

**Explanatory Notes for Bills and Acts: Pilot Scheme
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 Every year sees at least one new Finance Act, containing multiple provisions as to taxes, rates, duties, exemptions and reliefs – some new, some which alter the existing tax law. These are supplemented by a vast array of secondary legislation, used to provide the detailed regulations. In a nutshell there is a lot of tax law coming out of Parliament every year and tax law affects everybody.
- 1.2 Our interest in this consultation is therefore from the point of view of the unrepresented taxpayer – unlikely to read the actual raw legislation itself but who may be seeking to understand how new laws or amendments to laws will affect their rights and duties or who, for personal reasons, are researching how the law that is in existence applies to their specific circumstances.
- 1.3 The level of confidence of the general public when dealing with legislation is very low, therefore we are not unsympathetic to the Good Law initiative and Government's wish to increase accessibility to law. Improving the format of explanatory notes is certainly one way of doing this. Indeed, it is worth saying that the excessive length and complexity of legislation means that even we, a group of qualified tax professionals, will often read the explanatory notes, rather than the legislative text in the first instance – we therefore approve of any efforts to make them more user-friendly and welcome the opportunity to

review the new version accompanying the Armed Forces (Service Complaints and Financial Assistance) Bill.¹

- 1.4 We particularly like the Policy Background included at the start of the notes: for the lay reader this should give them an understanding of what the Bill is about and put the content into context.
- 1.5 However, while we recognise that the explanatory notes may now be easier to **navigate**, we feel an opportunity has been missed to also put them into a language that most people will **understand**. In particular we are discouraged by the fact that the new format explanatory notes seem, in places, merely to restate the legislation in different words – a complaint often levied at the old style notes. On the basis that people will most often use explanatory notes when they are trying to understand a provision where the text of the legislation is not self-explanatory, this is unhelpful.
- 1.6 We would also like to ask if the new format explanatory notes have been tested by people with particular needs – e.g. are they compatible with screen readers? Are the font/colours easy on the eye? If not, then we recommend that they should be so tested.
- 1.7 In light of the move of HM Revenue & Customs' (HMRC) website content to GOV.UK – where, in the drive for simplicity, key messages are being lost – it is now more vital than ever that the general public have access to reliable, clear information about the tax law and how it applies to them. It seems to us then, that clearly drafted and informative explanatory notes could help fill this gap. However in order for this to come to fruition, people need to know that explanatory notes exist in the first place – and how to find them. At the moment there seems to be an information-access problem on legislation.gov.uk and we believe more could be done for the unrepresented taxpayer in this regard, by making it clearer whether legislation is final and signposting to other relevant sites, for example.

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 HM Revenue & Customs (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

¹ Found here: <https://www.gov.uk/government/consultations/explanatory-notes-for-bills-new-format>

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 As Benjamin Franklin said, 'In this world there is nothing that is certain except death and taxes' yet despite the raft of tax statutes and supplementary material in existence in the UK, many citizens are completely mystified by our tax code. This seems unfair – if an elected Parliament can levy taxes more or less as it sees fit, then it is only right that the citizens who elect them can access clear information on what those taxes are.

- 3.2 However, legislation itself is typically lengthy, detailed and intimidating – it is unsurprising that citizens feel unable to wade through it and may need help in understanding the purpose and effect of the raw material of the law in 'laypersons' terms'. Therefore we have explanatory notes, the purpose of which is to make the law accessible to readers who are not legally qualified and who have no specialised knowledge of the matters dealt with. They are intended to allow the reader to grasp what the Bill or Act sets out to achieve and place its effect in context.

4 Readability

- 4.1 It follows from this that we might expect to see Bills and Acts translated into plain and understandable English in explanatory notes – the original text of the legislation 'explained' rather than summarised. However, more often than not, explanatory notes just recite or closely follow the text from the legislation, so are not very helpful.
- 4.2 We note that this trend seems to continue in the new format explanatory notes, making the content difficult to understand and difficult to extract meaning from. We provide the following by way of specific example:

Actual legislation:

'340B Procedure for making a complaint and determining admissibility

(1)The Defence Council may make regulations (referred to in this Part as "service complaints regulations") about the procedure for making and dealing with a service complaint.

(2)Service complaints regulations must make provision—

- (a) for a service complaint to be made to an officer of a specified description;
- (b) about the way in which a service complaint is to be made (including about the information to be provided by the complainant);
- (c) that a service complaint may not be made, except in specified circumstances, after the end of the specified period.

“Specified” means specified in the regulations.

(3) The period referred to in subsection [\(2\)\(c\)](#) must be at least three months beginning with the day on which the matter complained of occurred.’

Explanatory note:

‘New section 340B Procedure for making a complaint and determining admissibility

This section provides in section 340B(1) for the Defence Council to make regulations - referred to in the Bill as "service complaints regulations" - about the procedure for making and dealing with a service complaint. It also states some key aspects of bringing a complaint that must be covered in Defence Council regulations. The complaint must go to an officer who will decide whether the complaint is admissible. The officer must tell the complainant of his decision. If the officer rejects the complaint, the complainant will be able to go to the Ombudsman for a final decision on admissibility. The regulations may specify a time limit for bringing a complaint, which must be at least three months after the thing complained about happened.’

4.3 We might suggest the following as an alternative Explanatory Note:

“New section 340B Procedure for making a complaint and determining admissibility

This section provides further detail about how to make a complaint.

The way that a complaint may be made will be included in further regulations (those further regulations are not included here, but a link to them will be provided once the regulations are finalised).

The regulations will have to include certain things:

- A description of the rank of officer that the complaint must be made to in the first instance;
- A statement of the information that needs to be included in the complaint;
- A time limit for making the complaint that would be at least three months after the incident that is the subject of the complaint took place; and
- Special provision for extending the time limit for making the complaint in certain circumstances.”

- 4.4 In addition, we would refer you to the section ‘Territorial application of the Bill in the UK’ on page 4, reproduced below.

‘The matters which the provision of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly; so no Legislative Consent Motions are required.’

- 4.5 The construction of this paragraph may be grammatically and factually correct, but equally will be incomprehensible to many citizens due to the clusters of nouns and the use of terms such as ‘legislative competence’ and ‘Legislative Consent Motions’. Indeed, a check on the ‘readability’ of this text¹ gives a score of 25.3, and it is helpful to compare this to the average scores for newspaper editorials:

- The Sun: under 14
- The Daily Express: under 16
- The Telegraph and The Guardian: over 17

- 4.6 One function of explanatory notes must be to ensure that the legalese and archaic language often used in Bills and Acts is translated into plain and understandable English. We therefore urge the Government to attempt to simplify both the technical content of the sentences and the actual words used. A prominent disclaimer is already made at the start of the Notes at the section “What these notes do” to the effect that the notes cannot be relied upon. Simplifying the language used in the notes might be achieved, therefore, without creating an expectation on the part of the reader that the notes reflect each nuance in the legislation. Nevertheless, we would not wish to see the notes simplified to the extent that they become almost meaningless.

- 4.7 To summarise, while we think that some of the changes to the explanatory notes are positive (including those that make the notes work better online, and those that enable users to get straight to the section of the notes that interests them via the Contents page, access other related documents and understand what has prompted the legislation), it appears that the aim has largely been to make life easier for parliamentarian and law professional users, rather than the lay people that the notes are intended to help.

- 4.8 It seems that an opportunity has been missed to do more to make the explanatory notes as clear, effective and readable as possible for members of the public and other non-professional users. Therefore, we would like to suggest the following further improvements:

- Clear language
- Explanation as to the effect of the clause, rather than a summary of the clause in a different form

¹ Using the National Institute of Adult Continuing Education’s tool found here: <http://www.niace.org.uk/current-work/readability>. “Readability is an attempt to match the reading level of written material to the ‘reading with understanding’ level of the reader.”

- Some discussion of how the law is intended to be applied in real life
- More worked details, including numerical examples where appropriate
- Clearer indication where there are provisions that need to be activated by regulation
- Where a provision amends another provision, it would be useful to see a before and after comparison of the legislation, with an example of how the change operates in practice
- Keep the unrepresented lay reader in mind as the audience.

5 Disability

- 5.1 Everyone has the right to information, whether they are disabled or not. Further to the section above, people with cognitive, neurological, and developmental disabilities will also benefit if language is kept simple in documents.
- 5.2 In addition, the design of the written material can be as important as the complexity of the text itself for people who are dyslexic, for example, or who have a visual impairment. In terms of the look and layout of the document, we are pleased to see some white space, good line spacing and font size, and use of headings and sub headings as they help organise the document and make it easy to read and understand.
- 5.3 However, with regards to the font itself, we understand that the main body of text is written in Palatino Linotype – which is a serif font. Serif fonts, with their "feet" at the end of most strokes can tend to obscure the shapes of letters and while they may look decorative, can cause reading problems for certain users. We believe that people with reading difficulties or a visual impairment, for example, tend to find sans serif fonts like Arial more legible and usable.
- 5.4 In addition, with regards to the use of tables and flowcharts, while we appreciate that they can be extraordinarily useful, clarifying and bringing the text to life, we also understand they can serve to confuse things for screen reading users. We assume that the necessary testing has been done? We also note that black text on a blue background is used in the flowchart at the end of the notes, yet we understand that this particular combination can cause difficulties to those with visual impairments as insufficient colour contrast between the front colour and the background can make the text harder to distinguish. We would therefore suggest that this is rethought.

6 GOV.UK

- 6.1 Given the length and complexity of the first hand law, the usefulness of HMRC and other Government departments setting out their understanding and interpretation of the legislation in plainly worded guidance should not be underestimated in terms of how it helps a lay reader understand what is expected of them and what the implication are of their actions or inactions.

- 6.2 However, as information has moved from HMRC’s website to the GOV.UK website (transition having been completed by 31 December 2014), we are concerned about the large degree to which much of it has been simplified and abridged – to the extent that some of it is incomplete or even misleading. Furthermore, even if the information can theoretically be found somewhere in its deep recesses, the search facility on GOV.UK often sees vast volumes of search results returned – cluttered with results of little relevance.
- 6.3 These two things taken together mean that increasing numbers of people, unable to find what they need on GOV.UK, will be looking to other sources for reliable, clear information on their rights and duties. Indeed, we can report that we have seen an exponential rise in visitors to our website which provides the latest information on the range of HMRC non-tax ‘products’ including tax credits, since the tax credits material was migrated to GOV.UK.¹
- 6.4 While voluntary bodies such as ourselves may continue to compensate for GOV.UK’s inadequacies with our own website material and other similar initiatives, it seems to us that clearly drafted and informative explanatory notes could provide the general public with a much-needed alternative way of understanding the impact of certain legislation.
- 6.5 However, more would need to be done to raise awareness of the existence and purpose of explanatory notes – and to help citizens find them when carrying out their own research. Currently, there are various hurdles in the way of this, given that legislation.gov.uk is primarily a site for publishing statutes. It is not really possible to search the legislation on the site by subject. Even if it were, the law on any given subject may be contained in many different statutes or statutory instruments and there may be other sources of relevant law, such as case law, that are not held on legislation.gov.uk, making for a confusing or incomplete set of search results.
- 6.6 While we appreciate that the statute book is an ever-changing tangle of complex information, it seems to us that it could be possible to map and organise the data, so that it is usefully searchable – considering the amount of information on the internet and how other major search engines are able to process and present it in an efficient and fast way. A search facility on legislation.gov.uk that provided up-to-date legal references, highly tailored to a specific problem, perhaps with links to further departmental information or guidance would no doubt be gratefully appreciated by those who are not familiar with the law on any given subject but want to be, or need to be.
- 6.7 Therefore, while we appreciate that explanatory notes could be a very valuable asset for those interested in understanding the objectives, purpose and main effects of legislation (particularly in light of the dwindling amounts of other guidance), ordinary citizens are not able to use the notes if they cannot find them. This is the sort of thing that needs to be looked at alongside the current Good Law initiatives, in order to ultimately succeed in making the law more accessible to users.

¹ www.revenuebenefits.org.uk

LITRG
30 January 2015