



National Insurance Contributions Bill 2013-14 : Parliamentary scrutiny

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In his Budget speech on 20 March 2013 the Chancellor, George Osborne, announced the introduction of a new Employment Allowance: from April 2014 businesses, charities and community sports clubs would be entitled to claim up to £2,000 from their annual payment of secondary Class 1 National Insurance contributions (NICs). This tax cut is estimated to cost £1.26 billion in 2014/15, rising to £1.73 billion by 2017/18.¹

The main purpose of the *National Insurance Contributions Bill 2013-14*, which was published on 14 October 2013, is to implement the new allowance. The Bill also contains a number of miscellaneous measures announced in Budget 2013 relating to the scope of NICs. The text of the Bill, explanatory notes and details of the Bill's progress are collated on the [Parliament Bill page](#). This note gives an overview of the Bill's scrutiny to date. It is complemented by a Library Research paper prepared for the Bill's Second Reading debate ([RP13/60, 20 November 2013](#)).

The Bill was given a Second Reading on [4 November 2013](#), and was considered in Public Bill Committee in 4 sittings over two days: [19 & 21 November 2013](#). Oral evidence was taken at the first two sittings. The Bill was agreed unamended. The Opposition did not move any amendments, and there were no divisions.

In his Autumn Statement on 5 December the Chancellor announced that employer NICs for those under the age of 21 would be abolished from April 2015, with the exception of those earning more than the Upper Earnings Limit. Beyond this limit, employer NICs would be liable as normal. This would apply both to new and existing employees that are under 21 years of age with effect from 6 April 2015.² Provision for this relief was made by a new clause being added to the Bill at its Report stage on 10 December.³

The Bill completed its scrutiny in the House of Lords on [25 February 2014](#), when, unamended, it received its Third Reading.

¹ *Budget 2013*, HC 1033, March 2013 p64 ([Table 2.1 – item 25](#))

² [HC Deb 5 December 2012 cc1112-3](#); *Autumn Statement*, Cm 8747, December 2013 para 2.48. This is forecast to cost £465m in 2015-16, rising to £530m by 2018-19: [Cm 8747, December 2013 p78](#) (Table 2.1: item 8)

³ [HC Deb 10 December 2013 cc167-184](#)

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| 1 | Second Reading : 4 November 2013 | |

The Exchequer Secretary, David Gauke, introduced the Bill: the new Employment Allowance would cut “the jobs tax for 1.25 million employers” and take “450,000 of them out of employers’ national insurance contributions altogether, making it less expensive for businesses to take on new staff.” The Minister noted that the Government were “not predicting how many jobs the Bill might create because a number of factors apply”, although in a survey the Federation of Small Businesses had undertaken among its members, “28% of respondents believed that this measure would help them to increase the number of people they employ. That is a very encouraging step.”⁴

Mr Gauke went on to note the other main measures in the Bill: “the Bill gives effect to the general anti-abuse rule on national insurance contributions. It also amends the *Social Security Contributions and Benefits Act 1992* to allow regulations to be made on the certification of non-UK employers of oil and gas workers, and makes changes in connection with two elements of the partnerships review carried out by Her Majesty’s Revenue and Customs.”⁵

Mr Gauke also discussed the Regional Employers’ National Insurance Holiday, the forerunner of the Employment Allowance. The NI Holiday ran from September 2010 to September 2013. New businesses were entitled to deduct up to £5,000 from their employer NICs bill, for each of the first ten employees they took on in their first year of business. New businesses in Greater London, the South East Region and the Eastern Region were excluded.⁶

The Minister drew out some important differences between the two schemes which, in his view, would guarantee a much wider take-up of the new relief:

Opposition Members ... will make the point that take-up was not as high as we had anticipated ... 26,000 employers and 90,000 employees have benefited from it. Our expectation was that ... 400,000 businesses and 800,000 employees would benefit from the scheme. I think that the reason why that did not happen is [that] ... a scheme that was, essentially, quite targeted and required businesses to apply—even though

⁴ HC Deb 4 November 2013 c40, c38

⁵ *op.cit.* c40

⁶ For more details see, [The Regional Employer NI Holiday](#), Library standard note SN6737, 11 October 2013

we worked hard to try to make the application process as simple as possible—simply meant that fewer businesses applied for it than we had anticipated ...

Under the new proposal, no application process is needed as such. Businesses will receive the benefit of the employment allowance simply by using up-to-date payroll, and the introduction of real-time information makes that much easier to apply. We believe that this is a much-improved policy. It contrasts with the employers' NICs holiday, because that was a targeted regime. It also contrasts both with the policy advocated by Labour in its five-point plan, which was even more targeted, and with the policy we heard about yesterday on the living wage. Complicated, temporary schemes requiring applications are likely to have disappointing levels of take-up, whereas permanent schemes automated through the payroll system will, we believe, apply much better.⁷

Mr Gauke briefly discussed two other measures in the Bill: first, the certification scheme for the oil and gas sector:

The Government intend to address [the abuse of offshore employment schemes for tax avoidance] largely by using existing powers contained in social security legislation. The Bill supplements those with a new certification provision for the oil and gas industry. That provision will apply where the national insurance obligations are fulfilled by someone on behalf of the person deemed to be the employer for national insurance purposes ... [This] is part of a measure that, as a whole, is expected to bring in the region of £100 million per year to the Exchequer, without having a significant economic impact on the oil and gas industry. Staff costs for some businesses may increase if they had not previously been accounting properly for all tax and NICs. There will be little cost to the Government through additional administration, other than HMRC implementing the new certification system, and I hope hon. Members will agree that this is a straightforward and uncontroversial provision

And, second, the provisions following HMRC's review of the tax treatment of partnerships:

Following the Chancellor's Budget announcement, HMRC carried out a consultation on two aspects of the partnership rules between May and August this year, and the Government are bringing forward measures in the Bill as a result of that review. The Government are proposing two sets of changes, the first of which was not part of the consultation proposals but resulted directly from information received during that consultation. It concerns a tax issue that can arise from the interaction of the alternative investment fund managers directive—AIFMD—and existing partnership tax rules. Only those alternative investment fund managers who operate as a partnership will be affected by the proposed changes in the Bill.

A provision in the Bill will allow regulations to be made to modify the class 4 NICs liability of partners whose profits will be deferred under AIFMD, which aims to improve investor protection and reduce risk. The regulations will be based on new tax legislation that will be included in the forthcoming finance Bill. Measures will be included in the NICs Bill, the forthcoming finance Bill and secondary legislation to reclassify certain limited liability partnership—or LLP—members as employed earners for tax and national insurance purposes, to tackle the disguising of employment relationships through LLPs. The tax and NICs changes are expected to bring in approximately £125 million to the Exchequer in the first year, while the broader economic impact is expected to be negligible.⁸

⁷ HC Deb 4 November 2013 cc42-3

⁸ *op.cit.* cc44-5

Shabana Mahmood, the Shadow Exchequer Secretary, said that the Opposition supported the new Employment Allowance, but that the new relief should have been enacted “immediately” on being announced in the 2013 Budget, “rather than waiting until April 2014.” She noted that the Opposition also supported the extension of GAAR to national insurance, but that in Committee it would raise concerns that “the GAAR is far too narrow, that there is no specific penalty regime, that no arrangements are in place to monitor its effectiveness and that, as a result, it has little credibility.”⁹ Ms Mahmood also underlined that the Opposition supported the other two measures in the Bill mentioned by the Exchequer Secretary: the certification scheme for the oil and gas sector, and the provisions arising from the partnership review. In the former case, Ms Mahmood underlined that the Opposition wished to “review the effectiveness” of the package of measures the Government planned to introduce, to tackle the abuse of offshore employment schemes “as and when they come into force.”¹⁰

Other Members who spoke in the debate focused on the introduction of the Employment Allowance and were generally positive.¹¹ Winding up the debate, Catherine McKinnell reiterated the Opposition’s support for the Employment Allowance, though she asked why the draft version of the Bill, published in July 2013, had not included provision for the new relief. In response the Economic Secretary, Nicky Morgan, said that formal consultation on the Allowance “would have delayed the implementation date, which is something that none of us wants to see.”¹² Ms McKinnell also asked about the revenue impact of extending the GAAR to NICs. In reply Ms Morgan said that “the GAAR is expected to raise some £235 million over the next five years and it will also protect revenue that would otherwise be lost. We are confident that the GAAR will change the avoidance landscape as its impact starts to be recognised.”¹³

The House approved the Bill for Second Reading without a vote.

2 Committee Stage : 19 & 21 November 2013

2.1 Evidence

The Committee held two evidence sessions on 19 November when it heard evidence from witnesses from the Federation of Small Businesses (FSB), the Institute for Fiscal Studies (IFS) and the Financial Conduct Authority (FCA), as well as officials from HM Treasury & HMRC, and the Exchequer Secretary David Gauke.¹⁴

In its first session Members asked witnesses for their views on the likely take-up and impact of the Employment Allowance. Mike Cherry, national policy chairman for the FSB, thought that the Government’s estimate that about 90% of eligible businesses would apply was realistic “on the basis that the method by which the Government are implementing this is much simpler and easier.” Stuart Adam, senior research economist at the IFS, wondered, given the application process was to be so simple, why the anticipated take-up was not

⁹ *op.cit.* cc49-50

¹⁰ *op.cit.* c51

¹¹ For example, Margot James (c56), Caroline Dineage (c61) and Julian Smith (c63). Sheila Gilmore raised the concern that early NI schemes had not been successful in boosting employment and that the Government “should monitor and evaluate this new proposal as much as they can” (c55).

¹² *op.cit.* c72, c78

¹³ *op.cit.* c75, c78

¹⁴ The Committee received one piece of written evidence on the Bill from the Chartered Institute of Taxation, which it reported to the House at the conclusion of its proceedings.

100%. Mr Cherry suggested that “you will always find businesses that still do not understand what may be out there or how to do things.”¹⁵

Mr Cherry contrasted the approach taken in this case with the Regional Employers National Insurance Holiday, noting that the FSB had “always maintained that it should apply to all small businesses and throughout the whole country.” The FSB had suggested that a lower rate of NICs for small businesses could be an alternative, but supported the current initiative “as a much simpler approach that is completely broad brush ... meaning that it is much more likely that businesses will be able to take it up in the first place.”¹⁶ Mr Adam raised the question of having some form of post-implementation review: “having a look in a year or two’s time at how well it is working and seeing whether you want to tweak it or whether it has been a disaster and you should get rid of it.” Mr Adam went on to underline that, putting the question of take-up to one side, it would be very difficult to assess the impact the new relief had had on business behaviour:

Looking ex-ante based on previous evidence is going to be only a limited guide ... This is a slightly different policy from anything that has been implemented in the past, in that it is one per employer, rather than one per employee. It is therefore much more focused not only on the small business sector, but on the small business sector as defined in a particular way, with respect to employment and payroll ... Ex-post, it is going to be very hard to know what change, if any, is caused by this policy, particularly given [there are a]... number of other policies that are being implemented around the same time.¹⁷

In its second session the Committee took evidence from officials at the FCA. David Geale, head of savings, investments and distribution at the FCA, was asked about **clause 12** – which seeks to deal with the interaction of the Alternative Investment Funds Directive, agreed in July 2011, with the operation of the partnership tax rules. This issue had only come to light as part of HMRC’s partnerships review launched in Budget 2013. Mr Geale explained why:

While the directive was first proposed in 2007, it has taken some time to get to this point. We got the second set of measures only in March this year, after which we consulted ahead of implementation in July. However, the guidelines on remuneration from the European Securities and Markets Authority then came out only in September. We consulted from the FCA perspective on our own guidance around that in September with a view to putting out a policy or feedback statement in January.¹⁸

The Committee also took evidence from the Minister and officials. Members focused on the Bill’s provisions for the Employment Allowance. The Exchequer Secretary was asked about the likely impact of the new relief, and having a formal review of its effectiveness. Mr Gauke observed that businesses would use the NI cut in different ways – increasing its wages, its workforce or its investment, or some combination thereof.

[Given that] it will be difficult to identify the increase in the number of people employed as a consequence of the employment allowance, and of course many other factors in the labour market come into play when determining that. We will, however, keep the policy under review [though] I do not think that there is a particular case for a formal

¹⁵ Public Bill Committee (National Insurance Contributions Bill), *First sitting*, 19 November 2013 c4, c5

¹⁶ *op.cit.* c6

¹⁷ *op.cit.* c12. Mr Cherry also mentioned this, noting, as one example, the two year increase in the Annual Investment Allowance from 1 January 2013 announced in the *Autumn Statement 2012* ([Cm 8480, December 2012 para 2.74](#))

¹⁸ PBC, *Second sitting*, 19 November 2013 c19

post-implementation review, which can sometimes be a somewhat bureaucratic process.¹⁹

Mr Gauke was also asked why the Government had decided to cap the Allowance at £2,000, and exclude domestic employers from its scope:

We believe that £2,000 ... is reasonably significant for small firms ... big enough to make a difference but ... something that we could also afford ...

The purpose of the employment allowance is... to help businesses, particularly small businesses, and charities. We concluded that, certainly at this stage, extending the measure to domestic staff was not something that we wanted to prioritise ... If a nanny is employed by an agency, that agency would be able to claim the employment allowance, but just the once. As is the case for small businesses generally, that may be an incentive to take on more staff. If you were looking at a household with one nanny, it would be unlikely to take on a second nanny as a consequence of the employment allowance. That partly goes back to the rationale but, in short, if a business is employing people, they can benefit from the employment allowance.²⁰

Members also raised the fact that eligibility would be restricted for connected businesses, and for publicly funded bodies. On the first point, Simon Manclark, policy adviser at HMRC, explained how franchises, and merging businesses would be affected:

Provided [franchises] ... are separate businesses and they are not connected [to another business] other than by the fact that they have bought the franchise, they will be entitled to separate allowances, because they are separate businesses. That is the logic of the policy ... [For mergers, and demergers] to make the thing simple, we take the position at the start of the tax year and that rolls forward. If they combine during the year, both the merged firms will enjoy the allowance for the rest of the year, because it is too complicated to unravel that. Then for the next tax year they will have to decide between them which one is going to claim the allowance.²¹

On the exclusion of publicly funded bodies, Mr Manclark was asked about the scenario when a public authority outsourced activities to a private business:

[If the private business was] effectively doing the job of the public authority—if they have been outsourced—and being funded through the public purse, then they would not be eligible for the allowance, but quite often these firms have their own private business. If most of their work is for private business, they would be eligible for the allowance. [In this scenario the Bill uses the test] “wholly or mainly” ... The sort of test that we would use is about half.²²

Mr Manclark also touched on the administrative procedure for businesses applying for the Allowance:

The key point of the employment allowance is that it is a simple scheme. There is one allowance per business or charity and it will be claimed through employers' standard payroll processes by just ticking a box—or perhaps I should say clicking. You only

¹⁹ *op.cit.* c22

²⁰ *op.cit.* cc22-3

²¹ *op.cit.* c23

²² *op.cit.* c25. Mr Manclark emphasised subsequently that on the issue of outsourcing, “it is about providing the public service rather than contracting out some of your services, like cleaning or providing someone’s IT. That will be considered a private transaction” (c26).

have to do that once and then the claim automatically rolls over until you say. We are hoping and very much believe that the admin burden be absolutely minimal. There are no forms to fill in ...[The employer's claim] will be programmed into Real Time Information [RTI] ... The computer at our end will properly reconcile with the normal employer's return.²³

Members raised questions about two other clauses in the Bill: the certification scheme for the oil and gas sector (**clause 11**), and removing the presumption of self-employment for LLPs (**clause 13**). On the first issue, Sarah Radford, policy adviser at HMRC, explained how the scheme would work:

The way that the certification works is that the licensee of the oil field, who must be present in the UK because of the legislation on holding a licence, is made a secondary contributor. That way we always have someone in the UK to pay the tax in the case of very complex arrangements being set up so that the employer is outside the UK and outside our jurisdiction to collect the tax revenue. We think that it will be really quite successful. We know that quite a lot of the big oil and gas licensees are already looking to change their contracts to ensure that the companies with which they engage and that are operating on the United Kingdom continental shelf either have a certificate in place or have a UK associated company. That way, there will always be that link back so that we get all the NICs.²⁴

Ms Radford was asked if the scheme would be costly for British oil and gas companies. She replied:

From what we have been told, many of them have it in their baseline already. The cost of getting oil out of the UKCS is quite large, but the proportion that relates to the people on oil rigs is fairly small. A lot of the oil licensees have told us that they have been trying to get it into their baselines for all the costings for a number of years because they do not want to be involved in tax avoidance.²⁵

On the second issue, the Minister was asked for more detail on the implications of **clause 13**, in disapplying s4(4) of the *Limited Liability Partnerships Act 2000*. Mr Gauke replied:

Section 4(4) of the *Limited Liability Partnerships Act 2000* provides that, generally, a member of an LLP should not be regarded as an employee for any purposes. The Bill will remove that requirement. When members of an LLP satisfy certain conditions, they will be treated as if they were employees of the LLP, and the LLP will be treated as their employer for the purposes of employment taxes—PAYE and NICs. That will be done through existing NICs legislation that permits the self-employed to be categorised as employees.²⁶

2.2 Debate on clauses

The Committee considered the Bill in its entirety in two sessions on 21 November, when it agreed to its all of its provisions without making any amendments.

²³ *op.cit.* c26, c32

²⁴ *op.cit.* c28

²⁵ *ibid.*

²⁶ PBC, 19 November 2013 c36

The Employment Allowance

In its first session, the Committee considered **clause 1**, which sets out the main features of the Employment Allowance, and debated a new clause tabled by the Opposition to require HMRC to publish a biannual report on the Allowance, which would include the department's assessment of its take-up, cost, projected cost for future years, and the number of jobs it had created.²⁷ The clause was agreed without a vote, and without the Opposition formally moving their new clause.

Shabana Mahmood said that the Opposition “absolutely support the Employment Allowance [but] we have concerns about reviewing how it is working.” She noted that “it would have been better” if the Government had not allowed the Regional Employers NI Holiday “to last for the full three years ... the Government should have changed course a lot sooner than they did.” On the proposal for a biannual review, Ms Mahmood noted that assessing the Allowance's impact on employment was not as ‘linear’ a process as determining take-up, but that “the clear intention of the policy is to stimulate the economy, and one way of doing that is to increase job numbers.”²⁸ In response the Exchequer Secretary set out why, in his view, the new clause was unnecessary:

The [tax information and impact note](#) [published alongside the Bill] already commits the Government to keep the scheme under review through communication with taxpayers' groups affected by the measure. As part of that review, HMRC, the Treasury and Ministers will speak to interested parties to gauge their views of the employment allowance and ascertain how it is being used. HMRC talked to various interested parties during the summer about the design and operation of the allowance in forums for software providers, charities and small and medium-sized enterprises. There is ongoing engagement between the Department and those groups on the guidance and the publicity, which will, of course, continue after the launch of the allowance next April...

I have no problem with giving an undertaking that, in much the same way as we have done with other schemes, we will publish information about how many businesses have made use of the employment allowance, broken down by geographical location to the extent that we are able to do so—I suspect that will be by region—and put that information in the Library of the House of Commons. There is a legitimate desire to see what the take-up is and whether there are any particular geographical patterns, so publishing that information—let us say twice a year—is something we have no problem in doing, but 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.²⁹

The Minister was also asked if the Government had given any consideration to piloting the Allowance, to be in a better position to assess its likely impact. He replied that there was good reason not to do this: “we want to bring it into operation as quickly as possible.”³⁰

At the close the debate Ms Mahmood expressed her thanks for the Minister giving details “on publishing some of the data envisaged in the new clause”, and the Committee agreed to **clause 1** without a division.³¹

²⁷ PBC, *Third sitting*, 21 November 2013 cc37-60

²⁸ PBC, 21 November 2013, c40, c41, c46

²⁹ *op.cit.* cc56-7, c58

³⁰ *op.cit.* c57

³¹ *op.cit.* c60

The remaining provisions in the Bill relating to the Allowance (**clauses 2-8**) were considered in the Committee's second session of the day.³²

Clause 2 lists the exceptions to the scope of the Allowance. The Exchequer Secretary was asked about the exclusion of personal and managed service companies; in response Mr Gauke said:

It would not be right to give them the benefit of a relief against aid contribution liability that arises as a result of anti-avoidance legislation—the so-called IR35 rules for personal service companies and the managed service company rules. However, where such companies pay the worker a regular wage or salary that attracts a liability for class 1 contributions, they will be able to claim the employment allowance on the secondary class 1 liability on those earnings. In that respect, the employment allowance is following the precedent of the regional secondary class 1 national insurance contributions holiday, which we discussed this morning.³³

Clause 3 and **Schedule 1** restrict any claim to the Allowance where two or more businesses or charities are connected, so that, in the words of the Minister, “there is no incentive for larger businesses to fragment to receive more than one employment allowance.” Mr Gauke noted that it was only fair “that the connected persons rule should also apply to charities”, though this had implications for the wording used in **Schedule 1**:

Given the different legal forms and operational structures of companies and charities, it has been necessary for the schedule to be divided into two parts. In each case, however, we have adapted the provisions in existing tax legislation so that companies and charities will be familiar with them. I should also stress that where two companies are connected with each other only through the attribution of rights between certain associated persons—for example relatives—the connected persons rule will bite only if the companies in question are commercially interdependent. For example, when one company gives financial support to another, they have the same economic or commercial objectives and have common management, employees and premises.³⁴

Clause 4 sets out how the Allowance is to be paid. The Minister noted that HMRC had published a draft of the administrative arrangements to govern these payments.³⁵ Mr Gauke explained that for the 2,000 or so employers still eligible to submit returns on paper, “there will be a paper process that will mirror the IT procedures.” He also mentioned the arrangements for employers to claim the Allowance after the end of the relevant tax year:

There are provisions to enable an employer who has not been able to do deduct the employment allowance, which he is entitled to during the tax year—perhaps because he has forgotten to claim or he was not aware of the availability of the allowance—to make an application to HMRC for a repayment after the end of the tax year. Applications for a repayment can be made up to four years after the tax year in which the employment allowance was due. For example, a repayment claim for the 2014-15 tax year, which ends on 5 April 2015, can be made up to 5 April 2019.³⁶

³² PBC, *Fourth sitting*, 21 November 2013 cc63-72

³³ PBC, 21 November 2013 cc64-5

³⁴ *op.cit.* c68

³⁵ *op.cit.* c69. See, House of Commons Library Deposited Paper *Dep 2013-1851*, 20 November 2013, (*Arrangements Draft Doc*)

³⁶ *op.cit.* c70

Mr Gauke noted that, “when it comes to the question of why the Employment Allowance was not introduced earlier [it] would have been extremely difficult to have done this without RTI being in place.”³⁷

The Minister went on to give a brief summary of each of the four remaining clauses relating to the Allowance. Members did not pose any questions on these clauses, and they were agreed without a vote.

Other provisions

Clauses 9 & 10 extend the scope of the General Anti Abuse Rule (GAAR) to NICs. Introducing **clause 9** Mr Gauke explained that the GAAR was “a key part of our strategy to prevent avoidance from occurring at the outset and tackle it firmly where it persists.” He acknowledged concerns that “because the GAAR is tightly focused it will give a green light to all other forms of tax avoidance”:

Those who think that should take note of the range of actions we have taken in recent Budgets and Finance Bills. We have, for example, taken firm action to clamp down on stamp duty land tax avoidance, introduced the new annual tax on enveloped dwellings, and continued to close loopholes as quickly as possible after they emerge.

In the summer, we published a consultation called “Raising the stakes on tax avoidance” in which we sought views on proposals for a new set of obligations for promoters of high-risk tax avoidance schemes. HMRC does an excellent job defeating tax avoidance schemes in the courts and ensuring that people know that many of these schemes simply do not work, but we know that there is more to do. That was why the consultation also encouraged users of avoidance schemes to settle their tax affairs after similar cases had lost in court or tribunal. The GAAR is an important step to increase the pressure on the tax avoidance industry, but it is not the only step and we will continue to take action against all forms of tax avoidance.³⁸

Shabana Mahmood confirmed that in the Opposition’s view, the extension of GAAR to NICs was “uncontroversial” although the scale of GAAR “is so small that it will not do enough to close the tax gap.” Ms Mahmood went on to argue “there are no penalties for using a scheme to which the rule might be applied, so there is little or no disincentive for anyone who seeks to avoid.”³⁹ In response to this point, Mr Gauke said:

This is a complex area, because if there are penalties under the general anti-abuse rule, should there not be penalties under targeted anti-avoidance rules and so on? I do not think there can be a glib answer, and any changes are likely to be quite fundamental to how our tax system works. It is important that the GAAR can be bedded in and that there is a period in which taxpayers and advisors can get to grips with it. We have not ruled out future action to strengthen the deterrent impact of the rule by attaching penalties, if necessary. We will keep that matter under review.⁴⁰

As noted above, **Clause 11** provides for a certification scheme for the oil and gas workers sector. The Minister provided a general explanation of how the scheme would work, noting

³⁷ *op.cit.* c71

³⁸ *op.cit.* c74

³⁹ *op.cit.* c75, c76

⁴⁰ *op.cit.* c77. In his initial study of the case for a GAAR, Graham Aaronson ruled out a penalty system as, “such provisions would be seen as presenting an irresistible temptation to HMRC to wield the GAAR as a weapon rather than to use it, as intended, as a shield.” (*GAAR Study*, November 2011 para 5.48).

that draft regulations associated with the clause had been published,⁴¹ and that on 10 December “HMRC will be publishing guidance on how everything will operate to ensure that people are aware.”⁴²

The Minister went on to give the Committee a brief description of **clauses 12-16**. He was only asked a question in relation to **clause 13**, which, as noted above, relates to the classification of LLP members for NI purposes. Mr Gauke noted that following this, changes would also be made to existing secondary legislation:

The clause disapplies section 4(4) of the *Limited Liability Partnerships Act 2000* for the purposes of both the *Social Security Contributions and Benefits Act 1992* and its Northern Ireland equivalent. That will enable the reclassification of certain limited liability partnership members as employed earners for the purposes of national insurance contributions. Existing secondary legislation will be amended to ensure that members of an LLP who satisfy certain conditions will be treated for the purposes of national insurance contributions as employees rather than as self-employed. The conditions will broadly be that the individual member of the LLP has little or no real economic interest or risk in the LLP and instead has an entitlement to a fixed salary.⁴³

In response to a question from Shabana Mahmood, Mr Gauke went on explain when this, and related changes to the tax rules, would come into effect:

Detailed proposals in the form of regulations will be published in draft in the autumn, when the new tax legislation will be introduced under the Finance Bill 2014. That will ensure that individuals have access to the full proposals on tax and national insurance contributions at the same time. It is also worth pointing out that I wrote to the Committee yesterday to confirm that point. The legislation will take effect on 6 April 2014, so individuals who are affected will be treated as if they are employees from the beginning of the next tax year. That is consistent for both tax and national insurance contributions.⁴⁴

The remaining clauses of the Bill were agreed without debate.

3 Further developments

In his Autumn Statement to the House on 5 December the Chancellor announced that employer NICs for those under the age of 21 would be abolished from April 2015:

At the heart of our economic plan is support for the creation of more jobs. That is why ... in the last Budget I introduced the employment allowance, which eliminates the jobs tax for half a million small businesses. And that is why we will go further still. We are going to abolish the jobs tax on young people under the age of 21. Employer national insurance contributions will be removed altogether on a million and a half jobs for young people. We are not going to leave young people behind as the economy grows. We are going to have a responsible recovery for all.

⁴¹ *op.cit.* c78. See, House of Commons Library Deposited Paper *Dep 2013-1851*, 20 November 2013, ([Draft regulations](#))

⁴² *op.cit.* c79

⁴³ *op.cit.* cc80-81

⁴⁴ *op.cit.* c81. The [Minister's letter](#) was deposited in the Library, with related documents, as Deposited Paper *Dep 2013-1851*, 20 November 2013.

The cost for a business of employing a young person on a salary of £12,000 will fall by over £500. For someone on £16,000, that is over £1,000 off. I want to commend my hon. Friends the Members for Braintree (Mr Newmark) and for Carlisle (John Stevenson) and the Million Jobs campaign for highlighting this issue. The change requires legislation. It will come into force in April 2015, and it will not apply beyond the upper earnings limit.⁴⁵

Details were set out in the Autumn Statement document as follows:

2.48 Employer National Insurance contributions for the under 21s – The government will abolish employer NICs for those under the age of 21 from April 2015, with the exception of those earning more than the Upper Earnings Limit, which is £42,285 a year (£813 per week) in 2015-16. Employer NICs will be liable as normal beyond this limit. This will be legislated for in the NICs Bill currently before Parliament.⁴⁶

This measure is forecast to cost £465m in 2015-16, rising to £530m by 2018-19.⁴⁷ It is anticipated that take-up of the relief is to be above 95% of eligible employers.⁴⁸

HMRC have published a tax information and impact note on this change, which notes that, “the employer NICs liability for nearly 1.5m employees aged between 16 and 20 will be eliminated.” It is anticipated that for most employers “payroll software will be able to implement the exemption automatically.” One-off costs relating to training and familiarisation across employers are estimated to be “around £7.5m”, whereas the administration costs for HMRC are thought to be “in the region of £2m.”⁴⁹

Subsequently the Government tabled a new clause to the Bill to make provision for the new relief, as well as amendments to both clauses 12 and 13 of the Bill:

- to ensure all regulated partnerships covered by the AIFMD rules are included in the scope of the regulations to be made under clause 12; and,
- to allow HMRC to reclassify certain LLP members as employed earners to NICs purposes, and allow HM Treasury to counteract the use of companies or other intermediary structures to avoid the impact of the measure.⁵⁰

This was debated, and agreed at the Bill's Report stage on 10 December. On this occasion the Exchequer Secretary, David Gauke, set out the purpose of the new clause, underlining that the new relief would not have any impact on employees' entitlement to contributory benefits:

New clause 3 brings forward an important initiative ... [from April 2015] employers employing workers under the age of 21 [will] no longer have to pay employers' class 1 national insurance contributions. Proposed new section 9A of the Social Security Contributions and Benefits Act 1992 and its Northern Ireland equivalent bring this into effect by introducing a zero rate of secondary class 1 NICs for all employers on the earnings of employees under the age of 21 ... The measure will apply both to new and

⁴⁵ HC Deb 5 December 2012 cc1112-3

⁴⁶ [Autumn Statement, Cm 8747, December 2013 p87](#). See also, [HC Deb, 5 December 2013, c62WS](#)

⁴⁷ [Cm 8747, December 2013 p78](#) (Table 2.1: item 8)

⁴⁸ HM Treasury, [Autumn Statement 2013 – policy costings](#), December 2013 p17

⁴⁹ HMRC, [Abolition of employers National Insurance contributions for the under 21s](#), 5 December 2013

⁵⁰ Details of these amendments, and impact notes on both the new NI relief and changes to the clauses in the Bill coming out of the partnership review, were given in a Commons Library Deposited paper ([DEP2013-1943, 5 December 2013](#)), and collated [on the Bill page](#).

existing employees aged under 21 and is not time limited ... It is worth bearing in mind that the changes relate to employers' national insurance contributions, and that employees' contributions will remain unchanged. There is no change in terms of contributory benefits.

The new clause contains regulation-making powers to vary the age group and the rate of secondary class 1 NICs for that group, and to reduce the rate of secondary class 1 contributions for a previously specified age group. For example, the Government could allow for an increase in the age bracket of employees falling into the zero-rate band of secondary class 1 contributions. I want to reassure hon. Members that that power is capable of placing an employee only in a lower percentage bracket, and that it is therefore a relieving power only.

There is also a regulation-making power to ensure that the benefit of the zero rate or reduced rate of secondary class 1 NICs will be enjoyed only in respect of earnings below a certain level. In other words, the power will provide a means of introducing an earnings limit. As the Chancellor announced in the autumn statement, this will be set initially at the level of the upper earnings limit, which is expected to be the equivalent of about £42,000 a year in 2015-16.⁵¹

The Minister went on to oppose a Labour amendment to require the Government to assess what the impact of this relief might be if it were introduced a year earlier than anticipated:

Attempting to deliver [the relief] a year earlier, in 2014, would increase the administrative costs to business, and rushing the measure through in that way would be likely to lead to cost confusion and the failure of many employers to take it up. Such a tight time frame would not give employers, payroll software developers and Her Majesty's Revenue and Customs enough time to update their IT systems. It would also not give HMRC enough time to ensure that the policy could be implemented in a way that did not disrupt its other important IT systems. Given that the policy cannot be delivered in April 2014, it would not be a good use of Government time and resources to attempt to estimate the impact of something that we do not intend to do and that cannot be delivered.⁵²

Shabana Mahmood argued that both this relief and the Employment Allowance should be introduced from April 2014:

I understand that software developers are still waiting on HMRC to give them the full guidelines on what software they will need to produce to make sure that take-up of the employment allowance goes ahead with relative ease Given that it is December and [HMRC] have to get ready for the employment allowance to come online in April 2014, they will not have a huge amount of time to get everything in place and ready. If that is the position on the employment allowance, then why not add in the proposal on NICs for under-21s and deal with both issues at the same time?⁵³

Ms Mahmood put the amendment to the vote – though it was defeated, by 294 votes to 225.

The House approved Government amendments to replace clauses 12 & 13, without a vote. The Minister explained the purpose of these changes as follows:

New clause 4 is needed as it addresses a tax issue arising under existing partnership tax rules where the immediate entitlement to partnership profits is restricted by the

⁵¹ HC Deb 10 December 2013 cc169-70

⁵² *op.cit.* c172

⁵³ *op.cit.* c176

alternative investment fund managers directive—AIFMD. HMRC received further information about this during the partnerships review consultation. Following their discussions with the funds sector representatives and the Financial Conduct Authority with responsibility for the AIFMD implementation in the United Kingdom, the Government intend to put in place a statutory mechanism to address the issue, subject to parliamentary approval ...

The new mechanism that the Government propose is designed in such a way as to meet the Government objective of a partnership review to achieve fairer taxation by stopping tax-motivated allocation of profits in mixed membership partnerships that typically include individual and corporate members. The new power introduced under new clause 4 will support the introduction of the mechanism and will be used to change the relevant national insurance contributions legislation by regulation, once the related Finance Bill 2014 legislation becomes law. It will also allow NICs legislation to be amended in future to reflect any subsequent changes to income tax legislation in that area, to maintain symmetry between tax and NICs positions.

New clause 5 and amendment 2 replace clause 13, which would have removed limits on the Treasury categorising members of limited liability partnerships who satisfy certain conditions as employed earners for the purposes of NICs, rather than self-employed earners. New clause 2 provides an express power to treat LLP members who meet certain conditions as employed earners for NICs purposes. Those conditions will be set out in regulations and will follow income tax legislation introduced in the Finance Bill 2014. Broadly, it will mean that the individual member of the LLP has no or little real economic interest or risk in the LLP, and instead will be rewarded by a fixed salary. Those conditions will be based on proposals on which HMRC has consulted, as part of the public consultation on changes to partnership tax and NICs rules.

HMRC has been advised that in response to those proposals, structures with only corporate members were being promoted as a way around the proposed legislation. The schemes involved the individual establishing a personal service company or other intermediary, with that intermediary becoming a member of the LLP in place of the individual in order to avoid those provisions.

New clause 5 provides power to make regulations to achieve the policy objective of the measure, and counteract the artificial imposition of a company or intermediary to avoid the impact of the measure. Regulations will follow new income tax legislation in the Finance Bill 2014. That power will enable the reclassification by regulation of certain LLP members as employed earners for NICs purposes, even when they hide behind a company or intermediary.⁵⁴

Mr Gauke went on to oppose two new clauses tabled by the Opposition – the first, similar to an amendment tabled at the Committee stage, to require Ministers to assess the impact of the Employment Allowance on, among other matters, the level of employment; the second, for a formal review of the administrative costs for employers claiming the Allowance:

Let me make the case, as I did in Committee, for why new clause 1 is unnecessary. The tax information impact note already commits the Government to keep the scheme under review through ongoing communication with taxpayers groups affected by the measure. Moreover, in Committee on 21 November, I agreed that the Government should publish information twice a year about the overall take-up of the employment allowance, including by geographical location ... As I made clear on Second Reading on 4 November, and in the evidence session on 19 November, although the employment allowance will clearly reduce the cost of taking on new staff for small

⁵⁴ *op.cit.* cc185-6

businesses and charities, it will be up to those businesses and charities to decide how they use the resulting national insurance contribution savings ...

HMRC talked over the summer to various interested parties, including software developers, charities and small and medium-sized businesses, about the design and operation of the allowance, including the claims process. There are continuing discussions between HMRC and these groups around the guidance and publicity, and they will continue after the launch of the employment allowance next April. These contacts between HMRC and relevant representative groups will provide the basis for a continuous review of the way in which the allowance is working.⁵⁵

Ms Mahmood withdrew both new clauses, and the House proceeded to give the Bill a Third Reading without a division.

The Bill received a Second Reading in the Lords on 7 January 2014. The Bill was introduced by Lord Newby (Government Deputy Chief Whip) and two other Lords spoke in the debate.⁵⁶ In his speech Lord Razzall underlined the support for the Bill from Liberal Democrats, and noted the welcome given by business bodies for the Employment Allowance, while observing “it just remains to be seen whether this proposal has the effect desired by the Government of helping create new jobs.”⁵⁷ The Labour peer Lord Davies suggested that the Bill was “fairly uncontentious”, and, in particular, welcomed both NI reliefs, though he raised concerns that the zero rate for employees under 21 would not be introduced until 2015.

The Bill was considered in Committee on 23 January, when it was agreed unamended.⁵⁸ The Bill’s report and third reading were completed without debate.⁵⁹

HM Revenue & Customs has published detailed guidance for businesses and charities on claiming the Employment Allowance.⁶⁰

⁵⁵ *op.cit.* cc192-5

⁵⁶ [HL Deb 7 January 2014 cc1490-1498](#)

⁵⁷ *op.cit.* c1495

⁵⁸ [HL Deb 23 January 2014 cc359-366GC](#)

⁵⁹ [HL Deb 10 February 2014 c414](#); [HL Deb 25 February 2013 c833](#)

⁶⁰ HMRC, *Employment Allowance: further guidance on eligibility, claiming, record keeping and penalties*, February 2014