

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT ALLOWANCE (EXCLUDED PERSONS) REGULATIONS
2020

2020 No. 218

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument restricts access to the Employment Allowance for a tax year to employers with secondary Class 1 National Insurance contributions (NICs) liabilities below £100,000 in the previous tax year. The Employment Allowance is a relief which entitles most businesses and charities to a reduction in their secondary Class 1 NICs liabilities of up to £3,000 per tax year.
- 2.2 From April 2020 the Employment Allowance will be administered as de minimis State aid in order to ensure compliance with European Union State aid rules. This instrument sets out certain conditions that employers must meet in order to qualify for an Employment Allowance.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 21 of the National Insurance Contributions Act 2014) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Financial Secretary to the Treasury the Rt Hon Jesse Norman MP has made the following statement regarding Human Rights:

“In my view the provisions of the Employment Allowance (Excluded Persons) Regulations 2020 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 £3,000 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 also provides for certain types of employers and employer Class 1 NICs liabilities to be excepted from qualifying for an Employment Allowance.
- 6.3 This instrument amends section 2 (exceptions) of NICA by inserting new subsections after subsection (4A) to restrict eligibility to the Employment Allowance to employers with a secondary Class 1 NICs liability under £100,000 in the tax year prior to the year of claim.
- 6.4 Restricting the availability of the Employment Allowance to employers whose secondary Class 1 NICs liabilities for the previous tax year were less than £100,000 means that those employers will receive a financial advantage compared with employers whose employer secondary Class 1 NICs liabilities exceeded this in the previous tax year. It is therefore considered that this may be regarded as provision of a State aid under Article 107(1) of the Treaty on the Functioning of the European Union.
- 6.5 The Employment Allowance is therefore to be granted to qualifying employers as de minimis State aid. De minimis State aid is permitted under the following Commission Regulations:
- A. Commission Regulation (EU) No 1407/2013 (de minimis aid except in the agriculture and fisheries sectors);
 - B. Commission Regulation (EU) No 1408/2013 (de minimis aid in the agriculture sector);
 - C. Commission Regulation (EU) No 717/2014 (de minimis aid in the fisheries sector), or
 - D. Commission Regulation (EU) No 360/2012 (de minimis aid to undertakings providing a service of general economic interest).
- 6.6 Each of the above sets of European Union (EU) Regulations has different ceilings for the amount of de minimis State aid that may be granted over a three-year period depending on the sector in which the employer is operating in.
- 6.7 This instrument provides that employers may not receive the Employment Allowance unless it qualifies as de minimis State aid.
- 6.8 In order to monitor compliance with the de minimis State aid Regulations HMRC will require any employers wishing claim the Employment Allowance for a tax year to complete a declaration and supply certain information that HMRC will need for the purposes of checking that the granting of the Employment Allowance is made in accordance with the EU Regulations referred to in paragraph 6.5 before they use the relief to reduce their NICs liability. The requirements will be contained in a statutory notice issued under section 4(4) of NICA

7. Policy background

What is being done and why?

- 7.1 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 businesses, particularly small businesses wanting to hire their first employee or expand their workforce.
- 7.2 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.
- 7.3 This instrument reforms the Employment Allowance again to restrict access to the Employment Allowance to employers with an annual secondary Class 1 NICs liability of less than £100,000. The purpose of this reform is to target the Employment Allowance to support smaller businesses.
- 7.4 Restricting the Employment Allowance to employers with a secondary Class 1 NICs liability of less than £100,000 per annum means that the Employment Allowance will be treated as State aid.
- 7.5 HMRC will require additional information from employers so as to comply with State aid monitoring requirements which will be contained in a statutory notice.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 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 A technical consultation on the draft regulations was held between June and August 2019.
- 10.2 No comments were received about the draft regulations which required drafting changes. Other, general comments, about the operability of the reform have been considered and taken forward in the statutory notice and guidance for employers.

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 2020.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is limited: larger businesses with a secondary Class 1 NICs liability of £100,000 or more will no longer be eligible to receive the Employment Allowance. The removal of this relief will cost these employers up to an additional £3,000 per tax year.

- 12.2 Smaller businesses will still be entitled to the Employment Allowance. In order to receive it they will need to confirm annually that they have space in their relevant de minimis State aid ceiling(s) to include the full annual amount of the Employment Allowance, regardless of whether or not they will use the full amount against their secondary Class 1 NICs liabilities over the tax year. The compliance requirements for this are as minimal and straightforward as possible.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 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 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to set the secondary Class 1 NICs upper limit for eligibility at £100,000 or more. This means that around 93% of all businesses remain eligible for the Employment Allowance.
- 13.3 The basis for the final decision on what action to take to assist small businesses was responses to the technical consultation on the Excluded Companies Regulations, which ensured that this instrument does not have any unintended consequences.

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 The regulation 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 Victoria Bedford at HM Revenue and Customs, telephone: 03000 562088 or email: victoria.bedford@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rachel Nixon, Deputy Director for NICs Policy, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Financial Secretary to the Treasury the Rt Hon Jesse Norman MP can confirm that this Explanatory Memorandum meets the required standard.