

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 51 and Schedule 8: Employee Share Schemes

Summary

1. This section and Schedule implement several recommendations of the Office of Tax Simplification (OTS) to simplify the tax rules and administrative processes for employee share schemes. The main changes include:
 - Replacing approval by HM Revenue & Customs (HMRC) with self certification for three of the tax advantaged employee share schemes - Share Incentive Plans (SIP), Save As You Earn Option Schemes (SAYE) and Company Share Option Plans (CSOP).
 - Introducing online filing for all employee share scheme returns and information, including for Enterprise Management Incentives (EMI) and non-tax advantaged arrangements providing employment-related securities.
 - a number of technical changes to the SIP, SAYE and CSOP rules designed to clarify the legislation, including modification of the 'purpose test' that must be met by these schemes.
2. These changes aim to simplify the employee share scheme rules where these may create undue complexities or unnecessary administrative burdens for scheme users. They support the Government's objective to simplify the tax system. The changes will come into effect on 6 April 2014.

Details of the Schedule

3. The Schedule implements a series of changes across all schemes and arrangements providing employment-related securities.
4. The main legislation as it currently stands is set out in Income Tax (Earnings and Pensions) Act 2003 (ITEPA). The provisions on SIP are in sections 488-515 and Schedule 2 to ITEPA; on SAYE in sections 516-519 and Schedule 3; on CSOP in sections 521-526 and Schedule 4; and on EMI in sections 527-541 and Schedule 5. The rules concerning the provision of information to HMRC in relation to employment-related securities are in sections 421J-421L. Statutory references in this Note are to provisions in ITEPA unless otherwise stated.

Part 1: Share Incentive Plans

5. Paragraph 1 introduces amendments to Chapter 6 of Part 7 of ITEPA, which provides for income tax advantages to be available in connection with shares obtained under SIP.
6. Paragraphs 2-12 make various changes to Chapter 6 to reflect the replacement of the present arrangements for HMRC approval of SIPs with self certification of plans by employers. In particular the paragraphs remove legislative references to 'approved

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SIPs'. Instead the concept is introduced of SIPs that meet the conditions being certified by employers as 'Schedule 2 SIPs'.

7. Paragraph 8 modifies the current rules in Chapter 7 for determining the value of partnership shares (and the amount that counts as employment income of the participant) upon the shares ceasing to be subject to the plan within five years of their acquisition by the participant. This includes special rules that apply in certain circumstances where shares are required to be offered for sale by the participant.
8. Paragraphs 13-32 set out amendments to Schedule 2 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SIPs to self certification by employers, and there are new powers for HMRC to determine that a plan is no longer to be a Schedule 2 SIP, and to make enquiries into the running of a SIP.
9. Paragraph 16 amends the introductory provision for the SIP rules in paragraph 1 Schedule 2, taking account of the new self certification arrangements and HMRC powers to enquire into plans and decide that certain plans should not be Schedule 2 SIPs.
10. Paragraph 19 amends paragraph 7 Schedule 2 to introduce a new purpose test to be met by Schedule 2 SIPs. In addition to the current requirement that the purpose of a SIP must be to provide shares that give employees a continuing stake in the company, key new conditions are that SIPs must not provide benefits other than in accordance with Schedule 2 (unless the benefits are the same as the employee would have received had the shares been acquired outside the SIP), and in particular must not provide participants with cash as an alternative to shares.
11. Paragraph 23 amends paragraph 43 Schedule 2 to make clear that a plan may require an employee who has purchased SIP partnership shares to offer the shares for sale in certain circumstances, and provides conditions in relation to the price at which the shares are to be offered for sale.
12. Paragraph 25 amends the provisions in paragraph 56 Schedule 2 concerning the repayment of partnership share money to employees. It concerns cases in which HMRC give notice that the plan is not to be a Schedule 2 SIP, and takes account of the right of companies to appeal against such a notice.
13. Paragraph 26 amends paragraph 65 Schedule 2 to make clear that a plan may require an employee who has acquired SIP dividend shares offer them for sale in certain circumstances, and provides conditions in relation to the price at which the shares are to be offered for sale.
14. Paragraph 28 inserts a new Part 10 in Schedule 2, setting out rules for notification of SIPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of plans and online filing of returns. They include HMRC powers to apply penalties, determine that a plan is not to be a Schedule 2 SIP and make enquiries into the running of a SIP, as well as appeal rights in respect of these powers.
15. New paragraph 81A of Schedule 2 provides new rules concerning notification of SIPs to HMRC. For a plan to be a Schedule 2 SIP and qualify for favourable tax treatment, the company must give notice to HMRC and make a declaration that the plan meets and, where the declaration is made after the first award of shares, has met the relevant conditions of Schedule 2. The notice should be given by 6 July following the tax year in which the first award of shares is made under the scheme, and sub-paragraph (5) explains when the plan will be a Schedule 2 SIP in cases when this deadline is missed.
16. New paragraph 81B obliges companies to make annual returns to HMRC in respect of SIPs for which notice has been given under paragraph 81A, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the SIP or the plan trust in the tax year in question and contain a declaration by the employer. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to

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make an annual return to HMRC applies for each year prior to and including the year of the termination of a plan. If companies become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

17. New paragraph 81C lays down the penalties to which companies may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where companies have a 'reasonable excuse' for the failure.
18. New paragraph 81D provides that notification of SIPs and annual SIP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.
19. New paragraph 81E sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the company.
20. New paragraph 81F empowers HMRC to make enquiries into a SIP after giving notice to a company of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 2 are not or have not been met in relation to the plan.
21. New paragraph 81G provides the rules for closure of HMRC enquiries, the decision that may be included within an HMRC closure notice, the right of companies to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.
22. New paragraph 81H sets out the action HMRC may take where a SIP does not meet or has not met the conditions of Schedule 2. If the breach of the SIP rules is considered serious enough to warrant it, HMRC may decide that a plan is not to be a Schedule 2 SIP either from the time of the closure notice or such time as is specified in the notice, and the company is liable for a penalty. This will not affect the operation of the SIP rules (and any tax advantages available) in relation to shares awarded prior to the time in question.
23. New paragraph 81I sets out the action HMRC may take in cases where a breach of the SIP rules is not considered serious enough for the plan not to be a Schedule 2 SIP. HMRC will require the company to put right any failure within a specified period, and the company is liable for a penalty. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a plan is not to be a Schedule 2 SIP either from the time of the notice or such time as is specified in the notice, and the company is liable for a further penalty. This will not affect the operation of the SIP rules (and tax advantages available) in relation to shares awarded prior to the time in question.
24. New paragraph 81J sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.
25. New paragraph 81K provides rights for companies to appeal against decisions of HMRC, for example that a plan is not to be a Schedule 2 SIP and on imposition of penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.
26. Paragraph 30 confirms that shares appropriated to, or acquired on behalf of, a SIP participant may not be awarded under a plan following its termination. This makes clear that the paragraph 90 Schedule 2 prohibition on the award of further shares after termination of a plan applies to SIP dividend shares as well as other types of SIP shares.

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27. Paragraph 31 amends HMRC's powers in paragraph 93 Schedule 2 to require information concerning a SIP. In particular HMRC are empowered to require information needed to check details supplied by companies in their notification of a SIP or annual SIP returns, or to determine the liability to tax of any relevant person.
28. Paragraphs 33-43 make amendments to various provisions of Taxation of Chargeable Gains Act 1992 (TCGA) arising from the replacement of HMRC approval of SIPs with self certification.
29. Paragraphs 44-52 make amendments to various provisions of ITEPA and Finance Act 2004 (FA 2004).
30. Paragraphs 53-67 make amendments to various provisions of Income Tax (Trading and Other Income) Act 2005 (ITTOIA).
31. Paragraphs 57 and 63 introduce modifications to the rules that apply to determine for income tax purposes the amount of distribution treated as made to the SIP participant, and the amount of dividend treated as paid to the participant, where dividend shares cease to be subject to a Schedule 2 SIP within three years of their acquisition on the participant's behalf where shares are required to be offered for sale by a SIP participant.
32. Paragraphs 68-73 make amendments to various provisions of Income Tax Act 2007 (ITA 2007).
33. Paragraphs 74-83 make amendments to various provisions of Corporation Tax Act 2009 (CTA 2009). These amendments arise from the replacement of HMRC approval of SIPs with self certification, and include in paragraph 83 an amendment to section 998 CTA 2009 to enable an officer of HMRC to direct that a deduction made under section 987 CTA 2009 for the costs of setting up a SIP is withdrawn where a plan ceases to be a Schedule 2 SIP.
34. Paragraphs 84-87 make amendments to the Individual Savings Account Regulations 1998.
35. Paragraph 88 revokes the Employee Share Schemes (Electronic Communications of Returns and Information) Regulations 2007, which are superseded by the provisions of this Schedule.
36. Paragraph 89 provides that the new rules for SIPs come into force on 6 April 2014, and paragraph 90 introduces transitional provisions for SIPs approved by HMRC before that date.
37. Paragraph 91 provides that in the case of SIPs approved immediately before 6 April 2014, any provisions of the plan which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 2).
38. Paragraph 92 provides that for these existing approved SIPs the new purpose test introduced by paragraph 19 of this Schedule only applies from such time as there is alteration to a key feature of the SIP or the plan trust.
39. Paragraph 93 provides that these existing approved SIPs have effect from 6 April 2014 as if the SIP and plan trust include various modifications made by Part 1 of this Schedule.
40. Paragraph 94 modifies arrangements for the notification of these plans under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of shares acquired or appropriated under a SIP before 6 April 2014, the SIP code (and tax advantages where appropriate) will still apply in relation to these shares, whether or not the plan is notified to HMRC. HMRC's ability to determine that a scheme is not a Schedule 2 SIP applies in relation to breaches of the

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SIP rules that occurred prior to 6 April 2014. An annual return is required in relation to the schemes even if the scheme has not been notified to HMRC.

41. Paragraph 95 ensures that the availability of certain corporation tax deductions in relation to set up costs for a SIP approved by HMRC before 6 April 2014 is not affected by any changes in Part 1 of the Schedule.

Part 2: SAYE Option Schemes

42. Paragraph 97 introduces amendments to Chapter 7 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under SAYE schemes.
43. Paragraphs 98-101 make various changes to Chapter 7, mainly to reflect the replacement of the present arrangements for HMRC approval of SAYE schemes with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved SAYE schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 3 SAYE option schemes'. In addition, paragraph 101 amends section 519 ITEPA to reflect the tax relief available for certain exercises of SAYE options in the case of a 'non-UK company reorganisation arrangement'.
44. Paragraphs 102-120 set out amendments to Schedule 3 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of SAYE schemes to self certification by employers, and there are new powers for HMRC to determine that a scheme is not to be a Schedule 3 SAYE scheme, and to make enquiries into the running of a scheme.
45. Paragraph 105 amends the introductory provision for the SAYE rules in paragraph 1 Schedule 3, taking account of the new self certification arrangements and HMRC powers to enquire into schemes and decide that certain schemes should not be Schedule 3 SAYE schemes.
46. Paragraph 108 amends paragraph 5 Schedule 3 to introduce a new purpose test to be met by Schedule 3 SAYE schemes. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 3. In particular, schemes must not provide participants with cash as an alternative to shares or share options.
47. Paragraph 109 amends the requirements relating to shares that may be subject to SAYE options to reflect changes made in paragraph 114 of this Schedule, concerning the exercise of options on certain company events where shares in the company to which an option relates cease to meet the conditions of Schedule 3.
48. Paragraph 111 amends the provisions of paragraph 28 Schedule 3, which allow adjustment of the price, amount or description of shares under an SAYE option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation.
49. Paragraph 112 amends the provisions in paragraph 32 Schedule 3 to make clear that the twelve month exercise period for options held by a participant who dies is a minimum.
50. Paragraph 113 amends provisions in paragraph 34 Schedule 3 concerning exercise of options where employment ceases, to remove a minor element of duplication in relation to arrangements under the Transfer of Undertakings (Protection of Employment) Regulations.
51. Paragraph 114 amends provisions in paragraph 37 Schedule 3 allowing exercise of SAYE options where certain 'company events' occur.

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- The circumstances in which paragraph 37 may apply in 'non-UK company reorganisations' are clarified in new sub-paragraph (4A).
 - Where shares in the company to which an option relates cease to meet the conditions of Schedule 3, because control of the original company has changed hands in various specified circumstances, new sub-paragraphs (6B) to (6D) of paragraph 37 allow scheme rules to provide that the option may still be exercised by the participant within a period of 20 days after the relevant event.
 - New sub-paragraphs (6E) to (6F) allow scheme rules to provide for options to be exercised within a period of 20 days before a general offer to acquire the whole of the issued share capital of the company to which an option relates, or before certain takeovers sanctioned by the courts where an offeror has the right to buy out minority shareholders. Where scheme rules make such a provision, they must also provide that, if in such cases an option has been exercised in anticipation of a change of control and this does not in the event take place within 20 days of the exercise, that exercise is treated as having had no effect.
52. Paragraph 115 concerns provisions in paragraph 38 Schedule 3 allowing exchange of options on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.
53. Paragraph 116 amends provisions in paragraph 39 Schedule 3 concerning the requirements about share options granted in exchange for other SAYE options on a company reorganisation. In such an exchange, the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation. The market value of shares for the purposes of paragraph 39 must be determined using a methodology agreed by HMRC.
54. Paragraph 117 inserts a new Part 8 in Schedule 3, setting out rules for notification of SAYE schemes, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of schemes and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is not to be a Schedule 3 SAYE scheme and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.
55. New paragraph 40A of Schedule 3 provides new rules concerning notification of SAYE schemes to HMRC. For a scheme to be a Schedule 3 SAYE scheme and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it meets and, if the declaration is made after the date of the first grant of options, has met the conditions of Schedule 3. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme, and sub-paragraph (5) explains when the scheme will be a Schedule 3 SAYE scheme in cases where this deadline is missed.
56. New paragraph 40B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 3 SAYE schemes, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the SAYE scheme in the tax year in question and of any variations made to terms of SAYE options to take account of variations in share capital; and must contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme. If scheme organisers become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.

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57. New paragraph 40C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is allowed where scheme organisers have a 'reasonable excuse' for the failure.
58. New paragraph 40D provides that notification of SAYE schemes and annual SAYE returns must be delivered in electronic form in a manner prescribed by HMRC, unless a scheme organiser has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.
59. New paragraph 40E sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the scheme organiser.
60. New paragraph 40F empowers HMRC to make enquiries into an SAYE scheme after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 3 are not or have not been met in relation to the scheme.
61. New paragraph 40G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.
62. New paragraph 40H sets out the action HMRC may take where an SAYE scheme does not meet or has not met the conditions of Schedule 3. If the breach of the SAYE rules is considered serious enough to warrant it, HMRC may decide that a scheme is not to be a Schedule 3 SAYE scheme either from the time of the closure notice or such time as is specified in the notice, and the scheme organiser is liable for a penalty. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, the time in question.
63. New paragraph 40I sets out the action HMRC may take in cases where a breach of the SAYE rules is not considered serious enough that the scheme is not to be a Schedule 3 SAYE scheme. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser is liable for a penalty. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is not to be a Schedule 3 SAYE scheme either from the time of the notice or such time as is specified in the notice, and the scheme organiser is liable for a further penalty. This will not affect the operation of the SAYE rules (and tax advantages available) in relation to options granted prior to, but exercised after, the time in question.
64. New paragraph 40J sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.
65. New paragraph 40K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is not to be a Schedule 3 SAYE scheme and on imposition of penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.
66. Paragraph 118 amends HMRC's powers in paragraph 45 Schedule 3 to require information concerning an SAYE scheme. In particular HMRC are empowered to require information needed to check details supplied by scheme organisers in their notification of an SAYE scheme or annual SAYE returns, or to determine the liability to tax of any relevant person.
67. Paragraph 119 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the SAYE code.

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68. Paragraphs 121-128 make amendments to various provisions of TCGA, mainly arising from the replacement of HMRC approval of SAYE schemes with self certification.
69. Paragraphs 129-142 make amendments to various provisions of ITEPA, FA 2004, ITTOIA and CTA 2009.
70. Paragraphs 143-145 make amendments to the Individual Savings Account Regulations 1998.
71. Paragraph 146 provides that the new rules for SAYE schemes come into force on 6 April 2014, and paragraph 147 introduces transitional provisions for schemes approved by HMRC before that date.
72. Paragraph 148 provides that in the case of SAYE schemes approved immediately before 6 April 2014, any provisions of the scheme which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 3).
73. Paragraph 149 provides that for these existing approved schemes the new purpose test introduced by paragraph 108 of this Schedule only applies from such time as there is alteration to a key feature of the scheme.
74. Paragraphs 150-154 provide that these existing approved schemes have effect from 6 April 2014 as if the scheme includes various modifications made by Part 2 of this Schedule, and also provides that other modifications made by Part 2 do not have effect in certain circumstances.
75. Paragraph 155 modifies the arrangements for the notification of these existing approved schemes under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of SAYE options granted before 6 April 2014, the SAYE code (and tax advantages where appropriate) will still apply in relation to these options, whether or not the scheme is notified to HMRC. HMRC's ability to determine that a scheme is not a Schedule 3 SAYE scheme applies in relation to breaches of the SAYE rules that occurred prior to 6 April 2014. An annual return is required in relation to the scheme even if the scheme has not been notified to HMRC.
76. Paragraph 156 ensures that the availability of certain corporation tax deductions in relation to set up costs for a SAYE scheme approved by HMRC before 6 April 2014 is not affected by any changes in Part 2 of the Schedule.

Part 3: CSOP Schemes

77. Paragraph 158 introduces amendments to Chapter 8 of Part 7 of ITEPA, which provides for exemption from income tax in connection with share options granted under CSOP schemes.
78. Paragraphs 159-162 make various changes to Chapter 7 to reflect the replacement of the present arrangements for HMRC approval of CSOPs with self certification by scheme organisers. In particular these paragraphs remove legislative references to 'approved CSOP schemes'. Instead the concept is introduced of schemes that meet the conditions being certified by scheme organisers as 'Schedule 4 CSOP schemes'. In addition, paragraph 161 makes changes to section 524 ITEPA to reflect the tax relief available for certain exercises of CSOP options in the case of a 'non-UK company reorganisation arrangement'.
79. Paragraphs 163-182 set out amendments to Schedule 4 ITEPA. Many of these are consequential changes caused by the shift from HMRC approval of CSOPs to self certification by employers, and there are new powers for HMRC to determine that a scheme is not to be a Schedule 4 CSOP, and to make enquiries into the running of a scheme.

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80. Paragraph 166 amends the introductory provision for the CSOP rules in paragraph 1 Schedule 4, taking account of the new self certification arrangements for CSOP and HMRC powers to enquire into schemes and decide that certain schemes should not be Schedule 4 CSOPs.
81. Paragraph 169 amends paragraph 5 Schedule 4 to introduce a new purpose test that must met by Schedule 4 CSOPs. Key conditions are that schemes must provide benefits for employees and directors in the form of share options, and must not provide benefits other than in accordance with Schedule 4. In particular, schemes must not provide participants with cash as an alternative to shares or share options.
82. Paragraph 171 amends the requirements relating to shares that may be subject to CSOP options, to reflect changes made in paragraph 175 of this Schedule concerning the exercise of options on certain company events, where shares in the company to which an option relates cease to meet the conditions of Schedule 4.
83. Paragraph 173 inserts new paragraph 21A in Schedule 4, which sets out a series of general conditions that CSOP options must satisfy. In particular, certain terms of the option must be stated at the time the option is granted. Terms of an option may be changed after grant, but only as provided for in paragraph 22 of Schedule 4 (concerning requirements as to the price for acquisition of shares) or on the basis of a mechanism stated at the grant of the option. Any such mechanism must be applied in a fair and reasonable way. The terms of the option and any mechanism for varying it must be notified to the participant as soon as practicable after grant of the option.
84. Paragraph 174 amends the provisions of paragraph 22 Schedule 4, which allow adjustment of the price, amount or description of shares under a CSOP option where there is a variation in the share capital of the company. This amendment removes the requirement for these adjustments to be approved by HMRC, but provides that the market value of the shares that may be acquired under the option and the exercise price of the option must be substantially the same immediately before and after the variation.
85. Paragraph 175 amends provisions in paragraph 25 Schedule 4 concerning the exercise of options after the death of the participant, to make clear that the twelve month exercise period for options held by a participant who dies is a minimum.
86. Paragraph 176 amends provisions in paragraph 25A Schedule 4 allowing exercise of CSOP options where certain 'company events' occur.
- The circumstances in which paragraph 25A may apply in 'non-UK company reorganisations' are clarified in new sub-paragraph (6A).
 - Where shares in the company to which an option relates cease to meet the conditions of Schedule 4, because control of the original company has changed hands in various specified circumstances, new sub-paragraphs (7B) to (7D) of paragraph 25A allow scheme rules to provide that the option may still be exercised by the participant within a period of 20 days after the relevant event.
 - New sub-paragraphs (7E) to (7F) allow scheme rules to provide for options to be exercised within a period of 20 days before a general offer to acquire the whole of the issued share capital of the company to which an option relates, or before certain takeovers sanctioned by the courts where an offeror has the right to buy out minority shareholders. Where scheme rules make such a provision, they must also provide that if in such cases an option has been exercised in anticipation of a change of control and this does not in the event take place within 20 days of the exercise, that exercise is treated as having had no effect.
87. Paragraph 177 concerns provisions in paragraph 26 Schedule 4 allowing exchange of option on a company reorganisation. Scheme rules may provide for exchange of options if a company acquires control as a result of a 'non-UK company reorganisation arrangement', where certain conditions are met.

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88. Paragraph 178 amends provisions in paragraph 27 Schedule 4 concerning the requirements about share options granted in exchange for other CSOP options on a company reorganisation. In such an exchange, the market value of the shares and the price payable for the shares by the participant must be substantially the same under the new options as it was under the old options. The market value of shares for the purposes of paragraph 27 must be determined using a methodology agreed by HMRC.
89. Paragraph 179 inserts a new Part 7 in Schedule 4, setting out rules for notification of CSOPs, annual returns and HMRC enquiries. The new provisions reflect the shift to self certification of schemes and online filing of returns. They include HMRC powers to apply penalties, determine that a scheme is not a Schedule 4 CSOP and make enquiries into the running of a scheme, as well as appeal rights in respect of these powers.
90. New paragraph 28A of Schedule 4 provides new rules concerning notification of CSOPs to HMRC. For a scheme to be a Schedule 4 CSOP and qualify for favourable tax treatment, the scheme organiser must give notice to HMRC and make a declaration that it meets and, where the declaration is made after the first grant of options, has met the conditions of Schedule 4. The notice should be given by 6 July following the tax year in which the first option is granted under the scheme and sub-paragraph (5) explains when a scheme will be a Schedule 4 CSOP in cases where this deadline is missed.
91. New paragraph 28B obliges scheme organisers to make annual returns to HMRC in respect of Schedule 4 CSOPs, containing the information required by HMRC. Returns must give details of any alterations made to a key feature of the CSOP in the tax year in question and of any variations made to terms of CSOP options to take account of variations in share capital; and must contain a declaration by the scheme organiser. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. This requirement to make an annual return to HMRC applies for each year prior to and including the year of the termination of a scheme. This will be where there are no outstanding options under the scheme, and no intention to grant any further options under the scheme. If scheme organisers become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.
92. New paragraph 28C lays down the penalties to which scheme organisers may be liable for failure to deliver annual returns by the specified deadline. An exception is specified where scheme organisers have a 'reasonable excuse' for the failure.
93. New paragraph 28D provides that notification of CSOPs and annual CSOP returns must be delivered in electronic form in a manner prescribed by HMRC, unless a scheme organiser has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.
94. New paragraph 28E sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the scheme organiser.
95. New paragraph 28F empowers HMRC to make enquiries into a CSOP after giving notice to scheme organisers of their intention to do so, and sets out time periods for providing this notice. This is allowed in specified circumstances, including where HMRC have reasonable grounds for believing the requirements of Schedule 4 are not or have not been met in relation to the scheme.
96. New paragraph 28G provides the rules for closure of HMRC enquiries, the decisions that may be included in an HMRC closure notice, the right of scheme organisers to apply to tribunals to direct that closure notices be given and the requirement on the tribunal to provide such a direction in certain circumstances.
97. New paragraph 28H sets out the action HMRC may take where a CSOP does not meet or has not met the conditions of Schedule 4. If the breach of the CSOP rules is considered

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serious enough to warrant it, HMRC may decide that a scheme is not to be a Schedule 4 CSOP either from the time of the closure notice or such time as is specified in the notice, and the scheme organiser is liable for a penalty.

98. New paragraph 28I sets out the action that HMRC may take in cases where a breach of the CSOP rules is not considered serious enough that the scheme is not to be a Schedule 4 CSOP. HMRC will require the scheme organiser to put right any failure within a specified period, and the scheme organiser is liable for a penalty. Where the breach is not put right within the specified period, HMRC may provide by a 'default notice' that a scheme is not to be a Schedule 4 CSOP either from the time of the notice or such time as is specified in the notice, and the scheme organiser is liable for a further penalty.
99. New paragraph 28J sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.
100. New paragraph 28K provides rights for scheme organisers to appeal against decisions of HMRC, for example that a scheme is not to be a Schedule 4 CSOP and on imposition of penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.
101. Paragraph 180 amends HMRC's powers in paragraph 33 Schedule 4 to require information concerning a CSOP. In particular HMRC are empowered to require information needed to check details supplied by a scheme organiser in their notification of a CSOP scheme or annual CSOP returns, or to determine the liability to tax of any relevant person.
102. Paragraph 181 explains the term 'non-UK company reorganisation arrangement', involving companies set up under the law of an overseas territory, for the purposes of the CSOP code.
103. Paragraphs 183-189 make amendments to various provisions of TCGA arising from the move to self certification of CSOPs.
104. Paragraphs 190-203 make amendments to various provisions of ITEPA.
105. Paragraph 204 provides that the new rules for CSOPs come into force on 6 April 2014, and paragraph 205 introduces transitional provisions for schemes approved by HMRC before that date.
106. Paragraph 206 provides that in the case of CSOPs approved immediately before 6 April 2014, any provisions of the scheme which require HMRC approval for any purpose will have effect from that date without the requirement for approval (except where approval is expressly required under Schedule 4).
107. Paragraph 207 provides that for these existing approved schemes the new purpose test introduced by paragraph 168 of this Schedule only applies from such time as there is alteration to a key feature of the scheme.
108. Paragraphs 208-212 provide that these existing approved schemes have effect from 6 April 2014 as if the scheme includes various modifications made by Part 3 of this Schedule, and also provides that other modifications made by Part 3 do not have effect in relation to options granted under the scheme before that date.
109. Paragraph 213 modifies the arrangements for the notification of these existing approved schemes under self certification (including the declaration required within the notice), as well as HMRC's powers of enquiry. In the case of CSOP options granted before 6 April 2014, the CSOP code (and tax advantages where appropriate) will apply in relation to these options, unless the scheme is not notified to HMRC or prior to 6 April 2014 HMRC refused to approve the scheme or decided to withdraw approval. HMRC's

ability to determine that a scheme is not a Schedule 4 CSOP applies in relation to breaches of the CSOP rules that occurred prior to 6 April 2014.

110. Paragraph 214 ensures that the availability of certain corporation tax deductions in relation to set up costs for a CSOP scheme approved by HMRC before 6 April 2014 is not affected by any changes in Part 3 of the Schedule.

Part 4: Enterprise Management Incentives

111. Paragraph 216 introduces a series of changes to Schedule 5 ITEPA in respect of EMI.
112. Paragraph 217 makes several amendments to paragraph 44 Schedule 5 concerning the requirement to provide HMRC with notice of EMI options granted:
- The employer company's declaration in the notice must include confirmation that the EMI option holder has made a written declaration that they meet the 'working time requirement' of EMI (paragraph 26 Schedule 5). A copy of this declaration must be given to the option holder within a specified period, and a copy retained and produced to HMRC within a specified period if so requested.
 - Notices must be delivered in electronic form in a manner prescribed by HMRC, unless an employer company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.
113. Paragraph 218 replaces the existing paragraph 52 Schedule 5, which requires certain companies whose shares are or have been subject to an EMI option to deliver an annual return. New paragraphs 52 and 52A of Schedule 5 reflect the shift to online filing of returns and are consistent with the new provisions in this Schedule for the other tax advantaged schemes.
114. New paragraph 52 of Schedule 5 obliges companies whose shares are or have been subject to an EMI option to make annual returns containing the information required by HMRC. Returns must be made not later than 6 July following the end of the tax year to which they relate, and must be in the form required by HMRC. The requirement to make an annual return to HMRC applies for each year prior to and including the year of termination of a scheme. This will be where there are no outstanding EMI options over the company's shares, and no intention to grant any further options over the company's shares under the scheme. If companies become aware of errors or inaccuracies in returns, they must provide amended returns correcting the position without delay.
115. New paragraph 52A provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a company has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC must prescribe how the notices and returns must be submitted.
116. Paragraph 219 makes a change to paragraph 53 Schedule 5 to clarify the meaning of 'reasonable excuse' in cases where a person has failed to meet certain time limits set out in Parts 7 and 8 of Schedule 5.
117. Paragraph 220 inserts new provisions on penalties and appeals (at new paragraphs 57A-57E Schedule 5), similar to those in Parts 1, 2 and 3 of this Schedule.
118. New paragraph 57A of Schedule 5 lays down the penalties to which employer companies may be liable for failure to deliver the declarations required by paragraph 44 Schedule 5.
119. New paragraph 57B lays down the penalties to which companies whose shares are or have been subject to EMI options may be liable for failure to deliver annual returns by the specified deadline.

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120. New paragraph 57C sets out the penalties that may apply where annual returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the company.
121. New paragraph 57D sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.
122. New paragraph 57E provides rights for companies to appeal against decisions of HMRC in relation to penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.
123. Paragraphs 222-225 set out commencement and transitional provisions. The new rules come into force on 6 April 2014, and the rules in relation to annual returns will apply for returns for the tax year 2014-15 onwards.

Part 5: Other Employee Share Schemes

124. Paragraph 226 introduces a series of changes to Chapter 1 of Part 7 of ITEPA, which sets out general rules and requirements in relation to employment-related securities, including arrangements that are not tax advantaged.
125. Paragraphs 227-228 amend section 421J ITEPA concerning the duty to provide information to HMRC, and insert new provisions (new sections 421JA-421JF ITEPA) concerning annual returns, electronic submission, penalties and appeals. These changes reflect the shift to online filing of annual returns for employment-related securities and are consistent with the new provisions in this Schedule for the tax advantaged schemes.
126. New section 421JA ITEPA obliges a responsible person (as defined in section 421L) to make an annual return to HMRC for each tax year within their 'reportable event period'. Returns must contain the information required by HMRC, and be made not later than 6 July following the end of the tax year to which they relate. If they become aware of errors or inaccuracies in returns, the responsible person must provide amended returns correcting the position without delay. Sub-paragraph (7) provides that there is no need to report 'duplicate' information, as defined at sub-paragraph (8).
127. New section 421JB provides that returns must be delivered in electronic form in a manner prescribed by HMRC, unless a person has been specifically allowed by HMRC to use some other form. The Commissioners for HMRC will prescribe how the notices and returns must be submitted.
128. New section 421JC lays down the penalties which may apply for failure to deliver annual returns by the specified deadline. An exception is allowed where a person has a 'reasonable excuse' for the failure.
129. New section 421JD sets out the penalties that may apply where returns are not delivered in the form required by HMRC; or where they contain material inaccuracies that are careless or deliberate, or are not corrected by the person.
130. New section 421JE sets out procedures for the assessment and enforcement of penalties by HMRC, including time limits as to when penalties may be imposed and when payment must be made.
131. New section 421JF provides rights of appeal against decisions of HMRC in relation to penalties, and lays down time limits for appeals, rules for the handling of appeals and the action tribunals may take in response to an appeal.
132. Paragraphs 232-234 set out commencement and transitional provisions. The new rules come into force on 6 April 2014, and the rules in relation to annual returns will apply for returns for tax year 2014-15 onwards.

Background

133. SIP is an 'all employee' scheme under which employees may purchase 'partnership' shares out of their pre-tax (gross) salary; be awarded 'matching' or 'free' shares by their employer; or reinvest dividends earned on SIP shares into 'dividend' shares.
134. SAYE is an 'all employee' share option scheme under which employees save out of taxed earnings and can use their savings to purchase shares in their company at a discounted price.
135. CSOP is a scheme under which selected employees may be awarded options to purchase shares in their company.
136. EMI is a scheme targeted on small and medium sized businesses carrying out certain trades, under which selected employees may be awarded share options in their company.
137. The OTS published a report on the tax advantaged employee share schemes in 2012. This identified various areas where the present rules created undue complexities or disproportionate administrative burdens for scheme users, and made recommendations on how the legislation and related provisions could be simplified. The Government implemented the first tranche of changes to give effect to these recommendations in Schedule 2 Finance Act 2013.
138. This measure implements the further OTS recommendations that the Government should introduce self certification and a new 'purpose test' for SIP, SAYE and CSOP (self certification already applies in the case of EMI), and online filing for all employment-related securities returns to HMRC. In drawing up these provisions the Government has consulted extensively over the past 12 months to devise arrangements that will meet the needs of scheme users.
139. The measure also includes minor technical changes to clarify or simplify certain aspects of the current statute, where companies might potentially have found it difficult to self certify with confidence as the legislation stood.