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UK GOVERNMENT MAKES CHANGES TO PROPOSED EMPLOYEE OWNER SCHEME

The UK Government has issued the response to the recent consultation on the new employment status of "employee owner" that it intends to introduce in April 2013 (see our update of 19 October 2012 for further details). It has acknowledged that a number of specific issues and concerns were raised through the consultation. Yet despite this – and its own admission that "a very small number of responses welcomed the scheme and suggested they would be interested in taking it up" (for "very small" read just three out of 184 responses to that particular question, two of those from individuals!) – the Government is intent on pressing ahead. It is, however, intending to amend the relevant section of the Growth and Infrastructure Bill, in response to the consultation, as follows to:

- **Explicitly state that the shares should be fully paid up and be issued free of charge to the employee owner**. This would avoid the situation whereby an employee owner who receives shares that are not fully paid up is left with a financial liability if the company becomes insolvent. The Government also wants to make it clear that an employee owner should give no payment or consideration for the shares other than by entering into the agreement.
- **Enable an increase in the minimum value of the shares offered (currently £2,000)**. The BIS Secretary of State will have the power to increase, but not decrease, the minimum value of the shares that must be offered to the employee owner.
- **Remove the share range upper limit of £50,000**. This will enable businesses to offer more shares under the scheme, though does not explain why they should ever want to do this. The exemption from Capital Gains Tax (CGT) will still only apply to the first £50,000 of offered shares. Draft legislation on the CGT exemption will be published on 11 December 2012. The Government is also exploring the possibly of reducing income tax and National Insurance contributions when employee owners receive shares.
- **Allow non-UK registered companies to use the employee owner status**.
- **Change the additional paternity leave notice period to be in line with the proposed increased period for maternity and adoption leave**. It is hard to know whether it is more depressing that this was omitted first time around or that anyone in Government thinks it will make any difference to the take-up for employee owner contracts.
- **Allow shares to be issued in both the employing company and its parent (potentially useful if the employing company is of little value)**. It will not, however, be possible to allow qualifying shares to be issued in a subsidiary of the employing company.

The new status is also to be re-named 'employee shareholder', perhaps recognising that to describe as "owner" someone holding £2,000 of shares in a substantial company borders on the delusional.

The Government appears to be leaving the door open for further changes to the scheme (if required) ahead of the April implementation.

In what is becoming a recurrent theme with the Government's recent employment proposals, it is intending to deal with concerns raised by the consultation process by way of "guidance" – for example in this case, in relation to share valuations and forfeiture of shares on termination. It had better be good. These are not concerns in the "faintly hesitant" sense but fundamental planks of the whole scheme. The idea that they will fall outside the statute is worrying enough, but couple that with the obviously overwhelming public indifference evidenced by the responses to the consultation process and you end up with poor law which no one will either want to use or be able to understand even if they do.

For initial reactions and comments on the scheme, see David Whincup's, Morna Mackenzie's and Gerry Peyton's recent posts on our Employment Law Worldview Blog.

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