



FINANCE (NO.2) BILL 2019-21 CLAUSE 22 (PAYMENTS ON TERMINATION OF EMPLOYMENT)

Issued 12 April 2021

Text of ICAEW briefing for MPs on **Finance (No.2) Bill 2019-21** clause 22 payments on termination of employment published by government on 11 March 2021.

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EXECUTIVE SUMMARY

1. We recommend that subclause 22(7)(c) (which inserts new subsection 402D(6A) ITEPA 2003) needs to make it clear that the method of calculation of post-employment notice pay that it sets out is an alternative that can be used rather than must be used.
2. This would make the legislation on termination payments agree with the policy intent stated in the Finance Bill Explanatory Notes, the Notes on Finance Bill resolutions 2021 and HMRC's existing guidance.

THE MEASURE

3. Clause 22 amends the income tax treatment of termination payments. As explained in the Finance Bill Explanatory Notes (FBEN) at paragraph 11, subclause 22(7)(c) provides for the insertion into s402D ITEPA 2003 of a new subsection (6A) setting out an alternative post-employment notice pay (PENP) calculation for certain employees paid by equal monthly instalments whose post-employment notice period is not a whole number of months.
4. The clause will apply to those individuals who both have their employment terminated and receive a termination payment on or after 6 April 2021.

OUR CONCERN

5. The alternative calculation in new subsection 402D(6A) which is being inserted by subclause 22(7)(c) is described in both the FBEN at para 11 and the Notes on Finance Bill resolutions 2021 at para 17 as an alternative calculation.
6. As stated in the FBEN background note at para 15, the method for calculating PENP set out in subclause 22(7)(c) has been allowed since 2019 by HMRC under its collection and management powers as an alternative calculation where it benefits of the employee (further details are in HMRC's employment income manual at EIM13886).
7. We believe that the intention of legislating this point is to put into law the ability to choose to adopt the alternative method. This is in line with HMRC's policy of enacting extra-statutory concessions and other easements following the Wilkinson case.
8. However, the Finance Bill, if enacted, will make the method of calculation compulsory.
9. We therefore believe that the proposed legislation does not reflect intended policy.

OUR RECOMMENDATION

10. We recommend that new subsection 402D(6A) ITEPA 2003 being inserted by FB subclause 22(7)(c) makes it clear that the calculation is an alternative that can be used rather than must be used.

SUGGESTED AMENDMENT

11. Page 17, line 17, insert after 'then' and before '—'
'where it is to the benefit of the employee the following calculation may be used'

FURTHER INFORMATION

12. As part of our Royal Charter, we have a duty to inform policy in the public interest.