



Select Committee on Economic Affairs

Finance Bill Sub-Committee

Uncorrected oral evidence: Draft Finance Bill 2020-21

Monday 7 December 2020

3.55 pm

Watch the meeting:

Members present: Lord Bridges of Headley (The Chair); Baroness Bowles of Berkhamsted; Lord Butler of Brockwell; Viscount Chandos; Lord Forsyth of Drumlean; Baroness Kramer; Lord Monks; Lord Rowe-Beddoe.

Evidence Session No. 10

Virtual Proceeding

Questions 119 - 137

Witnesses

I: The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury; Cerys McDonald, Director, Strategic Policy into Delivery, HMRC; Chris Simons, Deputy Director, Off-Payroll Working Programme, HMRC.

USE OF THE TRANSCRIPT

1. This is an uncorrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.
2. Any public use of, or reference to, the contents should make clear that neither Members nor witnesses have had the opportunity to correct the record. If in doubt as to the propriety of using the transcript, please contact the Clerk of the Committee.
3. Members and witnesses are asked to send corrections to the Clerk of the Committee within 14 days of receipt.

Examination of witnesses

Jesse Norman MP, Cerys McDonald and Chris Simons.

Q119 **The Chair:** Good afternoon and welcome to this meeting of the Finance Bill Sub-Committee. I thank the Financial Secretary to the Treasury and his officials for joining us at relatively short notice and at a very busy time. We are very grateful to you for making the time.

As always, this meeting is being broadcast live via the parliamentary website. A transcript will be taken and published on the Committee website, and you will have the opportunity to make corrections to that transcript where necessary. Those are the formalities done.

Financial Secretary, would you like to introduce your officials, or maybe they would like to do it themselves?

Jesse Norman MP: I am very happy to introduce myself and say hello to members of the Committee again. I think you know me from old acquaintance. We cannot go on meeting like this; people will start to talk. Let me introduce Cerys McDonald, who is—[*Connection lost.*]

The Chair: Financial Secretary, your connection is not very good. You have just frozen.

Jesse Norman MP: I have with me Cerys McDonald, Director of Strategic Policy into Delivery at HMRC, and Chris Simons, Deputy Director of Off-Payroll Working and—[*Connection lost.*]

The Chair: It is a very poor connection.

Jesse Norman MP: I am sitting in the Treasury. I am not sure how I can improve the connection. I apologise.

The Chair: It is not your fault. Obviously, we need to invest even more in digital infrastructure. Can I crack straight on, given that we do not have masses of time? The Financial Secretary has now disappeared. You are talking, but we cannot see you. Can you hear me, Financial Secretary?

Jesse Norman MP: Yes, I can, but I think your clerk has ended my video.

Q120 **The Chair:** The key thing is that we can hear your words of wisdom. Let me crack on. We are holding this Committee meeting to discuss Statutory Instrument 2020/1220. Given that the problems associated with this SI were identified before it was laid, why was it agreed to proceed with the laying of it and, therefore, to ask Parliament to pass a law with an acknowledged error in it?

Jesse Norman MP: I do not know whether I can put this into perspective. What we are talking about is a technical change to a law that is already on the statute book but not in force. The current statutory instrument is 13 pages long and has been very widely welcomed by stakeholder groups working with HMRC and the Treasury. The bit we are talking about is one paragraph long, so the regulations are far broader than the specific issue that requires amendment and cover the entire process—[*Connection lost.*]

The Chair: Financial Secretary, we lost about the last 30 seconds of what you were saying.

Jesse Norman MP: The SI is 13 pages long and we are talking about one paragraph in it. The regulations are, therefore, far broader than this specific issue, and they have been very widely welcomed by stakeholders, including the IR35 Forum and others.

The Chair: Can you clarify what the impact would be if you cannot find a fix for the problem? How many people will it affect?

Jesse Norman MP: [*Inaudible.*] We are confident that we will be able to, and indeed officials are already working on a candidate solution to the problem. I do not—[*Inaudible.*]

The Chair: We are not picking up nearly enough of what you are saying, Financial Secretary. I do not know whether you can reconnect.

Jesse Norman MP: Can I make a suggestion? Let us try to reconnect via a different system and see if we can answer the questions that way.

The Committee suspended.

On resuming—

The Chair: Financial Secretary, let us start again and try to keep it short, because we did not hear every word you said. Can you explain why the SI has been tabled with an acknowledged error in it and why we have got into this state? Very briefly, how many people do you think it will have an impact on if the error is not corrected?

Jesse Norman MP: To be clear, I think I said that we are discussing a technical change to the law, which is a very small part of a much wider SI. The SI is 13 pages long, and we are talking about one paragraph in that. We have been very much focused on preserving the overall intent and thrust of the legislation, and that is what stakeholders, including the IR35 Forum, very much welcome and want, and have been calling for.

It does not make much sense to quantify the impact of something that is not going to happen. My officials are very confident about, and are already discussing with stakeholders, a fix, or possible fixes, which can be put in place in good time. This is on the statute book, as I mentioned, but it is not in force and will not come into force until April next year, so there is good time to preserve the thrust of what we are doing, which is widely welcome, while fixing this narrow technical point to address the concern.

The Chair: We will come back to some of those points.

Q121 **Baroness Bowles of Berkhamsted:** Has the problem arisen because there is a fundamental issue with the policy, or is it, as perhaps you have already said, just a legal technical issue? Do you know how to fix it? You say you are consulting on it, but does that mean you do not know how to fix it?

Jesse Norman MP: No, it does not. In response to your question, this is a technical legal issue; it is not a fundamental issue with the policy. The problem is that this part of the legislation, while it reflected the primary legislation, did not reflect the overall underlying policy intent, so we want to address it for that purpose.

There was originally an attempt to prevent an opportunity for avoidance of the off-payroll working rules, that was flagged to us. We have now made a change, and that change itself has raised a question, which we are amending. Officials can come in if they want. They are in discussions with stakeholders.

I think it is well understood that there are several options for potential ways to address the issue. The key way to address it involves slightly refining a test for a particular status within the tax system¹, and that will require further consultation and discussion, but it absolutely does not mean that the much wider body of legislation, which has been widely welcomed and is being actively used, should be overturned in favour of an entirely fresh approach.

Baroness Bowles of Berkhamsted: But it would not be overturned, would it? If you have to bring forward changes to correct the error, why can you not just withdraw it and make the whole thing correct? You have to do it within that timeframe, so what is the difference?

Jesse Norman MP: If I may say so, there is a very substantial difference. There is no withdrawal process as such for legislation. To deal with this in the manner you describe, we would have to revoke the statutory instrument and make and lay a new one. That would involve the concurrence of DWP Ministers and the Department for Communities in Northern Ireland. We would then have to make and lay further new regulations in the spring, which would completely unhorse the process of legislative development that we have put forward and are taking forward now. As I say, it is a very small part of a much wider picture, and it would be very badly received by stakeholders who are already working on the basis of the law that is in place at the moment.

Q122 **Lord Forsyth of Drumlean:** Surely, if the legislation is not coming into effect until April and you are content to issue guidance in respect of the error to say that the law does not mean what it says, what is the problem, other than an administrative one, in laying before Parliament amendments to the law that are accurate?

Jesse Norman MP: The law is not defective as it presently stands; it merely does not reflect the policy intent that we have for it. We wish to amend it, and that is what we have in mind. That is well understood across the stakeholder community already. As I said, they are already working with officials on the technical legal fix required to make it effective.

¹ HMRC has since clarified that 'this would be refining the test for when a company needs to consider and apply the legislation, rather than making a change to the employment status rules'.

It would be a very radical move to withdraw the entire statutory instrument. As I say, this is a very small part of it. It would be very badly received by stakeholders who are already organising themselves accordingly, and that is before you get to the question of all the timing and other parliamentary time issues required to make and lay a new instrument. It would be a completely disproportionate response to the problem we have identified.

Lord Forsyth of Drumlean: You say the law is not defective. The SI is law now. If it continues, by your own admission and statement, that law is defective in so far as it is bringing people into the scope of a law in a way that was not your intention.

Jesse Norman MP: I have made no such admission and I have not said it is defective. I have said the opposite. The law is not defective; the law represents the primary legislation that was brought into place. What it does not do is represent the policy intent. That is why we are proposing to change the primary legislation and then change the implementing regulations.

Q123 **Lord Butler of Brockwell:** Financial Secretary, I think you are saying, are you not, that there is a defect in the law that has to be put right in the next Finance Bill?

Jesse Norman MP: No. What I am saying is that we want to reflect the policy intent, and that means changing the law as it currently stands. The law is what it is; it will have its effect as it presently stands. We do not want it to have the effect that it seems likely to have and, therefore, we are going to change it.

Lord Butler of Brockwell: The statutory instrument as is is based on the law as it is.

Jesse Norman MP: Yes.

Lord Butler of Brockwell: You are going to change that law, and in the meantime the statutory instrument will not be applied. Is that what you are saying? Although the statutory instrument is the law, you will not apply it until you have changed it.

Jesse Norman MP: No, that is not quite right; the implication is wrong. The statutory instrument is on the statute book but is not at present in force. It will not come into force until April. That gives us time, of which we will avail ourselves, to change both the primary and implementing regulations.

Lord Butler of Brockwell: Will you correct the statutory instrument before the operative date of April?

Jesse Norman MP: We will have a new statutory instrument that reflects the policy intent in time for the start of the new financial year.

Lord Butler of Brockwell: So the answer to my question is yes.

Jesse Norman MP: You used the language of correcting. As the statutory instrument is not inadequate as it stands, but just does not reflect our policy intent, I was being slightly more punctilious about that point.

Lord Butler of Brockwell: Can I get the sequence of events? When do you expect the Finance Bill that will amend the legislation to come into law?

Jesse Norman MP: In good time for us to be able to make the change before the beginning of the new financial year.

Lord Butler of Brockwell: So before April 2021.

Jesse Norman MP: Yes. Of course, we do not require the Finance Act itself to make the regulation; we can do it through other means. But we will have it framed and in place in time for the new financial year.

Lord Butler of Brockwell: And then you will bring in a new statutory instrument.

Jesse Norman MP: We will do that as well.

Lord Butler of Brockwell: Why do you not withdraw the present statutory instrument and produce a completely correct new one in time for the implementation date of April?

Jesse Norman MP: I love the Committee very dearly, but we are asking the same question in two or three different ways. This is a very small part of a large statutory instrument of some 13 pages. It is already being very widely observed and adapted to by stakeholders, companies and the people they represent. It would be a grossly disproportionate response to withdraw the statutory instrument because it does not quite reflect our policy intent, and then re-lay it, given all the other problems I have described and the impression that would create.

Lord Butler of Brockwell: But it is incorrect.

Jesse Norman MP: It is not incorrect; it simply does not reflect the policy intent we wish it to have.

Q124 **Lord Forsyth of Drumlean:** Following your response to me, I am looking at the Written Ministerial Statement you made on 12 November, under the heading "Off-payroll working—technical change to ensure legislation operates as intended". You said: "A technical change to the off-payroll working rules will be made in the next Finance Bill. This will ensure the legislation operates as intended from 6 April 2021 for engagements where an intermediary is a company. The change will correct an unintended widening of the definition of an intermediary, which went beyond the intended scope of the policy". That was what you said.

Jesse Norman MP: Yes. What is the point you are making, my Lord?

Lord Forsyth of Drumlean: The point I am making is that these regulations extend the scope that was intended, but you do not know at this point how you will achieve the intention of your policy, do you?

Jesse Norman MP: I have said the exact opposite of that.

Lord Forsyth of Drumlean: I know you have.

Jesse Norman MP: On what basis, therefore, are you contradicting me?

Lord Forsyth of Drumlean: Because your officials tell us that you are still consulting people as to how you will change the policy to meet your intentions.

Jesse Norman MP: That was exactly what I said a few moments ago. We are consulting stakeholders. We have lead candidates. We understand the policy design. Officials are well advanced in considering it. It involves a test of a particular status in the tax system², and we expect that to be in place, as do stakeholders I might add, in good time for them to be able to act on it at the beginning of the new financial year.

Lord Forsyth of Drumlean: What if you have not reached a solution that works?

Jesse Norman MP: As we say, we are extremely confident that we will be able to reach a solution, and stakeholders apparently share that confidence. Therefore, this technical issue should be put to rest in good time for the beginning of the new financial year.

Q125 **Baroness Bowles of Berkhamsted:** Can you clarify whom you mean by stakeholders? If the law is wrong, and if umbrella companies, in this case, are in a confused status, it could cause confusion about IR35. We have heard about victims of the loan charge because of confusion and so forth, and some of the organisations that have caused it are umbrella companies. In that instance, are you not putting some of the public or potential employees at risk? Are the right people being consulted as stakeholders? I suppose that is what I am getting at.

Jesse Norman MP: Clearly, HMRC and the Treasury have a very wide range of stakeholders, and they tend to cast the net quite widely in discussing issues of this magnitude. I do not know whether Cerys or Chris wants to come in to talk about the detailed discussions they are having. They have stayed plainly and closely in touch with the IR35 Forum throughout this process.

Chris Simons: We engaged with the IR35 Forum and other stakeholders initially when we identified the concern. In that process, we asked them about the best way to provide reassurance to the market that this was not the policy intent and it would be fixed. They advised us on the best way of handling that, which led to a note the Committee may have seen suggesting that we had heard that concern and were looking into it. It then led, fairly swiftly after that, to the Written Ministerial Statement by the Financial Secretary confirming that we would fix it, and to very broad

² HMRC has since clarified that 'this would be refining the test for when a company needs to consider and apply the legislation, rather than making a change to the employment status rules'.

engagement, not just with the IR35 Forum but reaching out to other stakeholders, about the different solutions we could have to the problem to make sure that the legislation operates to the policy intent.

- Q126 **Lord Monks:** Financial Secretary, you mentioned that one of the reasons for not withdrawing the statutory instrument is that various stakeholders have been preparing extensively on the grounds of the changes you are making, but surely they are also preparing on the bit that is wrong. I am sure that there is an inside group of stakeholders who know it is a mistake and they do not have to bother, but surely a lot of people out there will have studied the tax changes and will have made some preparations on the basis of an error. Is that a correct interpretation?

Jesse Norman MP: I do not think it necessarily is. The error was picked up and communicated and discussed with the stakeholder group relatively quickly thereafter. We have put a Written Ministerial Statement into the public domain. I think there is very widespread understanding among the different groups that comprise different segments of the wider community that this is the case.

So I do not think there is a great deal of likelihood that people will have been configuring themselves to the previous arrangement, which was itself very much unexpected. I think people understood the policy intent. Then, when this technical loophole came through, it raised a question that was somewhat counterintuitive, so I do not think you will see a great deal of preparation the other way, as it were.

- Q127 **Lord Butler of Brockwell:** Financial Secretary, I want to get this right. I think you told us that the present law does not do what you intend, but you will take legislation, having consulted, to put it right in the Finance Bill and, following that legislation, get in force a new statutory instrument in time for the implementation date of April. Have I correctly represented you?

Jesse Norman MP: Yes.

Lord Butler of Brockwell: In that case, what is your objection to annulling the present statutory instrument, telling taxpayers that a revised one will be coming that will be different only in respect of that paragraph, and, if I may say so, treating Parliament properly?

Jesse Norman MP: I am very surprised that you say we are not treating Parliament properly, my Lord. We discovered a technical issue. We reflected on it as rapidly as officials and experts were able to do that. We discussed it with stakeholders informally to understand its potential impact. We alerted Parliament to the problem at a very early opportunity, and we are proposing a thoroughly sensible, proportionate and limited approach that will fix the problem without unsettling the wider reform, around which a large number of people have organised themselves and on which much else depends. I think that is thoroughly responsible.

If we pulled every piece of legislation in which we could find technical defects after the event, we would be at some risk. It is in the nature of the

tax code that as people's situations and ways of working evolve, and as taxation complexities unfold themselves—it is more complex than anyone would like; I am sure we all agree on that—there will be a fairly regular need for technical correction. That is what we have here.

Lord Butler of Brockwell: What is your objection to the alternative orderly procedure I suggested to you?

Jesse Norman MP: I have already scouted three or four serious objections to it, but let me go through them again. The first is that it would entirely disrupt the process of change that is already in place, whatever eirenic statements might be put out alongside it. The second is that it would require a considerable amount of further parliamentary time to make and lay the legislation all over again. The third is that it would be extremely disruptive more widely to other aspects of our legislative programme that may require parliamentary time.

If you do not share that view, I would be very happy for Chris or Cerys to come in and describe specifically what the stakeholder reaction would be if we attempted to adopt that very drastic approach to what is, after all, as I have emphasised, a limited and narrow problem or issue.

Lord Butler of Brockwell: If I may correct you on one point, removing the statutory instrument and making another statutory instrument subject to negative resolution would take no parliamentary time at all.

Jesse Norman MP: The statutory instrument would be only part of it, because primary legislation, as you and I have already agreed, would be required to put it into place. We are not proposing to create that extra disruption.

Lord Butler of Brockwell: But you need that anyway. You say you are going to take the legislation in the Finance Bill 2021.

Jesse Norman MP: But we are not going to lay an entirely new instrument; we will fix a very narrow problem, which, I repeat, is one paragraph in a 13-page statutory instrument.

Q128 **Viscount Chandos:** I would like to introduce the B-word, which is backstop. You have talked about a lead candidate solution and several options, but that implies some level of risk that there is no acceptable resolution. What level of risk do you think that represents, and what will you do if it proves that there is no solution? What is the backstop?

Jesse Norman MP: We have discussed this. I do not think that to say you have a lead candidate implies anything about risk. What it means is that you have more than one way to address a problem. As officials can confirm, there are discussions under way as to the respective merits of that approach, versus other approaches, with tax experts and experts among stakeholders. That seems to me perfectly reasonable. We do not expect to have any need for a backstop, and, if we do not use the lead candidate that is currently under consideration, there are alternatives.

The Chair: Can you give us a guarantee that there will be a fix ready to be implemented by April?

Jesse Norman MP: What we have done is put a Written Ministerial Statement before Parliament. That is as strong a guarantee as I can give. I do not think it would be appropriate or, indeed, correct to suggest that any stronger guarantee could be given to the Committee than the guarantee supplied by that WMS.

Chris Simons: It might help if I add to the Financial Secretary's point about how we might amend the measure. As he says, we have a number of options for the way we might fix it. We are currently exploring with stakeholders which of those is the most effective, and ensuring that none of them has unintended consequences.

I highlight that the change that brought about the concern and the issue was made on the back of feedback from stakeholders about an avoidance concern. The option remains open to us at all times to reverse the change made between the draft legislation and the Finance Act 2020, and instead to capture that avoidance arrangement via some sort of targeted anti-avoidance rule, which is a fairly common arrangement. If we are talking about potential backstops, the most basic of those would be to reverse the change that led to the issue and capture the avoidance arrangement in a different way, but the options we are exploring are better, clearer and less complicated for stakeholders and those implementing the reform.

Viscount Chandos: I understand that consultation takes time, but the length of time it is taking is what makes me and colleagues uneasy about whether there will ultimately be a solution that means that the legislation reflects the Government's policy and intentions.

Jesse Norman MP: I do not think that concern is warranted, given the feedback we have had from people directly concerned. The point I would make again is that we wish to reduce uncertainty. The option that the Committee seems to be advancing collectively is one that would greatly increase it. If it wishes to reduce uncertainty, the most uncertainty-reducing strategy it can adopt is the one we are following, which is to try to address the very specific issue, as we are doing.

Q129 **Lord Forsyth of Drumlean:** Financial Secretary, you have sort of implied that you discovered the technical difficulty after you laid the SI, but the consultation with stakeholders and HMRC took place in October, and the SI was laid on 5 November. I do not really understand. If you thought there was a problem, and you were talking to stakeholders about that problem in October, and if there are three options and they are so easy to implement, why did you not wait before laying the SI so that Parliament had an SI that put the law in a position that reflected your policy?

Jesse Norman MP: I do not think anyone doubted that the SI was a significant piece of legislation in its own right, which was important to advance the overall aims of the policy, and that is what we are trying to do. It was also clear that there was scope to revise and review any aspect

that we might need to, and that is the approach we have adopted and discussed with you.

Lord Forsyth of Drumlean: I am sorry. That does not actually answer my question. When you laid the SI, because it is negative procedure it immediately has the force of law, does it not?

Jesse Norman MP: Yes, it does, but it is not in force.

Lord Forsyth of Drumlean: Indeed. It is not in force until April 20, so I do not understand why, on discovering in October that there was a problem, you would not have waited to resolve that problem and then laid the SI.

Jesse Norman MP: Because to do that would have delayed the other 12 and three-quarter pages of the SI, and that legislation was important for stakeholders, as we have described, to be able to adapt themselves to the changes in the law that were coming in April. That seems a sensible, balanced and indeed Burkean way of addressing the problem of the lack of congruence with the legislative intent of one very small part, for which we had time to make the relevant fix, while respecting and supporting the overall thrust of the legislation, which after all is the implementation of something that Parliament voted for.

The Chair: I am sorry, but why could you not have published it in draft when you knew that there was a problem, and just said: "This is the intent that we are going to follow, and we will bring in a full SI when we know it all works"?

Jesse Norman MP: Because the legislation follows a standard pattern and process, and stakeholders were very strongly pressing us for legislation on which they could rely, so it was important for us to be able to make clear to them which part of the legislation was one where we thought there was not a fit with our policy intent, while allowing them, for the remaining 12 and three-quarter pages of legislation, to have some black-letter law on which they could act.

Q130 **Baroness Kramer:** Minister, I am a company caught by this inadvertent paragraph. I have to make changes if I am to meet the requirements set out in that paragraph. I take legal advice. Does the lawyer say to me, "There is a statutory instrument, which is in effect secondary legislation. There is primary legislation that sits behind it, but don't worry: there is something superior to both of those—departmental guidance and a parliamentary statement. That means that you can ignore the primary legislation and not prepare for it. You can ignore the statutory instrument and not prepare for it"? Is that the position you are presenting to Parliament?

Jesse Norman MP: I think the lawyer you describe could say, "We've been scratching our heads as to whether or not there may be potential scope in this particular area of the legislation, where the law may not quite achieve what the Government evidently intended. I note there has been a Written Ministerial Statement suggesting that the Government do not intend to

allow this to proceed but will address it in time—before it comes into force. Therefore, my suggestion to you would be to follow the 12 and three-quarter pages on which you can act and which are not being affected by this, and await developments from Parliament along the lines that have been described”. That is what I think they will do.

Baroness Kramer: I am just trying to get to grips with it. You would essentially expect legal counsel to say: “Take a risk. You have something you can utterly rely on, which is a ministerial Statement. You can rely on that, rather than relying on a statutory instrument or primary legislation”. I am trying to understand the way in which HMRC is now beginning to treat legislation, guidance and ministerial Statements. I am somewhat troubled by the hierarchy you are proposing.

Jesse Norman MP: I am not proposing a hierarchy, Baroness Kramer; you are the one who suggested it. All I am doing is describing the very common-sense approach we have taken, and that is to flag an area of concern that happens to fall before the legislation comes into force and which we are fixing on that basis. It might have fallen significantly earlier, and we would have fixed it earlier; it might have followed after the legislation came into force and we would have needed to fix it retrospectively.

Baroness Kramer: Minister, I notice that you have resisted saying that you will make a statement that there is absolutely no risk to any company in ignoring this particular part of the statutory instrument. You guarantee no risk, and are trying to explain to us how that now fits into the processes and procedures of legislation, secondary legislation, guidance and ministerial Statements.

Jesse Norman MP: I am not going to be drawn on your original question as to what a lawyer might advise beyond a purely hypothetical consideration of the kind I have given. I am not accepting your description of the hierarchy as between those three. I am describing what the situation is. I have also given a fairly precise description, tested by officials, of how we propose to fix the problem. These are working issues of legislation, and we are working our way through them.

Lord Butler of Brockwell: What I think the Financial Secretary cannot deny is the point Lord Forsyth made that you have passed a piece of legislation by making this statutory instrument, although you knew at the time that it contained a defect.

Jesse Norman MP: We thought there was a concern about that aspect of it, and we were discussing that concern with stakeholders. That concern has proved well grounded. We have, therefore, acted to bring that to Parliament’s attention as early as we sensibly could.

Q131 **Baroness Bowles of Berkhamsted:** Why did you not just do a statutory instrument of the 12 and three-quarter pages and leave out the bit that you knew was wrong, and then come along with it when you had got it right?

Jesse Norman MP: That is a very good question and I will bring in Cerys and Chris to discuss it from a technical standpoint. Obviously, there is a trajectory in the way legislation is laid. We were not certain about the status of that particular aspect. It needed consideration and discussion. Therefore, it seemed wisest to proceed on the basis that people were broadly expecting, while making it clear that we were proposing to fix the relevant section.

Chris Simons: The secondary legislation, as the Financial Secretary mentioned, needs to follow the primary legislation, which includes the particular clause we are talking about. The process we worked through when the concern was raised had three stages. First, does the interpretation being proposed have any merit? Secondly, if it has merit, how broadly does it impact and, therefore, how important is it that we make a subsequent amendment? That formed part of the advice to Ministers. Thirdly, as you suggest, what are the options for how we can do that?

Indeed, we explored as one of those options whether it would be sensible or appropriate to lay a narrower statutory instrument without that provision in place, as you suggest, Baroness. However, overall, looking at it in the round—how to give people certainty, and to give consistency with the primary legislation—the best approach felt like continuing with the SI as a whole.

Q132 **Lord Rowe-Beddoe:** Financial Secretary, as I have listened to this—I am sure you have more than listened to it—is there anything we can learn in future? If we make mistakes, why do we not rectify them sooner rather than later? It is not a question of hiding it, but why do we not come right out with it? You talk about the experts that your officials talk to and so on and so forth. Did nobody raise the sort of questions that are being asked today? If they did—[*Inaudible.*] For the future, can we learn from how this has been handled?

Jesse Norman MP: Thank you for that very helpful and interesting question. The truth of the matter is that we do not have in general a better approach than one of high levels of publicity and engagement with a very wide range of expert advice and opinion. That is not just inside Parliament, to the extent that it has those things; it lies in the stakeholder groups, independent experts and ancillary parts of government, such as the Office of Tax Simplification and the like.

As you will be aware, changes have been made to improve the tax process over the last 10 years. Although they have not been perfectly followed in every case, they have greatly improved the transparency and visibility of what is proposed. Government has been criticised on occasions in the past when it has failed to observe that. I do not think there is much alternative to that.

Personally, I would be very sad indeed if any Government retreated to a much narrower basis. I think that would be contrary to the way in which law-making ought to proceed and expert opinion ought to be used. We are

operating in an evolving and complex environment, and although I think you and I would agree that the tax system is too complex and we would all greatly prefer simplicity, we have to deal with what we have at the moment, and that is what we are trying to do.

It is sometimes the case—this has been a very rare example—that unexpected change becomes apparent only relatively late in the process. We have not hidden in the face of that; we acted quickly and expeditiously, as has been described by my officials, to try to assess and evaluate the problem and examine how it might be solved, proceed on that basis and alert Parliament that there was an issue so that people could have a high level of transparency and visibility as to what it was early, without—this is a crucial caveat—disrupting the overall pattern of the legislative change for which primary legislation had been passed, and without creating more uncertainty in the marketplace.

Those are the principles on which we operated. I do not think there are many better ways. There are obviously small improvements we could make, and possibly different sources of advice and information on which we could draw, but I do not think that that overall approach is one that we could readily better.

Q133 Lord Butler of Brockwell: I cannot remember any case where any Government introduced and made legislation, which is what this statutory instrument is, which they knew at the time was likely to be defective. Financial Secretary, can you or your officials give me any precedent for that?

Jesse Norman MP: I asked that very question. As I say, we differ over the use of “defect”, but I am certainly not aware of any situation in which a concern about legislation has come to light during the process of the passage of legislation. Often it comes to light much earlier, and sometimes it comes to light much later and has to be cured subsequently. This is the only occasion I am aware of, certainly in recent memory, when it happened during the process, so to some extent we are breaking new ground, but we are doing so in what I think is a sensible, proportionate and transparent way, as I have already described to Lord Rowe-Beedoe.

The Chair: Financial Secretary, breaking new ground makes it sound as though this is going to establish a precedent, and that is something I would be extremely concerned about. I am sure that is not your intent, so maybe you would like to think about your choice of words.

Jesse Norman MP: I think that is a debating point, if I may say so.

The Chair: No, I am sorry. This is fundamental to why we are all gathered here today. We are very concerned that this is starting to set a dangerous precedent. Saying that it is breaking new ground confirms to me, and raises an enormous red flag in my mind, that in some way this is an acceptable way to proceed. It is totally unacceptable in my mind and that, I think, of members of our Committee. That is what we are trying to get from you. The level at which the Government as a whole and HMRC are

operating is unacceptable. This incident to me is unacceptable. Do you agree that you absolutely did not desire to see this situation?

Jesse Norman MP: If I may say so, that is a complete overreaction. There is no suggestion that we are setting any precedent here; there is no policy aspect in respect of which any official or Minister would wish us to be in the position we are in at the moment. I profoundly hope that neither we nor any future Government are in this position, but the fact of the matter is that misalignments of legislative intent occasionally arise. One discovers them after the event sometimes, as I said to Lord Butler, or sometimes before.

There is no suggestion here that any policy precedent is being set. No one has any appetite for that or interest in doing it, and we should be perfectly clear about that issue. If the Committee is determined to make something of it, I think it would be mistaken, because there is no intent or desire on the Government's side for that to be the case at all.

The Chair: Very good. Thank you for that answer. I call on Baroness Bowles and then Lord Monks. Can we keep the questions short because the Financial Secretary has given us a lot of his time?

Q134 **Baroness Bowles of Berkhamsted:** Financial Secretary, I want to follow up the point Lord Bridges has taken up. What you are saying is that, although you know there is a defect, a mismatch of policy or whatever you want to call it, you still think it is a fit and proper thing to proceed to put it into legislation. You knew that it was there before you laid it. You are saying that is a fit and proper thing to do, but, at the same time, you are saying that it by no means establishes a precedent as to what is fit and proper.

Jesse Norman MP: If I may say so, I do not think you have drawn the right conclusion from what I said. We have not laid legislation in the knowledge that it was defective. There had been concern that an aspect of it was not doing what we wanted it to do, and that concern has taken a period to validate and understand.

No one has any appetite for this episode to be repeated. One wishes it were the case that the tax system was so beautifully clear and simple in its overall operation that it never could recur, but we have a series of importantly different concerns and wish to give effect to legislation that Parliament has passed. We wish to do so on a timetable that does not create uncertainty in the marketplace. We have a large amount of legislation in the same statutory instrument that is not in any sense the subject of debate or concern from a legal perspective, and stakeholders and the wider public very much wish to see that legislation. That is the context in which we laid the statutory instrument.

We were completely transparent, as that concern emerged, about how we were planning to address it. I think the Committee should take a degree of comfort from that. The alternative—certainly, the alternative that it is promoting, which is that we should remove the statutory instrument

altogether—would create a great deal of completely unnecessary uncertainty and unfortunate confusion in the marketplace.

The Chair: I gather that the director of policy of the Association of Independent Professionals and the Self-Employed—IPSE—has just tweeted that it would welcome it being pulled. We can debate stakeholders versus stakeholders. Let us not get into that.

Q135 **Baroness Kramer:** Financial Secretary, I want to check this: you feel that it is fit and proper for a company to ignore a piece of legislation based on advice contained in a ministerial Statement and that that presents no material risk to that company.

Jesse Norman MP: Baroness Kramer, I have not said that at all. Those are entirely your words. I have been completely clear about what the Government is doing. Companies can choose to take whatever advice they may seek as to how to proceed on that basis. I am not erecting a hierarchy. That is entirely language that you have adopted. I have not discussed what a fit and proper person might conclude. That is entirely language you have brought to the table.

Baroness Kramer: Then what was the point of the ministerial Statement?

Jesse Norman MP: The point of the ministerial Statement was to flag a concern we had about the fact that the SI as laid did not represent ministerial intent—a concern that was widely shared. I have not been following Twitter as you have, Lord Bridges, but it is true that there will be people out there who do not like the IR35 legislation, as the Committee does not, and do not wish it to be brought into effect. Those people would like to see the statutory instrument pulled. That is not really the point at issue, if I may say so.

The Chair: Thank you for your time. Lord Monks and Lord Forsyth both have very short questions.

Q136 **Lord Monks:** I have the picture from you, Minister, that basically there is a group of stakeholders who know exactly what is going on. They know that this is a mistake and they do not have to do anything, because it will have no effect anyway until April, and they can relax. What about various umbrella companies in Bacup, Braemar or somewhere, that look at this legislation, think they will be affected, do not follow ministerial Statements and are not in the in-crowd of stakeholders of HMRC? Can you give an assurance that there are not lots of people preparing for next April on the basis of the error?

Jesse Norman MP: I am not in a position to give you any assurance about these things. What I can say, and my officials have advised, is that it is quite unlikely that there are a large number of people in this area. There are people whose job it is to keep those groups informed. They are often extremely well organised and adept at understanding the implications of change, and they have been following the IR35 legislation with considerable interest and attention. All those factors would point in the opposite direction.

Q137 **Lord Forsyth of Drumlean:** Very briefly, Financial Secretary, I do not know whether you have read the 35th report of the Secondary Legislation Scrutiny Committee of 26 November.

Jesse Norman MP: I have.

Lord Forsyth of Drumlean: You will see that the report concluded that there was a need for a more holistic approach that not only deals with tax and employment but considers people's rights across different forms of employment. In our own report, in April 2020, we recommended that you completely rethink this legislation, and we called on the Government to keep their promise to implement the recommendations of the Taylor review.

With hindsight, would it not have been better to follow the advice of both Committees? Are you comfortable to find yourself in a position where the two Committees are giving advice that you have clearly ignored, which has created some of the uncertainty and confusion you say you wish to avoid?

Jesse Norman MP: I congratulate the Committee on the Lords definition of a short question. Thank you. The answer is no. I think the policy is a good one. I think it was right to delay it to reflect the concerns about Covid. We have a disagreement about the policy. I am sad that is the case, because I greatly respect the opinion of the Committee and respect its reports, which I read with care and interest, but we do not agree on this.

I read with great interest what the Delegated Legislation Committee said. I wonder whether it was basing its judgment on the Economic Affairs Committee's conclusions, since the substantive point of the policy goes so far beyond the statutory instrument's technical strength or weakness, but that is a matter for members of the Committee. I can take it up with them, or they can take it up with me in due course, as they see fit.

The Chair: Thank you very much indeed, Financial Secretary and colleagues, for your time. We have eaten up more of it than we originally intended, but we are very grateful for your attendance, not least at such short notice. Thank you for all your answers. No doubt we will see you in the not too distant future.

Jesse Norman MP: We cannot go on meeting like this, my Lord, but I shall look forward to that very much.

The Chair: Thank you very much for joining us.