

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT EMPLOYMENT ALLOWANCE (EXCLUDED
COMPANIES) REGULATIONS 2016

EMPLOYMENT ALLOWANCE (INCREASE OF
MAXIMUM AMOUNT) REGULATIONS 2016

DRAFT SOCIAL SECURITY (CONTRIBUTIONS)
(LIMITS AND THRESHOLDS AMENDMENTS AND
NATIONAL INSURANCE FUNDS PAYMENTS)
REGULATIONS 2016

Monday 29 February 2016

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Friday 4 March 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
FACILITATE THE PROMPT PUBLICATION OF
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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: PHIL WILSON

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| † Bradshaw, Mr Ben (<i>Exeter</i>) (Lab) | † Reynolds, Emma (<i>Wolverhampton North East</i>) (Lab) |
| † Burns, Conor (<i>Bournemouth West</i>) (Con) | † Scully, Paul (<i>Sutton and Cheam</i>) (Con) |
| Cooper, Yvette (<i>Normanton, Pontefract and Castleford</i>) (Lab) | Shah, Naz (<i>Bradford West</i>) (Lab) |
| † Davies, Byron (<i>Gower</i>) (Con) | † Soames, Sir Nicholas (<i>Mid Sussex</i>) (Con) |
| † Gauke, Mr David (<i>Financial Secretary to the Treasury</i>) | † Stephens, Chris (<i>Glasgow South West</i>) (SNP) |
| † Glen, John (<i>Salisbury</i>) (Con) | † Stride, Mel (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † McGinn, Conor (<i>St Helens North</i>) (Lab) | † Tracey, Craig (<i>North Warwickshire</i>) (Con) |
| † Marris, Rob (<i>Wolverhampton South West</i>) (Lab) | † Williams, Craig (<i>Cardiff North</i>) (Con) |
| † Mullin, Roger (<i>Kirkcaldy and Cowdenbeath</i>) (SNP) | Fergus Reid, <i>Committee Clerk</i> |
| † Norman, Jesse (<i>Hereford and South Herefordshire</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Monday 29 February 2016

[PHIL WILSON *in the Chair*]

Draft Employment Allowance (Excluded Companies) Regulations 2016

4.30 pm

The Financial Secretary to the Treasury (Mr David Gauke): I beg to move,

That the Committee has considered the draft Employment Allowance (Excluded Companies) Regulations 2016.

The Chair: With this it will be convenient to consider the Employment Allowance (Increase of Maximum Amount) Regulations 2016 (S.I., 2016, No. 63) and the draft Social Security (Contributions) (Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2016.

Mr Gauke: It is a great pleasure to serve under your chairmanship for, I believe, the first time, Mr Wilson.

All three sets of regulations before the Committee deal with national insurance contributions and it seems sensible to debate them together, so I am grateful that the Committee has agreed to that. As a matter of course, I can confirm that all the regulations are compatible with the European convention on human rights.

The substance of the two employment allowance statutory instruments was announced in the Chancellor's summer Budget on 8 July last year, while the NICs rates and thresholds for the 2016-17 tax year were announced as part of the autumn statement on 25 November.

I will begin with the Employment Allowance (Increase of Maximum Amount) Regulations 2016. The Government are committed to supporting businesses that want to expand their workforce. To that end, the employment allowance was first announced in the Budget in 2013 as a reduction of up to £2,000 a year for eligible businesses and charities on their employer NICs bill. In the year 2015-16 the allowance has benefited almost 1.2 million employers, helping to cut the cost of employment in the United Kingdom.

The regulations increase the employment allowance to £3,000 from 6 April 2016, further supporting businesses and charities to enable them to grow. As a result, 90,000 more employers will be taken out of employer national insurance contributions altogether. Also, firms will be able to employ four workers full-time on the new national living wage next year without paying any employer national insurance contributions.

The draft Employment Allowance (Excluded Companies) Regulations 2016 focus the employment allowance on companies that support employment. Under these regulations, as was announced in the summer 2015 Budget, from April 2016 limited companies where the director is the sole paid employee will no longer be able to claim the allowance. That ensures that the allowance

is focused where it should be, on its original objective of helping businesses with the costs of employment. The draft regulations have been subject to public consultation with interested parties, and that finished in January. Her Majesty's Revenue and Customs anticipates, taking this measure into account, that about 1 million employers will benefit from the employment allowance in the next tax year.

Finally, as hon. Members may be aware, the draft Social Security (Contributions) (Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2016 contain some technical detail, so I hope that they will bear with me while I explain. The consumer price index rate of inflation is the basis of indexation for most of the national insurance contribution limits and thresholds. The CPI rate of inflation was minus 0.1% in the year to September 2015. As a result, not all the national insurance contribution limits and thresholds will need to be changed in the 2016-17 tax year. The exceptions to this are the upper earnings limit, the upper secondary threshold, the upper profits limit and the new apprentice upper secondary threshold.

The upper earnings limit is the level of earnings at which employees begin to pay class 1 national insurance contributions at the additional percentage rate. It is aligned with the point at which higher rate tax is paid. The upper earnings limit will be increased from £815 to £827 per week from 6 April 2016 to maintain this alignment. The upper secondary threshold is the level below which employers are entitled to a 0% rate of national insurance contributions on the earnings of employees under the age of 21. Since its introduction in April 2015, the zero-rate earnings band for employees under the age of 21 has supported the jobs of more than 1.5 million young people. The UST will continue to be aligned with the upper earnings limit and will also be set at £827 a week from 6 April 2016.

From April 2016, employers will also be entitled to a reduction in secondary class 1 national insurance contributions on the earnings of eligible apprentices under the age of 25, which will reduce the cost to employers of providing apprenticeships for young people. The new apprentice upper secondary threshold will be the level below which employers are entitled to a 0% rate of national insurance contributions on the earnings of relevant apprentices. Like the UST, it will be aligned with the upper earnings limit, so it will also be set at £827 a week from 6 April 2016.

In relation to the self-employed, the regulations also set the upper profits limit for class 4 contribution liability. The UPL is the level of profits below which the self-employed pay the main class 4 percentage rate of national insurance contributions on profits above the lower profits limit. The UPL will also rise to maintain alignment with the level at which the higher rate of income tax is payable, to £43,000 for the 2016-17 tax year. The regulations also set the prescribed equivalents of the thresholds and limits that I have mentioned for employees paid monthly or annually.

In the 2016-17 tax year, employers will continue to pay contributions at 13.8% on earnings above the secondary threshold. Employees will continue to pay 12% on earnings between the primary threshold and the upper earnings limit, and 2% on earnings above that. This is in line with the Government's commitment in the National Insurance Contributions (Rate Ceilings) Act 2015 to

provide certainty for businesses and employees by locking the main rate of class 1 NICs for the duration of this Parliament.

I need to ensure that the national insurance fund can maintain a working balance throughout the coming year, which the Government Actuary recommends should be one sixth of benefit expenditure for the year. The regulations provide for a Treasury grant of up to 5% of benefit expenditure to be made available to the fund in the 2016-17 tax year. A similar provision will also be made in respect of the Northern Ireland national insurance fund.

I commend the regulations to the Committee.

4.37 pm

Rob Marris (Wolverhampton South West) (Lab): It is a pleasure to appear before you again, Mr Wilson. You seem to be getting a taste for matters financial. Looking around the room, the under-representation of women on this Committee is rather disappointing. In the Opposition's defence, two of our Back Benchers who were not able to come are women, but there is a bit of a problem on the Government Benches.

When the employment allowance was introduced in 2014, the Chancellor of the Exchequer said in a letter to small and medium-sized enterprises:

"Small businesses are the lifeblood of the economy and I want to make it easier for you to succeed and grow."

Labour totally supports that. We may not always support the instruments employed by the Chancellor of the Exchequer, but we certainly support that goal. In the same letter, the Chancellor of the Exchequer estimated:

"The Employment Allowance will benefit 1.25 million employers next year"—

—he was referring to 2015. Today, the Financial Secretary says that, after the enactment of the regulations on excluded companies, he estimates the figure will be about 1 million. The figures are similar—a lot of businesses gaining a lot of benefit—but there are some problems with how it has been working out.

In May 2015, Her Majesty's Revenue and Customs itself published a kind of impact assessment: "Awareness and impact of the Employment Allowance— Research with small employers", HMRC research report 368. One of the key findings, listed on page 4 of the report, is that

"(69%) eligible businesses with fewer than 50 employees had claimed Employment Allowance at the time of this research (November 2014)."

November 2014 was fairly shortly after this came up, but take-up was not great then. The research also found that

"Non-claimants were more likely to be micro businesses (<5 employees)."

Again, that is a bit of a problem, because we hope to nurture microbusinesses and boost employment by encouraging them, through tax reliefs and other measures, to take on an additional employee or part-time employee.

On the credit side, the findings of the November 2014 impact document included a statement that

"Awareness of Employment Allowance is high amongst both claimants and non-claimants."

I find it slightly strange that awareness was high among non-claimants, but the report delineates some reasons

for that. Furthermore, take-up appears to have gone up: HMRC statistics for April to October 2014 show a 68% take-up rate.

In paragraph 7.1 of the explanatory memorandum for the regulations before us, the take-up rate is estimated to be 89%, which is a considerable improvement in a year and a half. However, one has to look also at the efficacy of the measure, or the lack thereof. No one is quite sure of the number, but there seem to be about 1,200 tax reliefs, and a National Audit Office report found that HMRC was keeping tabs on the efficacy or otherwise of fewer than 300 of them. Regarding the efficacy of the employment allowance in increasing employment, laudable though the goal is, there are some question marks over whether it has altered behaviour as much as its proponents and we would have wished.

On page 28 of the impact report is a table showing the behaviour of employers—the claimants—with regard to investment that would have happened without employment allowance: 20% of employers would have engaged in it anyway, whether or not the allowance existed; 2% would have done some of what they did, but had been able to do more, which is encouraging; and 6% would not have engaged in the activity but for the availability of employment allowance. In terms of taking on additional staff, however, according to table 6.3 on page 29 of the report, the net effect on investment in staff as a percentage of claimants was 6%, but 3% of respondents who were claimants had taken on additional members of staff because of the measure. There are questions to be answered, and the report concludes:

"While take up has been successful and awareness of the scheme is high, it has had relatively little impact on employment."

As I am sure the Minister remembers vividly, he himself said when the measure was debated in the Public Bill Committee that

"there is a particular problem with including the new clause—assessing how many jobs are created as a result of the allowance, because of the inherent complexity in that matter."—[*Official Report, National Insurance Contributions Public Bill Committee*, 21 November 2013; c. 58.]

That was before the measures that we are amending today came into effect. Even then assessment was difficult, but two and a half years later there is still a huge problem measuring whether this tax measure has much of the intended effect on behaviour.

The measure is expensive. The Office for Budget Responsibility certified the figures in a table on the summer Budget 2015 indicating that for the current tax year the employment allowance tax relief would cost the Government £630 million of forgone revenue. That figure stays in the £600 millions through to 2020 in those projections. That is quite a lot of money, even for the Revenue, which deals with very big sums.

Perhaps the Minister can reassure me on this, but employment allowance seems to be a bit of a blunt instrument, because while it has a disproportionate effect—or one hopes it does—on microbusinesses, it will remain available to all businesses of whatever size, unless they are the ones excluded under the regulations I am about to discuss.

I understand that HMRC carried out a technical consultation on director-only companies and the excluded companies regulations before us that ran from 26 November 2015 to 3 January 2016. The Minister may correct me, but I am not aware that HMRC has published a summary

[Rob Marris]

of responses to that consultation. I hope he can tell me that I am wrong and that such a summary has been published. There is reference to that consultation in paragraph 8.1 of the explanatory memorandum to the regulations:

“Some stakeholders raised concerns that the measure may be vulnerable to avoidance behaviour”.

I may be misreading this, and the Minister can reassure me if that is the case, but looking at the measure it seems as if a self-employed person who is a company, as it were—the regulations are to do with businesses that are director-only and have one employee—could easily drive a coach and horses through the regulations and avoid their effect by signing up a spouse as a director. That is not uncommon for, say, a plumber who wants to have her husband on the books and maybe even claim the personal allowance, which has now gone up a lot, so there is quite an attraction to do so. We would then have two directors—two employees—off to the races and claiming employment allowance. I may be wrong, but it seems that a spouse—it would not have to be a spouse, obviously—could be on the books as a director or a nominal employee, which would be a body swerve right around the regulations. If those companies were technically limited liability companies, they would no longer be excluded from receiving employment allowance. I seek some reassurance from the Minister on that.

Finally, I turn to the social security measures. I understand the annual uprating and so on, but perhaps the Minister can reassure me. There appears at the bottom of the scale to be some fiscal drag, as I think it is called. While the top end has been uprated in line with the CPI—although in the period concerned, I believe the CPI was in fact negative—the bottom end has not, so the value of money has changed but those paying more would be affected.

I hope the Minister can explain this technical point to me, because I may be misunderstanding it. When taken together, paragraphs 7.6 and 7.7 of the explanatory memorandum—I appreciate it is not the same as the regulations themselves, but many of us find explanatory memorandums helpful—appear to me to indicate that an employer who employs an apprentice will not have to pay employers’ national insurance contributions whatever the apprentice’s earnings level, provided the apprentice is under 25. That is no bad thing, as long as one has an adequate definition within HMRC rules of an apprentice. I think we already do, because of the minimum wage legislation and so on, but perhaps the Minister could, for my benefit, clarify whether the regulations will let employers off the hook, so to speak, for NICs for employees under 25 who are apprentices.

4.49 pm

Roger Mullin (Kirkcaldy and Cowdenbeath) (SNP): It is a pleasure to serve under your chairmanship, Mr Wilson, and to see Members who have been on many Committees with me in my short career here. I commend the hon. Member for Wolverhampton South West for his detailed scrutiny of the regulations.

The Scottish National party’s perspective is that the regulations faithfully enact what the Government announced in both the Budget and the autumn statement.

In that regard, I do not see anything technically troublesome about the implementation of the regulations. We might disagree about the policy backdrop and we might think that more could be done to encourage the employment of apprentices. In Scotland, for example, an apprenticeship applies only to a full-time job, so we would want more done to enable that to occur. However, in broad terms, given the answers to the hon. Member for Wolverhampton South West, we are content with the proposals.

4.50 pm

Mr Gauke: I am grateful for hon. Members’ remarks on the regulations. I will pick up some of the points raised, particularly by the hon. Member for Wolverhampton South West. On the broader issues to do with the efficacy of the employment allowance, the hon. Gentleman talked about take-up. The most recent take-up statistics released in October last year show 1.17 million employers benefiting from the allowance. Around 680,000 employers—48% of all employers—have been lifted out of employer national insurance contributions altogether since the employment allowance was introduced in 2014-15. A further 90,000 employers are expected to be taken out of NICs when the employment allowance rises to £3,000 as a consequence of one of the regulations before us. It is worth pointing out that over 90% of the benefit of the allowance goes to small businesses with fewer than 50 employees.

In terms of what employers do with the employment allowance, that is a matter for them. The hon. Gentleman was right to refer to the debate that those of us who were around at the time had in respect of the primary legislation. The Government were careful not to put a specific number on this, because it depends on how people make use of the sums involved. Ultimately, it is up to employers as to how they use the allowance. We have not set targets for the number of jobs that we expect to be created. According to research by the Federation of Small Businesses, 29% of small businesses will use the employment allowance to boost staff wages; 28% will employ additional staff; and 24% will invest in resources. This is not attributable to one policy, but we are in the position where we have record levels of employment in this country. A measure that reduces the tax liability for businesses, particularly smaller business, plays a role in ensuring that we have a climate in which job creation is encouraged, and it has helped contribute to record levels of employment.

On the cost of the employment allowance, it is forecast to cost the Government approximately £1.4 billion in 2015-16 in tax revenue forgone, and 98% of that tax revenue is to the benefit of small and medium-sized businesses or employers employing fewer than 250 people. On the value for money assessment, the Government will internally review the employment allowance on various criteria, such as take-up levels, to determine the overall value for money of the policy. As a part of this process, we will speak to interested parties to gauge their views of the allowance and to ascertain ways in which their members are using it. However, at this point, we are encouraged by the wide take-up of the employment allowance; it is helping feed through into an environment that is good for employment and good for our constituents. I am sure it is not the intention of the hon. Member for Wolverhampton South West, but I hope that no one who reads his contributions would

jump to the conclusion that the official Opposition are looking to abandon the employment allowance in order to save funds to use for other purposes, because that would be damaging for the many smaller businesses in this country that have done so much to ensure that we have such high levels of employment.

Rob Marris: I started my remarks with a quote from the Chancellor of the Exchequer, with which I agree, on support for small business. However, when dealing with revenue and revenue forgone, we must bear in mind the question of opportunity cost. In round terms, the figures that I have show that it is costing £560 million a year; the Minister talked about £1.4 billion. Either way, it is a lot of money. One has to consider whether such revenue support to encourage businesses to grow, a concept that we support, could be better spent by the Revenue in other ways. For that, one needs to measure. It is a question of how one allocates that money, not of support for business.

Mr Gauke: I note the hon. Gentleman's remarks, which will no doubt be studied closely, probably by someone in Conservative Campaign Headquarters.

The hon. Gentleman and others have raised concern that the single director provisions could be avoided. We do not accept that avoidance behaviour will be as widespread as has sometimes been suggested. There are anti-avoidance provisions in the original legislation, and the proposed measures strike the right balance between maximising yield for HMRC, on the one hand, and ensuring that tax changes do not affect genuine businesses and charities that create employment, on the other hand. The anti-avoidance provision in the National Insurance Contributions Act 2014 provides that employers who would qualify for the employment allowance only by virtue of avoidance arrangements are disqualified. To be entitled to the allowance, companies with a single director cannot simply pay a second employee £10 to requalify. Rather, the regulations will mean that they must pay the second employee enough to accrue a secondary class 1 national insurance contributions liability, which is currently more than £156 a week.

The relief for apprentices under the age of 25 will be simple for employers to claim by inputting information in their payroll software. HMRC published guidance on

2 February 2016 on gov.uk to let employers know how to apply the relief and which evidence they are required to hold to ensure that it has been properly applied. That will include a record of the framework or standard being followed, which has also been publicised via HMRC's employer bulletin. Ahead of the next tax year, HMRC will work with the Department for Business, Innovation and Skills to circulate the guidance further.

The purpose of the measure in relation to apprentices under the age of 25 is to provide support to businesses, which is helpful in improving the skills of the workforce in the UK. It is right that we use the national insurance contributions system to encourage employers that are undertaking expenditure in that area. The measure will be welcomed by employers, and it will help to achieve very ambitious targets in ensuring that far more people undertake apprenticeships in this country than in the past. We have seen dramatic progress in recent years, and we wish that to continue. The measure on apprentices under the age of 25 is part of that process.

I hope those points are helpful, and I commend the regulations to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Employment Allowance (Excluded Companies) Regulations 2016.

EMPLOYMENT ALLOWANCE (INCREASE OF MAXIMUM AMOUNT) REGULATIONS 2016

Resolved,

That the Committee has considered the Employment Allowance (Increase of Maximum Amount) Regulations 2016 (S.I., 2016, No. 63).—(*Mr Gauke.*)

DRAFT SOCIAL SECURITY (CONTRIBUTIONS) (LIMITS AND THRESHOLDS AMENDMENTS AND NATIONAL INSURANCE FUNDS PAYMENTS) REGULATIONS 2016

Resolved,

That the Committee has considered the draft Social Security (Contributions) (Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2016.—(*Mr Gauke.*)

5.1 pm

Committee rose.

