

**EXPLANATORY MEMORANDUM TO
THE INCOME TAX (LIMITS FOR ENTERPRISE MANAGEMENT
INCENTIVES) ORDER 2008**

2008 No. 706

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 These regulations provide that the maximum value of a qualifying Enterprise Management Incentives (EMI) share option that can be granted to an employee is increased from £100,000 to £120,000.

2.2 These regulations will take effect from 6 April 2008.

3. Matters of special interest to the Select Committee on Statutory Instruments

None

4. Legislative Background

4.1 The legislation on EMI is contained in sections 527 - 541 and Schedule 5 to Income Tax (Earnings and Pensions) Act 2003. These regulations amend section 536(1)(e) and paragraphs 5(1)(a), 6(1) and 6(3) of Schedule 5 to Income Tax (Earnings and Pensions) Act 2003.

4.2 The regulations are made under paragraph 54 of Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003.

5. Extent

These regulations apply throughout the United Kingdom.

6. European Convention on Human Rights

Although subject to the negative resolution procedure, this instrument amends primary legislation. The Exchequer Secretary to the Treasury, Angela Eagle, has made a statement that she is satisfied that the instrument is compatible with the Convention rights.

7. Policy Background

- 7.1 EMIs are tax and National Insurance contributions (NICs) advantaged share options available to companies with gross assets not exceeding £30 million, to help them recruit and retain employees. In addition to the gross assets test, EMI is limited to companies or groups which are independent and whose trade does not consist in excluded trading activities.
- 7.2 Currently, employees cannot hold qualifying EMI options, taking into account Company Share Option Plan options also granted to them, over shares with a total market value of more than £100,000 at date of grant. The limit applies to options granted by the employing company or by companies which are members of the same group of companies.
- 7.3 The Order increases the limit for qualifying EMI options to £120,000 as part of the Government's Enterprise Agenda, in order to help smaller higher risk companies with staff recruitment and retention.

8. Impact

No impact assessment has been produced in relation to this instrument because no impact on the private or voluntary sectors is foreseen.

9. Contact

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