



National Insurance Contributions Bill 2014-15: **Parliamentary scrutiny**

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The *National Insurance Contributions Bill 2014-15* would allow for both categories of National Insurance contributions (NICs) which are payable by the self-employed – Class 2 and Class 4 – to be collected through self assessment from April 2016. The Bill would also extend existing tax rules regarding ‘accelerated payments’ and ‘high-risk’ tax promoters to NICs, and introduce a Targeted Anti-Avoidance Rule to prevent the avoidance of NICs by ‘intermediaires’.¹

This note gives an overview of the Bill’s scrutiny to date. It is complemented by a Library Research paper prepared for the Bill’s Second Reading debate ([RP14/45, 21 August 2014](#)).

The Bill received a Second Reading [on 8 September](#), and was considered in Public Bill Committee [on 21 October](#), in two sittings. In Committee, the Opposition did not move any amendments, and a number of technical amendments moved by the Government were agreed without a vote. The Bill completed its scrutiny in the Commons on [11 November](#).

In his Autumn Statement on 3 December 2014 the Chancellor, George Osborne, announced that the Government would abolish employer NICs for young apprentices.² From April 2016 employers of apprentices under the age of 25 will no longer be required to pay secondary Class 1 (employer) NICs on earnings up to the Upper Earnings Limit (UEL), for those employees.³ This is estimated to cost £105m in 2016/17.⁴

The Government tabled a new clause to the Bill to make provision for this measure, with a number of technical amendments, at the Report stage of the Bill in the Lords on 6 January 2015.⁵ These were all agreed without a vote. In all other respects the Bill was agreed, without division, during its scrutiny in the Lords. In turn the Commons agreed to all of these amendments on 3 February 2015.⁶

¹ Background material on the Bill is [collated on Gov.uk](#).

² HC Deb 3 December 2014 c315

³ HMRC, *National Insurance contributions: abolition of employer contributions for apprentices under 25 – tax information & impact note*, 10 December 2014

⁴ *Autumn Statement*, Cm 8961, December 2014 p64; Table 2.1 – item 6

⁵ [HL Deb 6 January 2015 cc262-270](#)

⁶ [HC Deb 3 February 2015 cc 150-158](#)

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1 Introduction

The *National Insurance Contributions Bill 2014-15* has four elements:

- **Simplifying NICs paid by the self-employed:** the Bill would move the collection of Class 2 NICs into self assessment, for the 2015/16 tax year onwards. This would mean that this category of NICs paid by the self-employed could be collected alongside Class 4 NICs and income tax from April 2016.
- **Extending new rules for follower notices & accelerated payments to NICs:** under Part 4 of the *Finance Act 2014*, HMRC may issue ‘follower notices’ when in dispute with a taxpayer over the tax benefit delivered by an avoidance scheme. Where HMRC take the view that the scheme is the same as one that has been reversed in the courts, it may notify the taxpayer and require that they make a pre-payment of the amounts of tax at stake. These monies would be held by HMRC until the taxpayer’s final liability has been determined. HMRC may also require an ‘accelerated payment’ where the taxpayer has used an avoidance scheme reported under the Disclosure of Tax Avoidance Schemes (DOTAS) regime, or a scheme that falls foul of the General Anti-Abuse Rule (GAAR). The Bill would extend HMRC powers to issue follower notices and demand accelerated payments in similar circumstances for NICs.
- **Extending new rules for ‘high-risk’ promoters to NICs:** under Part 5 of the *Finance Act 2014*, HMRC may place conditions on the conduct of individual accountancy businesses and other promoters of tax avoidance schemes. Where a promoter breaches the terms of this conduct notice, HMRC has new powers to obtain information and impose penalties. The Bill would extend this regime to NICs.
- **Introducing a Targeted Anti-Avoidance Rule for intermediaries:** in 2014 the Government introduced new rules to tackle tax avoidance by ‘intermediaries’ – employment businesses or agencies who liaise between workers and client companies using their services. This avoidance activity had consisted in exploiting the way tax and NI rules apply to intermediaries based offshore, and in facilitating false self-employment. Legislation with regard to income tax was included in the *Finance Act 2014*; equivalent provisions with regard to NICs were made in secondary legislation. The *Finance Act 2014* also included a Targeted Anti-Avoidance Rule (TAAR) - legislation to ensure that further false self-employment schemes that sought to circumvent these new rules could be struck down in court. The Bill would provide for a similar TAAR for NICs.

Clauses 1 to 5 of the Bill, with **Schedules 1 & 2**, cover the four measures set out above. The Bill has three other clauses. **Clause 6** makes provision for HMRC's administrative expenses in relation to the Bill's provisions. **Clauses 7 & 8** define abbreviations, establish the title of this legislation, and determine its extent. The Bill extends to England and Wales, Scotland and Northern Ireland.

The Bill was published on 17 July 2014. The Bill, with its explanatory notes, which give a clause by clause description of the Bill, are published on [the Bill's page on the Parliament site](#), which also gives details of its Parliamentary progress.

2 Second Reading: 8 September 2014

The Exchequer Secretary, David Gauke, introduced the Bill, setting out the Bill's four measures in detail. First, the Minister gave details of how the Bill would provide for NICs paid by the self-employed to be simplified – underlining the fact that under this reform, individuals would still be entitled to spread the cost of Class 2 NICs through the tax year:

Class 2 NICs are currently collected via a flat-rate charge of £2.75 per week, paid through six-monthly billing or by direct debit, while class 4 NICs are a percentage charge on profits—of 9% between the lower and upper profits limit and 2% above the upper profits limit—paid through self-assessment alongside income tax.

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

Those changes are proposed to take effect for the 2015-16 tax year onwards, so that the collection of class 2 NICs under self-assessment will be from 6 April 2016 ... The six-monthly billing and direct debit systems will cease from April 2015 and July 2015 respectively I want to take this opportunity to reassure the self-employed that there is already the facility in self-assessment to make budget payments to spread the cost of tax and NICs through the year ...

Under this reform, customers with profits below the new small profits threshold, which will be equivalent to the current small earnings exception threshold, will not be liable to pay class 2 NICs, but will be able to choose to do so on a voluntary basis. That means that those with low profits who want to opt out of paying class 2 NICs will not need to do anything apart from confirm that when they are completing their self-assessment return, while those who still choose to pay in order to protect the benefits entitlement will be able to do so quickly and easily. Rather than a separate process, the decision will be built into the self-assessment return.⁷

The Minister went on to discuss the extension of provisions for both follower notices and accelerated payments to NICs, and addressed a number of criticisms that had been made of these rules: that they presumed that any contested appeal by a taxpayer was faulty; that they would have retrospective effect, and that they would place an unfair burden on taxpayers who would be unable to pay these sums to HMRC:

⁷ HC Deb 8 September 2014 cc681-2

One point that has been made is that the measure effectively assumes that someone is guilty before they are proved innocent. The Government do not agree ... The measure in no way alters the rights of appeal that people already have when disputing the tax or NICs they owe HMRC; it is only about where the money sits while the dispute continues ...

[Furthermore the measure] is not retrospective and there is no change to the liability to make a contribution. It involves NICs that the individual and his or her employer would already have paid if they had not entered into the avoidance scheme. The taxpayer can continue to dispute the case and will be repaid with interest if they succeed.

It has also been suggested that taxpayers are likely to find it difficult to find the money to pay. The Government's view is that we would expect a prudent taxpayer to anticipate that an avoidance scheme might not deliver savings and would be subject to challenge by HMRC and that such a taxpayer should have made some provision against that possibility. I can reassure the House, however, that when a taxpayer has genuine difficulties in paying some or all of the NICs, HMRC will use its usual collection tools, including appropriately structured payment arrangements, to assist taxpayers in paying the required amounts.⁸

The Minister summarised the new rules for 'high-risk' promoters and, as with follower notices and accelerated payments, took the opportunity to counter certain criticisms of these rules: that they were disproportionate, hit innocent promoters, and would have retrospective effect:

To be covered by the legislation, a person must be the promoter of avoidance schemes that give a tax advantage, or that avoid or reduce a NICs liability, and to have made a significant breach of a threshold condition. The vast majority of promoters will not be in that position ...

One part of the Government's strategy is to tackle the behaviour of the supply side of the market—those highest-risk promoters who design and sell avoidance schemes. We want to ensure that promoters who avoid their obligations to HMRC and their clients are made to change their behaviour, and the Bill achieves that by imposing consequences for those who do not meet acceptable standards of behaviour. It requires monitored promoters to tell HMRC about their schemes and clients, and there will be significant fines if they do not comply ...

While the provisions involve looking back at a promoter's past behaviour, they are designed to improve current and future behaviour. It is only if there is no improvement in the promoter's compliance with their obligations that they are subject to significant information powers and penalties.⁹

Finally Mr Gauke discussed the Bill's provision to introduce a TAAR to deter tax avoidance by employment intermediaries, and gave the Government's reasons for proceeding with this:

The use of employment intermediaries as a way of avoiding tax has grown in recent years, and they are increasingly marketed and promoted as a way of avoiding employer's NICs. The TAAR will dissuade some businesses from entering into convoluted arrangements to avoid NICs. The proposed measures will help to level the playing field for UK businesses and ensure that compliant UK businesses that facilitate the UK's flexible labour market are not undercut by those trying to avoid tax.¹⁰

⁸ *op.cit.* c683

⁹ *op.cit.* cc684-5

¹⁰ *op.cit.* c685

Speaking for the Opposition, Shabana Mahmood welcomed the Bill, saying: “we support the measures and so will support Second Reading, but we will examine in detail some of the practical impacts of the measures in Committee.”¹¹ Ms Mahmood asked for clarification that collecting Class 2 NICs through self assessment would not have an adverse impact on individuals’ ability to claim contributory benefits, specifically maternity allowance and universal credit:

Entitlement to maternity allowance is not assessed on self-employment and class 2 NICs paid in a particular benefit year. Instead, it is assessed over a test period of 66 weeks up to and including the week before the baby is due. Collecting class 2 NICs at the end of the tax year means that some women may find that it appears as though they have not been paying class 2 NICs during the period needed to make them eligible for the maternity allowance.

In order to address this problem, the Government have proposed measures in the Bill that would enable women who have not had the opportunity to file a self-assessment return and pay class 2 NICs to pay them early in order to secure maternity entitlement at the standard weekly rate. However, there is a danger that these proposals may be impractical. Women would have to make voluntary contributions before they filed their self-assessment returns, and this demands a very high level of forward planning on their part ...

Universal credit regulations require the individual to report their income, net of certain expenses, on a monthly basis. That net income is then used to establish their entitlement to universal credit. Certain safeguards are built in so that if income from self-employment for an assessment period falls below a certain level, the claimant’s income is treated as being a higher amount called the minimum income floor. Because universal credit is assessed on a monthly basis, if a claimant has to pay all their class 2 NICs in one month, this could push their earnings under the minimum income floor, thereby reducing their universal credit for that month. Simplification should not come at the cost of hardship. We will press the Government for assurances that they have fully considered the potential impacts of this change along with the introduction of universal credit, and the interplay between both policies.

The tax information and impact note suggests that the option of monthly payments will still be made available to self-employed persons and businesses. However, there is no provision for that in the Bill.¹²

On the other measures in the Bill Ms Mahmood asked if more work had been done on HMRC’s approach to issuing follower notices, and if HMRC had sufficient resources to implement the system of accelerated payments. She underlined the Opposition’s support for the new TAAR, but that in Committee she would raise the question of having a statutory test of self-employment, as an alternative method to prevent tax avoidance.¹³

Two other Members contributed to the debate. Ian Swales welcomed the Bill, and in particular the provisions to tackle tax avoidance through disguised employment. Catherine McKinnell reiterated the Opposition’s concerns set out by Ms Mahmood – in particular, whether the Government had made sufficient provision to ensure that entitlement to universal credit and maternity allowance would not be adversely effected by collecting Class 2 NICs annually.

¹¹ *op.cit.* c686

¹² *op.cit.* cc687-8

¹³ This was an issue the Opposition raised at the Committee stage of the Finance Bill 2014, when the new income tax TAAR was debated, and agreed (Public Bill Committee, *Fourth sitting*, 1 May 2014 cc112-128).

The Exchequer Secretary, Priti Patel, responded to the debate; the Minister gave some details on the ongoing work to revise the arrangements for the self-employed to claim maternity allowance, and underlined that the Bill would not prevent individuals paying Class 2 NICs through the year:

On the reform of maternity allowance for self-employed women, I challenge the assertion that the process is burdensome ... Primary legislation and supporting regulations, and a revised claim process, will ensure that expectant mums are no worse off than they were under the previous class 2 arrangements. Right hon. and hon. Members will be pleased that HMRC and DWP are working together to ensure that the process is straightforward and simple for them ...

It is fair to say that most self-employed people have the option to pay their class 2 NICs regularly using the budget payment option that is already available in self-assessment. Importantly, they are enabled to spread the cost of those payments. That is not legislated for in the Bill because the option to make the budget payments already exists within the current system of self-assessment. Once the Bill becomes law, the issue is how we raise awareness to ensure that people know about that. NICs are accounted for on an accruals basis, so the important fact is the time period within which the money is due rather than the date for payments. Of course, they will continue to be counted in the tax year, but as I have said, it is a question of spreading the costs.

The Minister went on to discuss the governance arrangements for the administration of follower notices:

Obviously, the system must be administered fairly and consistently for all taxpayers. To that end, HMRC will establish clear governance for the key decisions on which cases can be designated as followers, which disclosure of tax avoidance schemes will be within scope and on the appointment of designated officers for the calculation notices. One important point is that clear separations will be established so that reviews of follower notices are carried out independently of the original issuing team. In addition, clear internal guidance and training will be provided for staff within HMRC on how they are to apply the rules. That goes with the clear external guidance, which has been published by HMRC so that taxpayers and advisers know how the rules impact on them. This is about not only fairness, but transparency, so that there is no confusion.¹⁴

Following Ms Patel's comments, the House approved the Bill for Second Reading without a vote.

3 Committee Stage: 21 October 2014

3.1 Examination of witnesses

The Committee held one evidence session on 21 October. It heard evidence from witnesses from the Low Incomes Tax Reform Group (LITRG), the Office of Tax Simplification (OTS), the Institute of Chartered Accountants (ICAEW) & the Chartered Institute of Taxation (CIOT), the accountancy firm Baker Tilly, and the Recruitment and Employment Confederation. It also heard evidence from officials at HM Treasury, HMRC and the Department for Work and Pensions, as well as the Financial Secretary David Gauke.

¹⁴ *op.cit.* cc694-5. The guidance that the Minister mentions is [on HMRC's site](#).

Members asked witnesses about their views on collecting Class 2 NICs annually, and, in particular, whether those on lower incomes who might be claiming Universal Credit would be sufficiently aware of the changes. Gillian Wrigley at LITRG noted that paying a year's worth of Class 2 NICs in one lump sum "could push people's income below [the] minimum income floor" which could result in their getting "a smaller overall award of Universal Credit ... there has to be an ability to make in-year payments."¹⁵ John Whiting, tax director at the OTS, observed that "all the Class 2 payers ... should all be written to and have it carefully explained. It will need a certain amount of following up, quite careful and directed."¹⁶ Andrew Hubbard (Baker Tilly) suggested it was a 'good thing' to collect Class 2 annually, though "it would have been interesting to see whether it could have all been rolled into a single revised Class 4", a point endorsed by Frank Haskew (ICAEW).¹⁷

On communication of the changes, Mr Hubbard said, "the message has got to be that this is not a once-only campaign."¹⁸ Jane Edwards, policy adviser at DWP, explained that there would be "online guidance and helpline assistance in certain circumstances. We have also got an extensive communication network with stakeholder groups, and we intend to use those avenues as well to promote awareness."¹⁹ Members had raised concerns about HMRC having the resources to publicise the changes; in response Clare Sheehan, policy adviser at HMRC, underlined, "the reforms to Class 2 are very much intended as simplification, meaning that customers will not need to contact us or to have the sort of interventions that they found complex and confusing in the past."²⁰

Members asked witnesses as to how they thought follower notices and accelerated payments were working to date. Both Mr Hubbard and Mr Haskew suggested it was too early to assess their impact, though Mr Haskew suggested that the market for avoidance schemes "is starting to move already in relation to things such as ... professional indemnity insurance."²¹ Mr Haskew noted that both the ICAEW and the CIOT were worried that HMRC might not have the legal powers to return any overpayment of NICs associated with an accelerated payment. When asked, the Financial Secretary assured the Committee this was not the case:

If the courts determine that the amount that has been paid under an accelerated payments notice, whether in respect of tax or national insurance contributions, ultimately does not need to be paid, and if the scheme in question, for example, was legal and effective, HMRC would be obliged to make that repayment. Although it is not in the Bill, I am grateful for that question and I am happy to make that statement and to make it clear that that is the view of HMRC and the Government, having looked at it very closely.²²

Both Mr Gauke and David Edney, policy adviser at HMRC, gave details of how the new regime was working, and the department's resources to administer it:

Mr Gauke: The plan from HMRC has always been to start off relatively cautiously in terms of numbers and ramp it up. The first notices went out at the end of August. Something like 600 notices have been sent out, covering tax liability of up to £250

¹⁵ Public Bill Committee (*National Insurance Contributions Bill*), *First sitting*, 21 October 2014 c5, c7

¹⁶ *op.cit.* c8

¹⁷ *op.cit.* c11

¹⁸ *op.cit.* c13

¹⁹ *op.cit.* c27

²⁰ *op.cit.* c30

²¹ *op.cit.* c10

²² *op.cit.* c26

million. The notices give the parties concerned 90 days in which to settle and make the payment, so one would not expect us necessarily to see the money coming in until the end of November. I can inform the Committee that, up until now, over £25 million has been paid as a consequence of the accelerated payments project. There is clearly much more to come ...

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

We have added a little bit of resource to issue the first tranche of notices. We will build up the staffing into the new year as we build up to full capacity. As the reaction builds in, we will then look at resources on our debt management teams, for example, and our legal teams. Rather than recruiting very large numbers up front, we are taking it in stages as the programme unfolds.²³

Finally, witnesses were asked about the introduction of the new TAAR for intermediaries. Mr Hubbard said he was "not yet convinced" of the case for the TAAR, and Mr Haskew observed, "we are a bit concerned that we now seem to have ... a plethora of all sorts of different anti-avoidance rules."²⁴ Kevin Green, chief executive of the Recruitment and Employment Confederation, expressed scepticism that the TAAR would work, noting the efforts of some employers to get around the rules:

What we have seen already, since the Finance Act was put in place in the summer, is huge numbers of different models being created, which for us means that what you are doing is putting all the liability on the intermediary, while in reality the power in the relationships is driven by large companies, because it is affecting their supply base, and obviously you will get collusion from workers who will potentially be out of pocket ... One of the models that we have seen grow since the legislation is the Elective Deduction Model model. It is quite a clever wheeze where the worker is employed for tax purposes but self-employed for all other purposes. That is a clever way of getting the financial benefits without ending up with the employment responsibilities. We can see, and have seen, employers being absolutely explicit that that is the model that they want their intermediaries to use.²⁵

Colin Ben-Nathan at the CIOT was more sympathetic to HMRC's approach in targeting intermediaries:

[The question arises] ... where the liability should arise in the supply chain. Should it be everybody, the end user, the intermediary? ... As Kevin points out, there are many different arrangements that we see in the construction industry or otherwise for how people are paid and by whom. I suspect that the reason that the intermediary, the agency, is focused on is that typically it will be the agency that makes a payment to the workers. I suspect that HMRC and the Government were looking at that aspect to say, "Who can we therefore pin the liability on? We need somewhere to go." Indeed, that is what they have done in the tax rules, and that was what was modelled in regulations for national insurance purposes ... It is a difficult area and certainly the CIOT was sensitive to the question of the time frame for when the measures should be enacted.

²³ *op.cit.* c25

²⁴ *op.cit.* c12

²⁵ *op.cit.* c17, c19

With £2.5 billion on the table, presumably HMRC and the Government took the view that they needed to act sooner rather than later.²⁶

Robert Burton, policy adviser at HMRC, was asked if HMRC was aware of the developments mentioned by Mr Green:

We are ... aware of such things as the elective deduction model ... We cannot assume straight away that something that has passed in front of us is an avoidance scheme. We have to listen and then establish the facts, and we continue to do so. It may be that a vehicle such as the one being referred to here could circumvent the legislation. I say "it may be", and that is one of the reasons why we feel that it is appropriate that the targeted anti-avoidance rule is there.²⁷

He went on to explain why HMRC had taken the approach that it had:

We clearly listened to what we were being told by intermediaries who were compliant and who were spending time and money to ensure that they abided by the legislation. They told us that there was a race to the bottom ... So we have tried to bring in the action to support those who are compliant, without adding to the administrative burden, at the same time ensuring that we have the powers that we need to take action against those who choose deliberately to try to circumvent the legislation.²⁸

3.2 Consideration of Bill

Clause 1 and **Schedule 1** provide for Class 2 NICs to be collected annually, as part of self assessment. The Financial Secretary, David Gauke, summarised how liability to Class 2 would arise under the changes made by the Bill:

A class 2 liability will arise at the end of the tax year, and the amount due will be assessed on an annual basis, although it will still be based on the number of weeks an individual has been self-employed in that tax year. Liability for class 2 will be determined by whether a person's class 4 profits exceed a set threshold—the new small profits threshold. The SPT will be set at the current class 2 small earnings exception level. Those with profits below the SPT will no longer be liable for class 2 under the new arrangements, but they will be given the option to pay class 2 voluntarily to protect their benefit entitlement.²⁹

The Minister went on to address one of the principal concerns raised during the Second Reading debate, the potential impact for women claiming maternity allowance:

Where a woman has not yet had the opportunity to file an SA return and pay class 2 NICs for the period necessary to establish her eligibility for MA, she will be able to pay the necessary class 2 contributions through a simple exception process. That process will also be available to eligible pregnant women who are neither employed nor self-employed but who participate in the business of their self-employed spouse or civil partner, to allow them to continue to have access to the lower rate of MA if their spouse or civil partner has paid the necessary class 2 NICs ...

Her Majesty's Revenue and Customs and the Department for Work and Pensions have worked closely together to develop a simple and straightforward process. Self-

²⁶ *op.cit.* cc20-21. Mr Ben-Nathan is referring to estimates of the amounts the Government estimates it may recover from 2014/15 to 2018/19 tackling avoidance by onshore intermediaries (*Budget 2014*, HC 1104, March 2014 : Table 2.2 – item s)

²⁷ *op.cit.* c24

²⁸ *op.cit.* c28

²⁹ Public Bill Committee, *Second sitting*, 21 October 2014 c36

employed women who have not yet submitted an SA return will be able to choose to make a one-off payment to HMRC for the requisite number of class 2 contributions needed to secure the standard rate of MA. Some pregnant women may already be making regular payments through a budget payment plan, which they could use for that purpose.³⁰

Mr Gauke moved a series of amendments to **Schedule 1** to update the rate of Class 2 NICs, and the small profits threshold, for the 2015/16 year, as these had not been set when the Bill was first published:

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

[In the 2011 Budget] we announced that, from the 2012-13 tax year, the basis for indexation of most NICs rates and thresholds would be the consumer price index, instead of the retail price index—the rate of inflation. These amendments are in accordance with that policy.

The NICs rates and thresholds for the 2015-16 tax year are calculated using the September CPI and RPI figures published in October. They are announced in the autumn statement and legislated for early in the new year to take effect from the beginning of the following tax year. When the Bill was introduced in July, it included the 2014-15 tax year rate of class 2 NICs and set the small profits thresholds at the level of the small earnings exception for the 2014-15 tax year. That was because the timing did not allow us to include the 2015-16 tax year values of the weekly class 2 rate and small profits threshold in the Bill ... The remaining NICs rates and thresholds will be announced in the usual way in the autumn statement on 3 December.³¹

Speaking for the Opposition, Shabana Mahmood, took the opportunity to ask about HMRC's approach to ensuring those affected by this reform were fully informed, an issue that had been discussed in the previous sitting. In response Mr Gauke underlined that, in addition to online guidance, HMRC would be "writing to all payers of Class 2 NICs, to tell them that the changes are coming and will write again at the time of the changes." In addition, "both online and written guidance will be updated and key messages are always tested before they go out en masse, to ensure that they are clear."³²

All the amendments tabled by the Minister were agreed without a vote.

Clause 2 would allow the Treasury to make legislative changes consequential on **Schedule 1** by Order, and in answer to a question, the Minister explained that it was "expected that this power will be used to update references in legislation."³³

Clause 3 and **Schedule 2** apply the rules on follower notices, accelerated payments and high risk promoters – put in place for tax by *FA2014* – to NICs. The Minister moved what he termed a "minor technical amendment" to "ensure that the legislation works as intended":

Section 276(2) of the *Finance Act 2014* introduces a higher standard of reasonable care for tax returns and accounts of clients of monitored promoters, specifically those listed at paragraph 1 of schedule 24 of the *Finance Act 2007*. The *Finance Act 2014*

³⁰ *op.cit.* cc36-7

³¹ *op.cit.* cc38-9

³² *op.cit.* c41

³³ *op.cit.* c43

ensures that, in relation to tax, if a client is liable for a penalty under schedule 24 of the *Finance Act 2007*, and has relied on legal advice as to the operation of the scheme which has been provided by a monitored provider, that advice cannot be taken into account in relation to a defence of reasonable care ... Removal of this defence in these circumstances encourages the clients of monitored promoters to obtain independent advice from alternative sources, not just monitored promoters who may seek to misrepresent the likely success of an avoidance scheme.

This amendment ... ensures that the reference to schedule 24 of the *Finance Act 2007* in section 276 of the *Finance Act 2014* will also include that schedule as applied to NICs. It ensure that the higher standard of reasonable care provided for by section 276 of the *Finance Act 2014* applies to clients of monitored promoters of NICs avoidance schemes when submitting returns to HMRC.³⁴

In response Ms Mahmood reiterated the Opposition's support for these changes, and that they agreed with the Government that, despite a considerable amount of opposition from affected taxpayers and accountancy organisations, the arrangements for accelerated payments did *not* constitute retrospective legislation. Ms Mahmood went on to mention concerns mentioned during Second Reading about HMRC having the resources to administer the new schemes; in response, Mr Gauke said:

The Government have provided significant reinvestment of £1 billion specifically to combat revenue lost and at risk through non-compliance ... [so] while most of HMRC's lines of business are reducing in size, the number of roles in compliance is increasing ... Around 100 staff have been recruited into counter-avoidance to deal with the issue of accelerated payment notices, and another 100 will be added in 2015. In addition, HMRC is deploying additional staff to handle collection work. HMRC is taking a flexible approach on additional legal staff, which will depend on the number and nature of legal challenges.

Her Majesty's Courts and Tribunals Service is recruiting additional tribunal judges to handle the cases involving accelerated payments and follower notices and to accelerate the number of cases going through the tribunal generally. The Government have invested extra funds into HMRC's work to tackle avoidance and evasion. That is bearing fruit, with compliance in 2013-14 bringing in £23.9 billion up substantially from where it was when we came to office.³⁵

The Government amendment to **Schedule 2** was agreed without a vote.

Clause 5 provides for a new TAAR to prevent intermediaries falsely disguising contracts for workers supplying their labour to clients as self-employment. Ms Mahmood expressed the Opposition's support for the new TAAR, but raised concerns over the evidence the Committee had had from Kevin Green, chief executive of the Recruitment and Employment Confederation, that the TAAR would not be effective:

Although we support the placing of liability on intermediaries—there was a specific problem with employment intermediaries and the Government needed to act—that has had the impact of shifting avoidance behaviour further down the supply chain. The Minister and his officials said that they are alive to some of the other ways in which avoidance activity is taking place in other parts of the supply chain. Will he give further reassurance that those gaps will be closed as they appear?³⁶

³⁴ *op.cit.* cc44-5

³⁵ *op.cit.* cc47-8

³⁶ *op.cit.* c50

In response the Financial Secretary said:

HMRC has opened inquiries and is establishing and testing the facts to ascertain whether the [new avoidance schemes mentioned by Kevin Green] successfully circumvent the legislation and therefore whether the TAAR would be appropriate to use in each instance. There is much work that needs to be done in these circumstances. First, there is the question whether the new arrangements work and reduce the tax or NICs bill under the existing legislation. If they do work, it is a question of evaluating the options to address the matter and seeing whether that can be done without significant unintended consequences. That is work that HMRC is pursuing at the moment.³⁷

The remaining provisions in the Bill were agreed without debate.

4 Further developments

The Bill completed its scrutiny in the Commons on 11 November, without any further amendments being tabled for Report, nor any division on its Third Reading.

In his Autumn Statement on 3 December 2014 the Chancellor, George Osborne, announced that the Government would abolish employer NICs for young apprentices:

To support businesses that take on young people, we are already, from next April, abolishing national insurance contributions for employing anyone under the age of 21. Today, I can go further. Under this Government, almost 2 million people have taken up an apprenticeship. The Prime Minister has set this country an ambition of 3 million apprentices in the next Parliament. We back the businesses that employ apprentices, especially young apprentices under the age of 25. At the moment, we charge national insurance on businesses that employ apprentices. Today, I can announce that the jobs tax on young apprentices will be abolished altogether. When a business gives a young person a chance in life, we will support them, not tax them.³⁸

This measure is estimated to cost £105m in 2016/17.³⁹

The new NI relief for apprentices would be the third cut in employers NICs that the Government has introduced in the last two years. First, in his 2013 Budget Mr Osborne announced the introduction of the Employment Allowance: a fixed £2,000 rebate on an employer's annual NI bill

The cost of employing people is a burden on small firms. It is a real barrier to taking an extra person on. To help create jobs and back small businesses in this country, I am today creating the employment allowance. The employment allowance will work by taking the first £2,000 off the employer national insurance bill of every company. It is a tax off jobs. It is worth up to £2,000 to every business in the country. It will mean that 450,000 small businesses—one third of all employers in the country—will pay no jobs tax at all.

For the person who has set up their own business and is thinking about taking on their first employee, a huge barrier will be removed. They can hire someone on £22,000, or

³⁷ *op.cit.* c52

³⁸ HC Deb 3 December 2014 c315

³⁹ HMRC, *National Insurance contributions: abolition of employer contributions for apprentices under 25 – tax information & impact note*, 10 December 2014

four people on the minimum wage, and pay no jobs tax. Ninety-eight per cent. of the benefit of this employment allowance will go to small and medium-sized enterprises. It will become available in April next year, once the legislation has passed. We will also make it available to charities and community sports clubs. The previous Government's answer to Britain's economic problems was to propose a tax on jobs. We stopped that and today this Government are taking tax off jobs.⁴⁰

The cost of the allowance was projected to be £1.26 billion in 2014/15, rising to £1.73 billion by 2017/18.⁴¹

Subsequently the Chancellor announced a second employer NI relief in the 2013 Autumn Statement, for employers taking on employees under 21. The relief would apply on earnings for this cohort of employees, up to the Upper Earnings Limit; earnings above this limit would be charged as normal.⁴² The relief would come in from April 2015, at a projected cost of £440m in 2015/16, rising to £505m by 2017/18.⁴³ Legislative provision for both of these tax reliefs was made by *National Insurance Contributions Act 2014*. Further detail on the passage of this legislation is given in two Library briefings.⁴⁴

Turning back to the Chancellor's announcement in December 2014, the *Autumn Statement* gave details of the scope of the NI relief for apprentices, and an extension to the existing Employment Allowance:

Abolish employer National Insurance contributions up to the upper earnings limit for apprentices aged under 25 – The government will abolish employer NICs up to the upper earnings limit for apprentices aged under 25. This will come into effect from April 2016.

Extending the employer National Insurance contributions Employment Allowance to care and support workers – The government will extend the annual £2,000 Employment Allowance for employer NICs to care and support workers. This will come into effect from April 2015.⁴⁵

In the latter case, at present certain payments made by an employer to an employee are excluded from the scope of the Employment Allowance, including payments made in connection with the employer's "personal, family or household affairs."⁴⁶ The Government is to introduce secondary legislation to amend this test, so that it will not apply to care and support workers.⁴⁷

Following its passage in the Commons, the *National Insurance (Contributions) Bill* passed to the Lords; the Bill received a Second Reading on 25 November, and completed its Committee stage on 15 December. As with its scrutiny in the Commons, the Bill proved relatively uncontroversial; both Lord Razzall, for the Liberal Democrats, and Lord Davies, for the Opposition, welcomed the Bill when they spoke during the Second Reading debate.⁴⁸ At

⁴⁰ HC Deb 20 March 2013 c944

⁴¹ *Budget 2013*, HC 1033, March 2013 p64; Table 2.1 – item 25

⁴² *Autumn Statement*, Cm 8747, December 2013 paras 1.195, 2.48

⁴³ *Budget 2014*, HC 1104, March 2014 p58; Table 2.2 – item d

⁴⁴ [Library Research paper 13/60](#), 1 November 2013 & Library standard note [SN6761](#), 26 February 2014

⁴⁵ *Autumn Statement*, Cm 8961, December 2014 p72

⁴⁶ under s2(3) of the *National Insurance Act 2014*

⁴⁷ HMRC, *National Insurance contributions: Employment Allowance extension to personal carers – tax information & impact note*, 10 December 2014. The annual cost of this measure is estimated to be £10m.

⁴⁸ HL Deb 25 November 2014 c805, c807

the close of the relatively short debate in Committee, Lord Newby announced that the Government would introduce an amendment at Report, to make provision for the new employer NI relief for young apprentices:

[This measure] will provide a zero rate of employer class 1 NICs on earnings between the secondary threshold and the upper earnings limit in respect of apprentices under the age of 25 from 6 April 2016. It will provide the power to define “apprentice” in regulations, allowing the time discuss the definition with stakeholders. It will also contain powers to alter the age range to which the zero rate applies and introduce a threshold for apprentices.⁴⁹

Lord Newby also announced two other changes to the Bill: first, to require that any secondary legislation to be laid under **Clause 2** be subject to the affirmative procedure:

Noble Lords will ... be aware that the Delegated Powers and Regulatory Reform Committee [has drawn] ... attention to the power in Clause 2 to amend primary and secondary legislation as a consequence of the reform of class 2 NICs ... [The Committee] has said that the justification given in HMRC’s delegated powers memorandum is not sufficient for the negative procedure to apply where the power allows for the amendment or repeal of primary legislation, and it has recommended that in this instance the power should be subject to the affirmative procedure. The Government ... intend to table an amendment on Report [to this effect].⁵⁰

Second, to ensure penalties in relation to payment of Class 2 NICs would be aligned with those for self assessment:

Finally, we intend to amend Schedule 1 to the Bill to ensure that the relevant self-assessment penalties apply to class 2 contributions collected through self-assessment by adding a missing reference to the self-assessment under-declaration penalty contained in Schedule 24 to the Finance Act 2007. It was always the Government’s intention to align penalties for class 2 contributions more closely with those for SA as part of the reform of class 2 so that the self-employed are not subjected to two different regimes, but this particular penalty was unintentionally omitted. This minor technical amendment will correct that omission.⁵¹

On this occasion Lord Davies said that the Opposition were “very much in favour” of the first of these technical measures, regarding the use of the affirmative procedure.⁵²

On 6 January the Bill completed its Report stage when each of these changes were debated, briefly, and agreed without a vote. Introducing the first measure, the new NI relief for young apprentices, Lord Newby explained a new clause to the Bill would provide three regulation-making powers: to define ‘apprentices’ who would come under the scope of a new zero rate; to allow the age bracket for the zero rate to be changed; and, to provide an upper threshold for relief – so that earnings above the UEL would be liable for NICs as normal:

The Government will provide a zero rate of employer’s class 1 NICs on the earnings of apprentices under the age of 25 from 6 April 2016. The measure will apply both to new and existing apprentices aged under 25 and is not time-limited.

The first main feature of the new clause is that there is a regulation-making power to define “apprentice”. There are existing statutory definitions relating to apprenticeships.

⁴⁹ HL Deb 15 December 2014 cGC9

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *op.cit.* cGC10

For example, in England and Wales, the Apprenticeships, Skills, Children and Learning Act 2009 introduces the concept of an “apprenticeship agreement”, which is defined in part with reference to an apprentice. Because education and training is a devolved matter, and not all apprentices are employed under apprenticeship agreements, we will need to look at the approaches taken towards apprenticeships in the different devolved Administrations. The power will allow time to discuss the definition with stakeholders such as the Skills Funding Agency and its devolved equivalents. The power will also enable us to respond simply to changing statutory definitions and requirements in the future.

Secondly, there are regulation-making powers to vary the age group to which the zero rate of secondary class 1 NICs for apprentices applies. For example, the Government could in the future allow for an increase in the age bracket of apprentices falling into the zero rate band of secondary class 1 NICs.

Thirdly, there is a regulation-making power to ensure that the benefit of the zero rate of secondary class 1 NICs for apprentices can be enjoyed only in respect of earnings below a certain level. In other words, the power will provide a means to introduce an upper secondary threshold for apprentices in the same way as we are doing for under-21 year-olds. This threshold will be set at the level of the upper earnings limit in the 2016-17 tax year.⁵³

Speaking for the Opposition Lord Davies welcomed this measure but raised concerns that employers might exploit the relief for avoidance purposes, and asked why the definition of “apprenticeships” for purposes of this relief had not been included in the Bill. In response Lord Newby said:

There is no evidence that employers will seek to use this measure to, for example, claim that a large number—or any number—of their staff are apprentices who are not actually apprentices. They will be required to meet the conditions of the regulations. The regulations that we are setting out in secondary legislation will include, at the least, an accredited form of training—for example by the Skills Funding Agency or its devolved equivalents. Employers will need to be able to confirm to HMRC that the employee in question is indeed an apprentice. The conditions will be designed in such a way that it will be easy for employers to provide verification if asked by HMRC on a routine compliance visit. The bull point is that there is no evidence whatever, circumstantial or otherwise, that employers either have been or will seek to use this relief, or existing funding schemes for apprentices, to get an unfair benefit.

The noble Lord asked about definitions and why we have not included a definition of apprenticeships in the Bill. As I said, there is a definition of “apprentice” in the 2009 Act, which is the starting point for the definition that we propose to put into secondary legislation. We have to consult with and seek the agreement of the devolved Administrations, which will take a little time. There is also an advantage in having an ability to amend the definition, which is obviously easier to do in secondary legislation, rather than in having a very detailed definition in the Bill.⁵⁴

The Bill received a Third Reading in the Lords, without debate, on 21 January.⁵⁵ In turn the Commons agreed all of these amendments, without a vote, on 3 February. On this occasion Shabana Mahmood, speaking for the Opposition, welcomed the introduction of the new NI

⁵³ HL Deb 6 January 2015 cc265-6

⁵⁴ *op.cit.* cc267-8

⁵⁵ [HL Deb 21 January 2015 c1332](#)

relief for young apprentices, but asked about the way in which apprentices would be defined in secondary legislation. In response the Financial Secretary, David Gauke, said:

We want to support apprenticeships and will seek to achieve a broad definition for the purposes of the relief. However, the apprenticeship system across the UK is complex and evolving. Education and training is a devolved matter. Apprenticeships operate slightly differently in England, Scotland, Wales and Northern Ireland, and there are differences between Government-funded apprenticeships and independent employer schemes. The Government will discuss the definition of “an apprentice” with the Skills Funding Agency and its devolved equivalents before committing ourselves to a final definition. It is important that the definition is robust, satisfying minimum compliance standards while achieving the objective of supporting the provision of apprenticeships to the under 25s.⁵⁶

Mr Gauke also gave some details of the numbers of apprentices that could be affected by this measure:

Overall, we estimate that about 180,000 employers offering apprenticeships in the UK are likely to benefit from the measure. Apprenticeship data from the Department for Business, Innovation and Skills for England for the 2013-14 academic year show that about 500,000 apprentices under the age of 25 are employed throughout the country, and we estimate that about 130,000 apprentices in England are aged 21 to 24. That group will be directly affected by the measure, with those under 21 already benefiting from the zero rate for under-21s from April this year.⁵⁷

⁵⁶ *op.cit.* cc153-4

⁵⁷ *op.cit.* cc155-6