

National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill

HL Bill 184 of 2017–19

Summary

- The [National Insurance Contributions \(Termination Awards and Sporting Testimonials\) Bill](#) is a government bill that would amend the national insurance treatment of termination awards and income from sporting testimonials.
- It would introduce a new 13.8% Class 1A Employer national insurance contributions (NICs) charge to any part of a termination award or payment from a sporting testimonial that is already liable to income tax.
- The bill was introduced in the House of Commons on 25 April 2019 and completed its stages in the Commons, without amendment, on 10 June 2019.
- During the House of Commons stages, both Labour and the Scottish National Party (SNP) opposed the bill. Labour argued that the bill was an attempt by the Government to introduce measures aimed at raising additional revenue from the termination payments of workers. Whilst the SNP called for the bill to include a requirement on the Government to review the impact of the measure.
- The bill was introduced into the House of Lords on 11 June 2019 and is scheduled to receive its second reading on 26 June 2019.

Background

Termination Awards

A termination award is a payment received in connection with the termination of a person's employment.¹

In July 2014, the Office of Tax Simplification (OTS) recommended that the Government reform the tax treatment of termination payments. Following a review into employee benefits and expenses, the OTS stated that termination payments were an “area which gives rise to confusion”.² The OTS contended that this was because “many people believe that the first £30,000 of any ‘payoff’ will be tax-free”. They were often faced with “an unpleasant surprise when they find that is not the case”.³ Further, the OTS argued that employers were “unclear” about which parts of a termination package “qualify for the exemption”.⁴ Consequently, the OTS called for a government review of the existing exemptions, reliefs, and reductions for termination payments.

The Government has since consulted on and made some changes to the tax treatment of termination payments. In 2015, HM Revenue and Customs (HMRC) consulted on simplifying the tax and national insurance treatment of termination payments. In response to the consultation, the Government

announced in the 2016 Budget that it would make changes. These would include:

- clarifying the scope of the exemption for termination payments to prevent manipulation, by making the tax and NICs consequences of all post-employment payments consistent;
- aligning the rules for income tax and employer NICs so that employer NICs will be payable on payments above £30,000 (which are currently only subject to income tax); and
- removing foreign service relief.⁵

Proposed changes to the taxation of termination awards outlined in the 2016 Budget were made by section 5 of the Finance (No. 2) Act 2017.

In the 2018 Budget, the Government announced that it would introduce legislation to reform the NICs treatment of termination payments, which it intended would take effect from April 2020.⁶ These are contained in the current bill.

The bill's explanatory notes outline the impact on the Exchequer of the measures. It states that:

Aligning the NICs treatment of termination awards is now estimated to increase receipts by £190m for 2020/21 rising to £210m for 2023/24. Combined with the rule reform for termination awards, it is now estimated to increase receipts by £440m for 2020/21 rising to £480m for 2023/24.⁷

Sporting Testimonials

Testimonials are a long-standing practice in sport to honour a sportsperson's playing career. Often they are held to mark the end of the sportsperson's playing career, but may also be held to recognise a period of service with a club.⁸ At present, all income from contractual or customary sporting testimonials and benefit matches for an employed sportsperson has been treated as earnings. They are subject to income tax and NICs. In the case of non-contractual or non-customary sporting testimonials, income raised from these are subject to income tax, but only beyond a £100,000 threshold.⁹

In addition to seeking to change the taxation of termination awards, the Government has also sought to change the tax treatment of sporting testimonials over recent years. In July 2015, HMRC launched a consultation seeking views on putting the tax and NICs treatment of such income onto a "firm legislative basis".¹⁰ The consultation document noted that despite there being no specific income tax legislation covering sporting testimonials, HMRC had published guidance on the subject. The guidance stated that where the right to a testimonial match is part of the sportsperson's contract of employment, or where the sportsperson's club always grants a testimonial match after a set qualifying period of service, the proceeds will always be taxable under section 62 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) as earnings. In addition, if income received from a testimonial was derived from a sportsperson's employment, it "would be liable to Class I NICs".¹¹

In November 2015, the Government announced that it would legislate to simplify the tax treatment of income from sporting testimonials. It stated that from 6 April 2017, all income from sporting testimonials and benefit matches for employed sportspersons would be liable to income tax. The Government also announced that an exemption of up to £50,000 will be available for employed sportspersons with income from testimonials that are not contractual or customary. In the 2016 Budget, the Government announced that the exemption would be increased to £100,000.¹²

In December 2016, the Government included provisions in its draft National Insurance Contributions Bill, so that Class 1A NICs would be charged on this category of income.¹³ These provisions would ensure that the new £100,000 exemption applies to sporting testimonials. On 2 November 2017, the Government announced that the introduction of the National Insurance Contributions Bill would be delayed.¹⁴ The provisions on sporting testimonials now feature in clauses 3 and 4 of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill.¹⁵

HMRC research shows that around 220 sporting testimonials or benefit matches are held annually. However, of these, a “much smaller number” are held for professional sportspeople who are “not self-employed”.¹⁶ HMRC notes that employed sportspeople who have a contractual entitlement or customary right to a sporting testimonial or benefit match will not be affected by these changes, as these are already fully charged to income tax and Class 1 NICs.¹⁷

Provisions of the Bill

The bill is formed of five clauses. Clauses 1 and 2 concern the treatment of termination awards in Great Britain. Clause 1 amends section 10 of the Social Security Contributions and Benefits Act 1992 by providing for the new Class 1A NICs liability (13.8%) on termination awards, whilst keeping the existing provisions for Class 1A contributions payable on benefits in kind.¹⁸ By adding a subsection to section 10 of the 1992 Act, the clause also outlines who would be liable to pay a Class 1A contribution on termination awards. The person liable would be the person who would be responsible for paying secondary Class 1 NICs if the amount of earnings were subject to Class 1 NICs. The clause also clarifies how the amount of Class 1A NICs payable on a termination award is calculated by using the Class 1A percentage. Clause 2 mirrors the effect of clause 1 in Northern Ireland legislation.

Clauses 3 and 4 cover the tax treatment of sporting testimonials in Great Britain. Clause 3 amends section 10 of the 1992 Act to provide for any Class 1A NICs liability arising on taxable sporting testimonial payments to be met by third party controllers of sporting testimonials. As part of this, the controller would be liable to pay Class 1A NICs on sporting testimonial payments either in cash or benefits in kind. It also covers the circumstances in which a sporting testimonial controller would be liable to pay a Class 1A contribution. Clause 4 mirrors the effect of clause 3 in Northern Ireland legislation.

Lastly, clause 5 details the extent, commencement, and short title of the bill. The bill will come into force on royal assent and will apply to England, Wales, Scotland and Northern Ireland.

House of Commons Stages

Second Reading

The bill received its second reading on 30 April 2019. Introducing the bill, Robert Jenrick, Exchequer Secretary to the Treasury, said that the bill aimed to provide a “welcome simplification” of the tax treatment of termination awards and sporting testimonials. He explained that it would do this by placing a 13.8% Class 1A employer national insurance charge on income derived from termination awards (over £30,000) and sporting testimonials (over £100,000) that are “already subject to income tax”.¹⁹

Speaking for the Labour Party, Peter Dowd, Shadow Chief Secretary to the Treasury, criticised the bill. He argued that the Government was “yet again” introducing measures aimed at raising additional

revenue from the termination payments of workers. Instead, Mr Dowd called on the Government to tackle tax avoidance and raise taxes to “ensure that the wealthy and large corporations pay their fair share”.²⁰

Committee Stage

Committee stage for the bill took place on 14 May 2019. In the first sitting, the committee took evidence from Robert Jenrick, officials at both HM Treasury and HM Revenue and Customs, representatives from the Office of Tax Simplification and the Chartered Institute of Taxation. In the second sitting, the committee considered the bill.

During the second sitting, Robert Jenrick set out the Government’s reasoning for introducing the Class IA national insurance charge for termination awards. He stated that:

Allowing the difference between the income tax treatment of that income and the employer national insurance treatment to persist would be confusing, and continue to provide an incentive for employers to manipulate final payments to achieve a tax advantage. [The clauses] will close that loophole, simplify the tax system, and raise about £200 million in revenue to continue to support the funding of public services in a significant way.²¹

Robert Jenrick also discussed the new charge’s application to sporting testimonials. He noted that at present, where a sporting testimonial is either non-contractual or non-customary, it can be organised by third parties to “raise money”, which “may not have been subject to national insurance charges”. Mr Jenrick argued that because of “this long-standing practice and ambiguity [...] this concessionary treatment will end with the passage of this bill on 6 April 2020, when clause 3 takes effect”. Expanding upon this, he outlined that from April 2020:

[N]on-contractual and non-customary testimonials arranged by third parties will be subject to national insurance contributions above the £100,000 threshold. The third-party testimonial committee will be liable to pay an employer Class IA national insurance contributions charge on the amount raised above £100,000, and not on any amount paid below that.²²

Speaking to clause 5, Kirsty Blackman, SNP Spokesperson for the Economy, tabled an amendment to ensure that changes in the bill were communicated to fans attending testimonials, employers, and employees.²³ Responding to Ms Blackman, Mr Jenrick stated that he did not think a “specific public communication awareness campaign” was “necessary”. Ms Blackman withdrew the amendment.

During the sitting, Peter Dowd and Kirsty Blackman also called for the bill to include a requirement for the Government to review the impact of the changes. This included Ms Blackman tabling a new clause on the subject. In response, Mr Jenrick stated that the Government had already consulted on this “in detail”. He noted that the Government had published both the draft policy proposals and the legislation for scrutiny. In addition, he stressed that the Government had already committed to keeping the measure under review. The Treasury must also carry out post-legislative scrutiny on all legislation within three to five years of implementation.²⁴ Ms Blackman withdrew the new clause, stating that she would not push it to a vote due to a drafting error. However, she said she would “probably” return to it on report.²⁵

The bill passed to report stage without amendment.

Report Stage and Third Reading

The remaining stages of the bill in the House of Commons were held on 10 June 2019.

At report stage, Peter Dowd tabled two new clauses. New clause 5 called on the Government to review the impact of the Class 1A measure on women, pregnant women, workers aged 50 or over or any group of people with protected characteristics every two years. Similarly, new clause 1 would have required ministers to undertake a distributional analysis of the impact of the measure, examining the impact on the level of termination awards received by employees. Kirsty Blackman also tabled new clauses calling on the Government to report to Parliament on the impact of the measures.

Responding to the tabling of the new clauses, Robert Jenrick stated that the Government would “choose the correct moment” to review the measure. He repeated that it would be within a three- to five-year window.²⁶ He also stated that the Government had considered the impact of the measure on employers and individuals as part of the policy development and consultation process. In relation to termination awards, Mr Jenrick stated that the Government had already assessed the impact of the policy in compliance with its duties under the Equality Act 2010.²⁷

Following debate, new clause 5 was moved to a division and was defeated by 273 votes to 214. New clause 1 was withdrawn.²⁸

At third reading, Anneliese Dodds, Shadow Treasury Minister, repeated Labour’s concerns about the bill. She stated that her party would be voting against it.²⁹ Speaking for the SNP, Kirsty Blackman also indicated she would be voting against the bill, arguing it made the system more complex and would reduce wages.³⁰

The bill passed third reading by 270 votes to 207. Consequently, the bill was read a third time and passed to the House of Lords.³¹

Further Information

- House of Commons Library, [National Insurance Contributions \(Termination Awards and Sporting Testimonials\) Bill 2017–19](#), 14 June 2019
- HM Revenue and Customs, [Income Tax and National Insurance Contributions: Treatment of Termination Payments](#), updated 4 April 2018
- HM Revenue and Customs, [Income Tax: Update to Treatment of Income from Sporting Testimonials](#), updated 9 November 2017
- UK Government website, [National Insurance Contributions Bill 2016](#), 5 December 2016

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- ¹ HM Revenue and Customs, '[National Insurance Contributions \(Termination Awards and Sporting Testimonials\) Bill](#)', updated 1 May 2019.
- ² Office of Tax Simplification, [Review of Employee Benefits and Expenses: Final Report](#), July 2014, p 7.
- ³ *ibid.*
- ⁴ *ibid.*
- ⁵ HM Revenue and Customs, '[Simplification of the Tax and National Insurance Treatment of Termination Payments](#)', updated 10 August 2016.
- ⁶ HM Treasury, [Budget 2018](#), October 2018, HC 1629 of session 2017–19, p 42..
- ⁷ [Explanatory Notes](#), 11 June 2019, p 6.
- ⁸ HM Revenue and Customs, [Tax Treatment of Income from Sporting Testimonials: Proposals for Legislation](#), 8 July 2015, p 5.
- ⁹ HM Treasury, [National Insurance Contributions \(Termination Awards and Sporting Testimonials\) Bill](#), 29 April 2019.
- ¹⁰ HM Revenue and Customs, [Tax Treatment of Income from Sporting Testimonials: Proposals for Legislation](#), 8 July 2015, p 5.
- ¹¹ *ibid.*
- ¹² HM Treasury, [Budget 2016](#), March 2016, HC 910 of session 2015–16, p 97.
- ¹³ UK Parliament website, '[National Insurance Contributions \(Termination Awards and Sporting Testimonials\) Bill: Commons Stages](#)', 10 June 2019.
- ¹⁴ HM Revenue and Customs, '[Draft Legislation: Sporting Testimonial Payments](#)', 5 December 2016.
- ¹⁵ UK Government, [Sporting Testimonial Payments: Draft Clauses 2016—Explanatory Notes](#), 8 December 2016, p 1.
- ¹⁶ An athlete's employment status can often depend on their personal circumstances. In professional team sports, such as football and rugby, the squad members are usually treated as employees of their teams. Whereas, in individual sports, for example, tennis or golf, professional athletes often determine their own competition schedule and any commercial activities and are therefore treated as self-employed. Further information on the subject can be found in the following article: Caroline Matthews and Libby Payne, '[The Employment Status and Rights of Funded Athletes in the UK](#)', *LawInSport*, 13 November 2018.
- ¹⁷ HM Revenue and Customs, '[Income Tax: Update to Treatment of Income from Sporting Testimonials](#)', updated 9 November 2017.
- ¹⁸ HM Revenue and Customs, '[National Insurance Contributions \(Termination Awards and Sporting Testimonials\) Bill](#)', updated 1 May 2019.
- ¹⁹ [HC Hansard, 30 April 2019, col 153.](#)
- ²⁰ *ibid.*, col 159.
- ²¹ [HC Hansard, 14 May 2019, col 33.](#)
- ²² *ibid.*, col 50.
- ²³ *ibid.*, col 59.
- ²⁴ *ibid.*, col 36.
- ²⁵ *ibid.*, col 62.
- ²⁶ [HC Hansard, 10 June 2019, col 466.](#)
- ²⁷ *ibid.*, col 467.
- ²⁸ *ibid.*, col 472.
- ²⁹ *ibid.*, col 474.
- ³⁰ *ibid.*
- ³¹ *ibid.*, col 475.

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