

**Department for Work and Pension (DWP) and Department of Health
Work, health and disability green paper: improving lives
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1. We welcome the opportunity to respond to this green paper on halving the disability employment gap.
- 1.2. The LITRG is not a disability organisation. Our brief is to focus on tax and related benefit matters as they affect the unrepresented, including disabled people on low incomes.
- 1.3. There are many organisations in a better position than us to provide detailed comments on the proposals in the consultation. However we think the tax and related benefits system is capable of influencing behaviour in this area – something which is not addressed in the green paper and something we are well placed to comment on.
- 1.4. The purpose of our response is to highlight what we see as some current barriers to work across a segment of the system with which we are familiar, including Value Added Tax (VAT), National Insurance contributions (NIC) and tax credits. We make practical recommendations on where we think rules and practice could be changed to improve incentives, reduce burdens and thus contribute to the Government’s overall objective.
- 1.5. For example, as a rule, disabled people need to spend more money than their non-disabled counterparts in performing the same tasks, including those related to work. Where you have a sympathetic employer, certain costs that are met for you to assist you in work will not be classed as a taxable benefit and are therefore tax-free. However you cannot claim relief if you meet such costs personally.

- 1.6. This is unduly restrictive where the sole reason for the outlay in the first place is to reduce or remove the barrier of the disability itself (and seems particularly so in the era of cuts to Access to Work funding). We recommend that a more neutral approach be adopted which better recognises the extra costs incurred by disabled people in working.
- 1.7. Other recommendations include:
- We think it would aid clarity and simplify matters if ‘disability’ per certain ITEPA provisions was interpreted to fully reflect the definition used in the Equality Act.
 - There should be VAT relief for modifications in the workplace.
 - From April 2018, that the system of NIC credits be extended to disabled people whose profits from self-employment do not exceed the small profits threshold.
 - Ensuring that HM Revenue & Customs (HMRC) treat any ‘strengthened self-employment’ test tax credit cases involving disabled people sympathetically, taking account of the fact there may be particular circumstances to consider.
- 1.8. We also look at the delivery of HMRC services for disabled people in our submission. Our recommendations in this area include that HMRC should do more to promote the availability of concessions or alternative ‘routes in’ for vulnerable people. Considering a recent query to our website, we also urge better staff training and closer co-operation between DWP and HMRC around Access to Work and the tax issues that arise when a grant is used to fund a support worker.
- 1.9. Finally, we take the opportunity to raise some concerns about how HMRC assess and monitor their compliance with equality law. We do this against the backdrop of a recent surprising decision regarding the Making Tax Digital (MTD) programme – i.e. that it will not ‘have a significant or disproportionate impact on groups with legally protected characteristics, as recognised in the Equality Act 2010’.
- 1.10. In our view, improvements in these two areas will help foster a sense of trust between HMRC and their disabled customers and thus, make it more likely that they will ask for the help they need to manage their tax and tax credit affairs.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

- 3.1 We welcome the high aspirations the Government has with regard to transforming policy, practice and public attitudes in this area.
- 3.2. We would also like to commend the Government on producing an easy-to-read version of the (very long) main consultation document. We hope that this has encouraged more meaningful comment from stakeholders.
- 3.3. We are not a disability charity per se. Others are in a better position than us to provide detailed comments on the proposals. However we have interest and expertise in tax and related benefit matters as they affect the unrepresented, including disabled people on low incomes and in our view, if Government policy is to halve the disability employment gap, then certain tax rules should not work against this objective, as they currently do.
- 3.4. We feel we can make the best contribution to this consultation by highlighting some particular difficulties faced by disabled people (and employers) in the tax and related benefits system and making recommendations as to how to remove those barriers.

4 Employees

4.1 *General comments*

- 4.1.1 Before looking at some of the tax barriers that exist for employees (and their employers) we think it is worth considering for a moment the extent to which the state of the labour market itself may be affecting the ability of disabled people to work.
- 4.1.2. LITRG has been concerned about the impact that growing 'flexible working' practices such as zero hours contracts have on the low-paid for some time. It seems to us that arranging modified hours or days or reduced working hours (two commonly stated enablers of

employment amongst adults with disabilities)¹ may be more difficult (or even impossible) to manage in such ‘insecure’ work.

- 4.1.3. Indeed, some new research by Rupert Harwood from the University of Greenwich’s Department of Human Resources and Organisational Behaviour suggests² that extra demands on workers in general – even those not on zero hours contracts – make it more likely that disabled workers will be denied requests for reasonable adjustments. We hope that this research will open up an important debate in this complex area.
- 4.1.4. In addition, unpredictable work and variable hours can also cause problems with another commonly stated enabler of employment³ – tax credits.
- 4.1.5. The disability element in tax credits can be a significant source of support for employees. To get the disability element, you must meet ALL 3 CONDITIONS below for each day of your claim:
- CONDITION 1:** You must work at least 16 hours a week⁴
- CONDITION 2:** Your disability must place you at a disadvantage in getting a job⁵
- CONDITION 3:** You must receive or have previously received a qualifying benefit⁶
- 4.1.6. Notwithstanding that the qualifying benefits test can be very confusing for claimants who incur the risk of overpayments if they make a mistake, the rule which requires a person to engage in ‘remunerative work’ for at least 16 hours a week in order to qualify for working tax credit can see people who only work 15 hours a week, for example, automatically

¹ Per these facts and figures from the Papworth Trust – particularly the ‘Employment’ section:

<http://www.papworthtrust.org.uk/sites/default/files/UK%20Disability%20facts%20and%20figures%20report%202014.pdf>

² The paper ‘*What Has Limited The Impact Of UK Disability Equality Law On Social Justice?*’ can be found here:

<http://www.mdpi.com/2075-471X/5/4/42>

³ Again, see the ‘Employment’ facts and figures from the Papworth Trust:

<http://www.papworthtrust.org.uk/sites/default/files/UK%20Disability%20facts%20and%20figures%20report%202014.pdf>

⁴ If you qualify for the disability element and do not have children, you can get working tax credits (WTC) by working at least 16 hours per week (rather than 30). If you are part of a couple and have responsibility for a child or children, it means you can get WTC by working at least 16 hours rather than 24 hours as required for most couples with children from 6 April 2012.

⁵ The meaning of this expression, in tax credit terms, is that you have one of a number of disabilities which HMRC have set out in a list. You can find that list on [leaflet TC956](#) produced by HMRC.

⁶ A list of disability-related benefits is set out in the law, at least one of which you must be receiving now, or have received at some time in the recent past. You can find the benefits and rules for each are also set out on [leaflet TC956](#) produced by HMRC. You do not need to meet them all, as long as you meet at least one of them, you will satisfy condition 3.

excluded from the support to which they would have been entitled had they been able to manage just one hour more.¹

- 4.1.7. Under universal credit (UC), which is gradually replacing tax credits, a disabled person will not need to work a set number of hours but there may be a minimum amount that they are expected to earn. This will be agreed with UC decision makers as part of the 'Claimant Commitment'. However please see sections 10.6 to 10.8 where we question the understanding and expertise of UC decision makers to discharge such a task.

5 Support in the tax system

- 5.1 Disabled people experience additional costs in most areas of everyday life – including work. For example, in terms of getting to work they may be unable to use public transport and need to use a specialist taxi service instead.
- 5.2 Disappointingly there is no blanket exemption or relief for the extra costs which are incurred by a disabled employee in work, over and above those incurred by a non-disabled employee. Instead there are piecemeal reliefs, such as that contained in s246 Income Tax (Employment and Pensions) Act 2003 (ITEPA).²
- 5.3 Section 246 ITEPA 2003,³ gives an income tax exemption if transport is provided between home and work for a disabled employee, or if the employer pays for such transport or reimburses the expense incurred. On the basis that inaccessible transport is the second biggest barrier to employment for disabled people (after lack of job opportunities) this is a sensible relief.⁴
- 5.4 However, disabled employees cannot claim a tax deduction for costs which they bear themselves and are not reimbursed by the employer.
- 5.5 While we appreciate Access to Work plays an important part in helping to fund a disabled person's extra costs such as transport costs, we are in the era of cuts to grants,⁵ drops in

¹We recognise that such an individual may qualify for Employment Support Allowance under the 'permitted work' rules instead.

² Other examples can be found in our report:
http://www.litrg.org.uk/sites/default/files/1_72_Disability091203.pdf

³ <http://www.legislation.gov.uk/ukpga/2003/1/section/246>

⁴ Again, see the 'Employment' facts and figures from the Papworth Trust:
<http://www.papworthtrust.org.uk/sites/default/files/UK%20Disability%20facts%20and%20figures%20report%202014.pdf>

⁵ On 12 March 2015, the Minister for Disabled People announced that Access to Work grants will be limited to one and a half times average salary for each award. This is £41,400 at current rates: <https://www.gov.uk/access-to-work/what-youll-get>

applications, and problems with the Access to Work process,¹ so the funding will not offer complete coverage in every instance, potentially leaving the employee to make up the difference. We think the tax system should, as far as possible, recognise such expenditure.²

5.6 **Recommendation: A holistic approach to the work-related rules should be considered whereby all employed disabled people should be able to claim as an employment expense the costs of putting themselves, as far as possible, on a par with non-disabled people.**

5.7 Of course, with recent technological advances, it seems to us that homeworking could help disabled people avoid a commute altogether. But here too, the relief rules for things like the additional costs of heating and lighting are restrictive.³ Currently, the rules are skewed to favour situations where the employer pays for or reimburses expenses. Again, tax relief is restricted if the employee incurs the expenses themselves. As such, there is probably also a case for reviewing these rules with a view to incentivising homeworking.

6 Definition of disability

6.1 There is a shortsighted approach to defining disability for the s246 ITEPA 2003 relief too which is unhelpful.

6.2 The definition of disability for this purpose draws on the definition in Equality Act 2010 of 'a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities' – however according to HMRC, the Equality Act 2010 meaning is more wide reaching than the tax meaning.

6.3 Per HMRC guidance:⁴

'For the purpose of the exemption in Section 246, "disabled employee" means an employee who has a physical or mental impairment that has a substantial and long-term adverse effect on the employee's ability to carry out normal day to day activities (Section 246(4)).

This definition of "disabled employee" draws on the definition of disabled person" now given by the Equality Act 2010 (previously contained in the Disability Discrimination Act 1995). However, when considering whether the exemption applies

¹ As described here: <http://www.disabilitynewsservice.com/drop-in-access-to-work-numbers-shows-dwp-is-strangling-the-scheme/>

² We say as far as possible, because recent years' above-inflation increases in the personal allowance, mean that for the lowest paid disabled person, there may not be a tax liability in the first place.

³ For the rules, see GOV.UK here: <https://www.gov.uk/tax-relief-for-employees/working-at-home>

⁴ <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim10080>

you must focus on the section 246 definition rather than the more detailed Equality Act legislation which is concerned with the prevention of discrimination against somebody on account of their disability.

There are circumstances in which an employee will not qualify for tax exemption under section 246, although that employee may be within the meaning of “disabled person” for the purposes of the Equality Act, which may then apply to prevent discrimination against that person. Circumstances that do not qualify for tax exemption include, for example, where the employee:

- *has a potentially recurring disability that is currently in remission such that the impairment ceases to have a substantial adverse effect.*
- *previously had a disability as defined by the Equality Act but has since recovered*
- *has an impairment and may be receiving medical or other treatment which alleviates or removes the effects (though not the impairment).*

An employee who is able to carry out normal day-to-day activities at the time an employer is providing the employee with the means of travelling between home and work will not meet the terms of the section 246 definition.’

6.4 Restricting the scope of this useful relief seems counterproductive. We think that the first bullet point for example, is potentially harsh on someone with a fluctuating mental health condition.¹ Such a person may find that they can better manage daily tasks, such as going to work – and perhaps even prolong their period of steady state – if they can avoid the stress of travelling on the tube in the rush hour. The tax system should support them to do this as far as possible.

6.5 **Recommendation: We believe it would aid clarity and simplify matters if HMRC interpreted the ITEPA legislation to reflect the Equality Act.**

7 Modifications in the workplace

7.1 As income tax law creates barriers for employees, VAT law can make it more expensive for some employers to employ physically disabled employees.

7.2 Ten years ago, LITRG published a report entitled ‘VAT and disabled people – the case for removing the barriers’.² In it we looked at the fact that while VAT zero-rating is available for

¹ [Equality Act guidance](#) – page 29 fluctuating conditions, i.e. ones where the effects come and go over a period of time, can be treated as a disability under the Equality Act.

² <http://www.litrg.org.uk/sites/default/files/vat-and-disabled-people.pdf>

modifications to certain areas of the home for disabled people, no corresponding relief is available in the UK VAT law in respect of workplace modifications undertaken by an employer.

7.3 This can inflate the cost of workplace modifications by up to 20%.¹ Although this may not be an issue for employers who are able to recover input tax in full, real VAT costs would be incurred by those unable to, e.g. exempt or partly exempt employers (e.g. banks and other financial institutions, etc.).

7.4 **Recommendation: That this barrier be removed by introducing VAT relief for modifications in the workplace.**

8 Self-employed

8.1 *General comments*

8.1.1 Self-employment is considered important for disabled people because it may offer a more convenient and flexible method of working. Indeed, Employment and Support Allowance (ESA) allows disabled people to do some ('permitted') work, which includes self-employment.

8.1.2 As with employment income however, there is no blanket tax exemption or deduction for the extra costs incurred when putting themselves, as far as possible, on a par with non-disabled people. We would like to see this changed. In particular, we think there should be tax relief for costs incurred by a disabled self-employed person in getting from home to a permanent place of work. HMRC would probably currently regard these costs as non-allowable 'ordinary commuting'.

8.1.3 Some self-employed people also face barriers in terms of HMRC's application of the VAT zero rate rules to buying goods and services when for use in their business – similar to those faced by employers making workplace modifications.

8.1.4 Zero rate relief is available to individuals who buy certain goods or services. The legislation states that for relief to apply the supply is to be for the disabled person's 'domestic or personal use'. HMRC's guidance advises that this does not include use for business purposes. It is not clear to us how HMRC have arrived at the qualification of the term 'domestic or personal use'. Domestic use, we agree, might be interpreted to exclude use for business purposes but there is nothing that precludes something for personal use also being for business use. In the absence of definitive case law on the subject, we can see no justification for narrowing the definition of 'personal' in the ordinary sense of the word to one particular definition. We would like to see HMRC's guidance be reviewed and amended so that it does

¹ The VAT would be deductible in computing the employer's taxable trading profits which may partially restore their position.

not prevent claims to the relief from being made by business users who nonetheless buy something to help them overcome their disability for personal reasons.

- 8.1.5 There are other issues too, related to the fact that self-employment for disabled people can be on a very small scale and we describe some in detail in sections 9 and 10.

9 National Insurance

- 9.1 Under proposed changes to the self-employed National Insurance system, Class 2 National Insurance is to be abolished.
- 9.2 At present, self-employed earners whose profits exceed £5,965 a year (the small profits threshold) are required to pay Class 2 NIC at £2.80 a week, which count towards their state retirement pension and entitlement to certain other contributory benefits. If their profits fall below the small profits threshold, they are currently able to opt into paying Class 2.
- 9.3 From April 2018, when Class 2 is abolished, payment of Class 4 NIC will count towards state benefits. In order to protect some on low incomes, Class 4 contributions will not be payable until annual profits reach £8,060 but as long as profits exceed the small profits threshold, the self-employed will be given Class 4 credits – in other words they will be treated as making contributions even though none were actually paid. This places them in a similar position to employees on low incomes who receive National Insurance credits.
- 9.4 Class 4 NIC cannot be paid on a voluntary basis, though, meaning that the only way that self-employed people on profits below the Class 4 threshold will be able to build up a contribution record (if they did not obtain National Insurance credits through receipt of other benefits, for example tax credits, child benefit or UC) will be by paying Class 3 voluntary contributions at £14.10 a week.
- 9.5 This will result in the lowest earners among the self-employed potentially paying five times more than they do now to secure entitlement to a state retirement pension. Alternatively, there is a risk that they will decide not to make Class 3 NIC payments due to the increased cost and will therefore fail to build up enough provision for retirement and will rely more on the state for assistance.
- 9.6 **Recommendation: Extend the system of credits to disabled people whose profits from self-employment do not exceed the small profits threshold.**

10 Tax credits (and Universal Credit)

- 10.1 The disability element in tax credits can be a significant source of support for the self-employed. For claims prior to April 2015, there was no restriction on claiming Working Tax Credit (WTC) for people who were self-employed, providing the work was done for payment, or in expectation of payment, and they met the remunerative work conditions. For claims

from 6 April 2015 onwards,¹ all new claimants who are using self-employed work to meet the qualifying remunerative work test for WTC must show that they are trading on a commercial basis and their business is done with a view to achieving profits. The self-employment should also be structured, regular and ongoing.²

- 10.2 The way HMRC are applying the test is that for claims where the income from self-employment provides an hourly rate at least equivalent to the NMW for a given number of hours a week, they will consider the test passed and where the income is less than that, they are likely to ask for additional information to support the claim. The evidence asked for may include things such as business plans. Claimants may lose their WTC if they cannot provide the evidence.
- 10.3 While the rules for self-employed disabled people have been amended so that HMRC consider the test is met where earnings are at least the equivalent of the minimum number of hours required to qualify for WTC (i.e. 16) x National Minimum Wage (NMW) per week (unless the disabled person declares 30+ hours and receives the 30-hour premium – in which case their situation will be tested against 30 hours x NMW), the impact of this new test on disabled people is concerning to us – many may well fail the ‘minimum wage’ test.³ Others, perhaps those with fluctuating conditions, may have problems meeting the ‘regular’ part of the test. In addition, there has been a lack of publicity surrounding the change and many will just not have the necessary evidence, such as business plans, to prove to HMRC they are trading commercially.
- 10.4 **Recommendation: HMRC should treat any cases involving disabled people sympathetically, taking account of the fact there may be particular circumstances to consider.**
- 10.5 Tax credits are due to be phased out over the next few years and replaced by UC. Under UC the self-employed are treated less beneficially than the employed, however one of the most concerning aspects is that if you are gainfully self-employed then a minimum level of income from self-employment will be assumed (the ‘Minimum Income Floor’ (MIF)), even if your actual income is lower than this.⁴

¹ HMRC are also now gradually checking existing claims to see if those claimants also meet the new test.

² <https://www.gov.uk/government/publications/revenue-and-customs-brief-7-2015-new-rules-for-the-self-employed-claiming-working-tax-credit>

³ The NMW has increased significantly following the introduction from 1 April 2016 of the National Living Wage rate. This is the rate of the NMW paid to those aged 25 and over and currently is £7.20 and is expected to rise to £7.50 per hour from April 2017.

⁴ Self-employed claimants in the ‘all work requirements’ group of UC, who have been found to be ‘gainfully self-employed’, will be subject to the MIF for any month where their income from self-employment falls below the MIF threshold. The MIF threshold is equal to the NMW for the claimant’s age group multiplied by their expected number of hours each week. For most people, the expected number of hours will be 35 hours a week, although it may be less, for example, if the claimant has a physical or mental impairment.

- 10.6 This minimum level of income will not apply to anyone who is found to have a limited capability for work, following a work capability assessment. While this will put many disabled people outside of the scope of the MIF, much rests on the decision maker taking into account what they can manage and what is realistic and achievable for them.
- 10.7 The prospect of disabled people having to rely on the judgement of UC decision makers when having their ability to work assessed is worrying, as the decision makers may not have the expertise and understanding to discharge the task assigned to them.
- 10.8 **Recommendation: Ensure appropriate training and guidance, with input from specialist external organisations, such as disability charities, is given to staff who are going to be taking on the role of key decision makers.**

11 Customer Service issues

- 11.1 While all taxpayers potentially face problems when dealing with HMRC due to the complexity of the tax (and tax credit) system, these problems can be exacerbated for those with disabilities. In this section, we would like to raise some concerns regarding HMRC's customer service which we think can disadvantage some disabled people in work and therefore need to be addressed as part of the project to halve the disability employment gap.
- 11.2 Whether due to employment, self-employment or indeed another reason, disabled people need to come into contact with HMRC. However things like:
- HMRC's relentless drive to digital (resulting in decisions like leaving telephone numbers out of letters and discontinuing printable PDF formats of forms)
 - unclear communications
 - confusing processes around appointing an intermediary to deal with HMRC, for example a 'trusted helper' (as described on pages 45/46 of our latest report 'Digital services for taxpayers – effectiveness and engagement')¹
 - and a lack accessible technical information on GOV.UK

can make their lives extremely difficult.²

- 11.3 In addition, there is HMRC's voice recognition telephone software which is a real barrier to disabled people accessing HMRC. This is particularly concerning to us as the telephone is the

¹ <http://www.litrg.org.uk/latest-news/reports/161129-digital-services-taxpayers-%E2%80%93-effectiveness-and-engagement>

² For a wider discussion of customer service issues see our submission: <http://www.litrg.org.uk/latest-news/submissions/161025-all-party-parliamentary-group-inquiry-public-confidence-hmrc>

gateway to HMRC's 'Needs Enhanced Support' (NES) service for those struggling to deal with them for various reasons. Moreover, while HMRC do have an 'online' contact form through which a person can request a face-to-face meeting with the NES team¹ we understand that HMRC are loathe to promote it, due to the risk of it being oversubscribed.²

11.4 Recommendation: Disabled people might have more confidence in contacting HMRC if they are aware of this online facility – so HMRC should better promote it.

11.5 Indeed, in general, HMRC should do more to promote concessions or alternatives that may be available to vulnerable taxpayers. In this context, it is noting the comments of Judge Mosedale in the case of *LH Bishop Electric Company Ltd and others v HMRC [2013]* who was critical of a telephone-filing facility (for those mandated to file VAT returns electronically but who were struggling to do so because of age, physical disability or remoteness of location), because it was essentially hidden:

'... HMRC wanted to restrict the use of the concessions to those who had no other options.

504. As a matter of public law, this cannot be a satisfactory justification for failing to publish to all taxpayers the availability of a concession. If it is right to offer a concession, then it should be offered to all persons who would be entitled to benefit from it. It should not be limited to those who litigate or who ring the online helpdesk.'

11.6 We would also draw attention to the recent (July 2016) report produced by the independent Social Security Advisory Committee (SSAC) on problems with telephony in HMRC for those with disabilities and their recommendations, which we endorse.³

11.7 We think the following query that we have recently had into our website helps illustrate that disabled people in work are not getting the support they need from HMRC:

'Hi. Please could you let me know about this question. Thankyou. I have a £320 a month grant for a support worker from Access To work. I am self-employed and have a small business that I work for and run on my own. My wife is the support worker and helps me to do the things that I struggle with as I am partially sighted after having a stroke. Access to work pay my business and then the business pays my wife the £320 a month. Please can you tell me if that money is taxable on our income or is it just my wages that are taxable. I have read that it isn't taxable but want to make sure. Thankyou'

¹ We discuss this in our news piece here: <http://www.litrg.org.uk/latest-news/news/150511-hmrc-offer-line-contact-facility-more-taxpayers-who-need-extra-help>

³ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538834/telephony-in-dwp-and-hmrc-an-update-op17.pdf

- 11.8 We wrote back to this person and explained that there were potential considerations for his business in terms of accounting for the Access to Work grant, for him, in terms of being an employer and for his wife in terms of receiving such taxable income.
- 11.9 While we were happy to do so, it was with a sense of frustration. Access to Work funding can be invaluable in supporting a disabled person to create a successful business, however HMRC have little customer information on the tax considerations that arise when funding, given to a self-employed disabled person, is used to buy in the services of a support worker. (Admittedly, this may lay somewhat out of HMRC's hands seeing that much of HMRC's taxpayer information is now delivered – in greatly simplified format – by GOV.UK.) Further, DWP, which delivers the Access to Work programme remain largely ignorant of the regulatory burdens.
- 11.10 **Recommendation: We have repeatedly urged that Access to Work training and guidance for staff and customers be improved and have encouraged closer co-operation between DWP and HMRC, so it is disappointing that we are still receiving queries on the matter. Given our comments on GOV.UK, part of acting on this recommendation may involve the GDS/HMRC/GOV.UK relationship being reviewed, with a view to restoring control of its online content to HMRC.**
- 11.11 Put simply, HMRC must work harder to understand the barriers to engagement and ensure that disabled individuals' needs are catered for so nobody is left without support.
- 11.12 We think this is particularly important remembering that a number of working disabled people will be on ESA, undertaking 'permitted' work. Again, from queries into our website, we know that the fact that ESA is taxable but paid gross causes widespread misunderstanding. A problem in 'coding out' the ESA, left unattended, can very quickly spiral out of control, leaving the person facing stress, debt and maybe even HMRC compliance or enforcement action. Such a 'run in' with HMRC could leave a disabled person in work disenfranchised and even questioning whether they would be 'safer' and more secure on benefits (even if working meant that they were better off). This would be a burden for all concerned, the individual, HMRC and the Exchequer.

12 Equality considerations

- 12.1 Finally, we would like to take the opportunity to make some general comments about HMRC's approach to Equality Impact Assessments (EQIAs).
- 12.2 In any project involving change, it is vital that HMRC demonstrate that they have considered equality impacts carefully. Yet, too often in our work, we see HMRC carrying out inadequate or partial EQIAs.
- 12.3 As part of HMRC's MTD project for example, it was stated: 'HMRC doesn't have evidence to suggest this measure will have a significant or disproportionate impact on groups with

legally protected characteristics, as recognised in the Equality Act 2010'. But HMRC had not undertaken an EQIA, nor published it for consultation/comment.

- 12.4 MTD is certainly capable of delivering benefits over the years to come, but there is a risk that many disabled people will suffer a real burden when they find they are mandated not only to transact with HMRC digitally, but also to keep records in a prescribed digital format. While the plan is to offer an exemption from MTD to individuals for whom it is not reasonably practicable to interact with HMRC online for reasons which include disability, this is not a complete solution. For example, it does not cater for those whose disability does not prevent the use of computers and the internet but who are likely to incur additional costs of compliance not encountered by their non-disabled counterparts.
- 12.5 HMRC concluding that there are no equality impacts is therefore regrettable. HMRC should have formally recorded the data and detail they have about their customers with protected characteristics and the difficulties they may encounter with MTD in an EQIA – *as well as* the proposed mitigating measures. They should have then published the document for consultation/comment so that stakeholders could have pointed out any gaps. This would have aided transparency, given people reassurance that HMRC have genuinely considered and reviewed all equality issues and provided a benchmark against which the success of the exemption could be measured.
- 12.6 Such omissions risk damaging HMRC's reputation. In future, we would urge that HMRC aim for best practice when it comes to the completion of quality EQIAs (as well as fully documenting the decision making process around the need for EQIAs in the first place). Doing so would mean that HMRC would be able to readily show that they have met their public sector equality duty, and, most importantly, help foster a sense of trust with their disabled customers, meaning they are more likely to turn to HMRC for the help that they need to manage their tax and tax credit affairs successfully.
- 12.7 We are very happy to discuss any aspect of our comments and to take part in any further consultations on this area.

LITRG

17 February 2017