EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT ALLOWANCE (INCREASE OF MAXIMUM AMOUNT) REGULATIONS 2022

2022 No. 364

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument increases the maximum amount of Employment Allowance from £4,000 to £5,000 for the tax year 2022-23 and subsequent tax years.

2.2 The Employment Allowance entitles the majority of businesses, charities and community amateur sports clubs to a reduction in their secondary Class 1 National Insurance contributions (NICs) up to the value of the allowance.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument comes into force less than 21 days after it was laid. The instrument increases the Employment Allowance by £1,000 from 6 April 2022, supporting smaller businesses by reducing their costs of employment. This policy was announced by the Chancellor at Spring Statement on 23 March 2022. The date for Spring Statement has been fixed since it was announced on 23 December 2021. Given that the legislation could not be laid before the policy has been announced, HMRC has had to breach the 21-day rule to the minimum extent possible by laying the instrument as soon as possible after announcement.

3.2 The consequences of delaying the legislation coming into force, to comply with the 21-day rule, would be that this wholly relieving measure does not take effect on 6 April 2022, as the Chancellor announced at his Spring Statement, to ensure support is provided to businesses from the start of the 2022-23 tax year. Delaying even a few days into the new tax year would be confusing for employers and introduce administrative complications for them to operate two maximum amounts in one tax year.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is United Kingdom.

5. European Convention on Human Rights

5.1 The Financial Secretary to the Treasury the Rt Hon Lucy Frazer QC MP has made the following statement regarding Human Rights:

"In my view the provisions of the Employment Allowance (Increase of Maximum Amount) Regulations 2022 are compatible with the Convention rights.".

6. Legislative Context

6.1 The Employment Allowance was introduced by National Insurance Contributions Act 2014 (NICA). It provides that an allowance of up to £4,000 each tax year may be offset against all eligible secondary Class 1 NICs liabilities by businesses, charities and amateur sports clubs.

6.2 Secondary Class 1 NICs are paid by employers. Section 2 of NICA excludes certain types of employers and employer Class 1 NICs liabilities from qualifying for an Employment Allowance. This includes public sector employers (e.g. Government departments, local authorities and the National Health Service) who cannot claim the employment allowance unless that employer has charitable status.

6.3 The Employment Allowance (Excluded Companies) Regulations 2016 (SI 2016/344) set out that companies will not qualify for the Employment Allowance, where there is only a single person paid above the secondary NICs threshold, and that employee is a director. The Employment Allowance (Excluded Persons) Regulations 2020 (SI 2020/218) exclude employers with an employer NICs liability in the previous tax year of £100,000 or more from qualifying for the Employment Allowance.

6.4 Section 74 of the Coronavirus Act 2020 modifies the procedure by which regulations made under section 5(1)(a) of National Insurance Contributions Act 2014 which increase a person's employment allowance are approved by Parliament. It applies negative procedure to such regulations made before the end of the period of 2 years beginning with the day on which that Act is passed (25 March 2020).

7. Policy background

What is being done and why?

7.1 This instrument amends section 1(2)(a) of NICA by increasing the maximum amount of Employment Allowance to £5,000.

7.2 The Employment Allowance was first announced in Budget 2013, as an entitlement of £2,000 a year for businesses, charities, and amateur sports clubs towards their secondary Class 1 NICs liability. This was done with the intention to support employers, particularly small businesses wanting to hire their first employee or expand their workforce.

7.3 At Summer Budget 2015, it was announced that the Employment Allowance would be increased by £1,000, to a maximum amount of £3,000 per tax year, from April 2016 and an exclusion for single director companies was also included.

7.4 At Budget 2018, it was announced that the Employment Allowance would be restricted to smaller businesses with an annual secondary Class 1 NICs liability of less than £100,000. The purpose of this reform, which came into effect from April 2020, was to better target the Employment Allowance to support smaller businesses.

7.5 At Budget 2020, it was announced that the Employment Allowance would be increased by a further £1,000 to a maximum amount of £4,000 per tax year, from April 2020.

7.6 This measure, which was announced at Spring Statement 2022, increases the level of support available to eligible employers, raising the maximum amount of Employment Allowance an employer can claim to £5,000.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation outcome

10.1 This measure was announced at Spring Statement 2022. Since it is increasing the value of an available relief, a consultation was not considered necessary.

11. Guidance

11.1 GOV.UK and other guidance for employers explaining how to claim the Employment Allowance has been updated and will be published as these changes come into effect in April 2022.

12. Impact

12.1 The impact on business, charities or voluntary bodies eligible for the Employment Allowance will be financially positive. Those eligible will receive a maximum additional £1,000 a year which will be deducted from their secondary Class 1 NICs, and from the 2023-24 tax year onwards their Health and Social Care Levy liabilities (secondary Class 1 NICs element).

12.2 There is no, or no significant, impact on the public sector, because the increase in the Employment Allowance is not available to public sector employers.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is because the ongoing administrative burden is expected to be negligible: employers eligible for and claiming the Employment Allowance will automatically receive the increase. There are likely to be negligible one-off costs as businesses familiarise themselves with the new value.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to report and review take-up statistics for the Employment Allowance. This will inform future policy decisions.

14.2 This instrument does not include a statutory review clause because it relates to a tax, duty, levy or other charge and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Joanne Collings at HMRC Telephone: 03000 575869 or email: Joanne Collings@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Edmund Hair, Deputy Director for National Insurance Policy, International and Student Finance, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.