than inflation since 2003 but argued that there were signs that costs were stabilising as a result of Government reforms, such as supporting schools and nurseries to offer more childcare.[33] In response to the amendment, the Minister cited Department for Education survey data that indicated that nearly a quarter of employed mothers would increase their working hours if they were able to access suitable high-quality childcare. She added that there was no evidence to suggest that the Bill would increase costs.[34]

The Minister failed to reassure Lucy Powell with her response and the amendment was pressed to division. The Committee voted against the amendment 7 votes to 9.[35]

A further amendment relating to the impact of policy changes on childcare costs was tabled by Catherine KcKinnell as new clause 5. It differed from amendment 2 tabled to clause 1 by Lucy Powell as it would require the Chancellor of the Exchequer to review trends in the cost

28 PBC Third sitting, 16th October 2014
29 PBC Fourth sitting, 16 October 2014
30 PBC 21 October 2014, c134
31 *Ibid,* c135
32 *Ibid*
33 *Ibid* c140
34 *Ibid*
35 *Ibid,* c142

of childcare, not just as a result of the Bill, but the impact of wider changes too, within three months of the passing of the *Childcare Payments Act 2014*. Ms McKinnell explained.

> Although the Opposition have raised a number of clarificatory queries about the mechanics of how it [tax-free childcare] will operate, we have no issue with the Government administering their support in the way that has been proposed.
>
> We do, however, have grave concerns about a much more substantive issue, which the Bill does not address. New clause 5 calls for a review of the lack of help the Government have provided over the past four years for parents struggling with child care costs, at the same time as they have cut in-work support for families, such as tax credits and benefits.
>
> We therefore call on the Government to review the trends in the cost of child care for working parents not only as a result of the Bill, but in the context of the current climate and of the last four years. We want them to review the impact of other changes to the tax and benefits system over the past four years; how those things have affected the affordability of child care for hard-pressed parents; and, following on from that, whether the top-up payments provided for in the Bill will make a dent in the lack of support for working parents with child care costs.[36]

In response, the Minister restated the Government's commitment to review the impact of the scheme within two years of implementation. She added:

> I am sure the Committee will agree that sufficient mechanisms are already in place to keep the scheme under the amount of scrutiny that it deserves. It does deserve ongoing scrutiny, as has been said in the Committee and as we have outlined in the impact assessment. Given the other measures that the Government are taking to support the supply of child care, we are taking the necessary steps to ensure that the already high costs of child care stabilise rather than spiral further upwards. I therefore ask the hon. Member for Newcastle upon Tyne North to withdraw the new clause.[37]

The new clause was pressed to division as the Opposition believed that two years was "just too long a time frame for the Government to let the issue drift before taking serious action to review and […] rectify the situation."[38] The Committee divided on the clause which was defeated 6 votes to 9.[39]

Alignment with Universal Credit

Parents who opt to apply for the tax-free childcare scheme will not also be able to claim support under tax credits or Universal Credit (clause 11). Lucy Powell tabled a group of amendments (amendments 5 to 7 and 15)[40] to clause 11 which would require the Chancellor of the Exchequer to assess the impact of Universal Credit and other childcare support schemes on families before bringing clause 11 into force. She informed the Committee that the amendments sought to explore the interaction of Universal Credit and tax credits with tax-free childcare so that parents were better informed about which system offered them the most support to return to work. She explained that the amendments would allow regulations to be made which would permit top-up payments under tax-free childcare to be more aligned with Universal Credit. She pointed out that during the Committee's earlier evidence sessions:

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36 PBC 28 October 2014 cc251-252
37 *Ibid,* c258
38 *Ibid*
39 *Ibid*
40 PBC 21 October 2014 c166. Amendment 15 was consequential on amendments 5, 8 and 12.

> .. there was some interest on both sides of the Committee in the possibility that in future the Government might want to combine top-up payments with universal credit, so that universal credit claimants receive a lower subsidy from universal credit, but are entitled to top-up payments through the tax-free scheme. In total, it would equate to the same level of support, but with the two schemes better aligned.[41]

She added that the amendments would also allow further consideration of some of the disparities between the schemes, for example payment in arrears under Universal Credit compared to top-up payments under the tax-free childcare, which would be paid in advance.[42]

The Minister agreed that it was important to "work with parents to get things right." She informed the Committee that in addition to publishing draft guidance on the Bill, HMRC and the Government Digital Service would be working with stakeholders to ensure that the scheme was easy to use and accessible to parents. She explained that the appropriate time for a review was once the scheme had had time to "bed down" so that a full evaluation could be carried out. In response to the amendments, the Minister sought to convince the Committee why the Government viewed them as unnecessary:

> The effect of amendments 6 and 7 would be that parents would be able to get support under the new scheme and universal credit at the same time. I do not want to cover the points that I made before, but families in receipt of universal credit will already receive good, generous support for their child care costs, as is right. Child care support is offered to parents on universal credit as part of the wider welfare system designed by the Department for Work and Pensions to ensure that we make work pay for those who need support the most. Up to 300,000 more people are likely to be in work as a result of universal credit, and we expect that a significant proportion of those will be households with children, but it is not right for a parent to receive tax-free child care in addition to universal credit when support is already there. I mentioned that 85% support for their child care costs will be provided from April 2016.
>
> I am aware from the evidence sessions that some of the Committee may think that this is complex, but I have addressed that point. We are working with stakeholders and families. It is our objective and my mission to ensure that the scheme is easy for parents to use, and I re-emphasise that our focus remains on those on lower incomes. The introduction of the scheme gives parents confidence that as they increase their income and move off universal credit, they will continue to receive Government support towards their child care costs. That is an important provision in the Bill, and it is a commitment from the Government. I therefore ask the hon. Lady not to press the amendments, and I commend the clause to the Committee.[43]

Lucy Powell acknowledged the Minister's commitment to ensuring communications in relation to the scheme would be available to parents. However, Ms Powell was concerned that issues remained with Universal Credit – a policy which did not relate to the Treasury Minister's Department.[44] Although she withdrew amendments 5 and 7, Ms Powell pressed amendment 6 (to allow Universal Credit to be topped-up) to a vote to enable the "possibility that in future, somebody receiving universal credit could also receive child care credit" as a top-up payment. The amendment was defeated on division 7 votes to 9.[45]

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41 PBC 21 October 2014 cc170-1
42 PBC 21 October 2014 c172; see also HC Deb 14 July 2014, c636
43 PBC 21 October 2014 c 176-7
44 Universal Credit is a policy of the Department for Work and Pensions.
45 PBC 21 October 2014 c177

Grandfathering Employer Supported Childcare schemes

During the clause stand part debate on clauses 62 and 63, Lucy Powell tabled a probing amendment (new clause 6) to explore the impact of 'grandfathering' Employer Supported Childcare (ESC). Clauses 62 and 63 would make provision for current ESC schemes to be closed to new entrants. New clause 6 would delay the bringing into force of clauses 62 and 63 until six months after the *Childcare Payments Act 2014* had received Royal Assent and the Government had reported on the impact of the restrictions in clauses 62 and 63 on families. Lucy Powell explained that the Opposition wanted to know what the Government intended to do for families who would be less well-off when ESC schemes were closed:

> The intention of the Bill is to give many more families the benefits of employer-supported child care, which is why we are talking about the new proposals. However, there are some families who are not going to be eligible for tax-free child care, but are currently eligible for employer-supported child care. Other families are better off staying in the employer-supported child care scheme than moving to tax-free child care.
>
> Some employers will stop offering the employer-supported child care because of demand. What assessment have the Government made of the impact of that on those families? Has the Minister considered that? Those are the main issues around grandfathering the employer voucher schemes.[46]

The Minister explained that the Government was not abolishing the employer's role in childcare support as they would be able to contribute to the tax-free scheme on behalf of their employee as part of the "wider family friendly employee package".[47] She added:

> We estimate that about a million families will be better off once the scheme has been introduced, which is of course a vast improvement for those who currently receive no help. I have explained why the new scheme will be a vast improvement on the current one, how parents who are already in the employer-supported child care scheme will be able to remain in it if they prefer, and how employers will still be able to be involved in the new scheme.

Although Ms Powell did not press the new clause to a vote, she urged the Minister to bear in mind those families who would be worse off once ESC schemes were wound down.[48]

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[46] PBC 28 October 2014, c245-6
[47] *Ibid,* c246
[48] *Ibid,* c247

Appendix 1 – Public Bill Committee Members

Chairs: Jim Sheridan (Paisley and Renfrewshire North) (Labour) and Mrs Anne Main (St Albans) (Conservative)

19 Members:

Gavin Barwell (Croydon Central) (Lord Commissioner of Her Majesty's Treasury)

Alex Cunningham (Stockton North) (Labour)

Nic Dakin (Scunthorpe) (Labour)

Charlie Elphicke (Dover) (Conservative)

Chris Evans (Islwyn) (Labour/Co-op)

Robert Flello (Stoke-on-Trent South) (Labour)

Pat Glass (North West Durham) (Labour)

Ben Gummer (Ipswich) (Conservative)

Mr David Heath (Somerton and Frome) (Liberal Democrat)

Andrew Jones (Harrogate and Knaresborough) (Conservative)

Robert Jenrick (Newark) (Conservative)

Catherine McKinnell (Newcastle upon Tyne North) (Labour)

Mary Macleod (Brentford and Isleworth) (Conservative)

Maria Miller (Basingstoke) (Conservative)

Priti Patel (Witham) (Exchequer Secretary to the Treasury)

Lucy Powell (Manchester Central) (Labour/Co-op)

Sir Bob Russell (Colchester) (Liberal Democrat)

Chloe Smith (Norwich North) (Conservative)

Sammy Wilson (East Antrim) (Democratic Unionist Party)