STATUTORY INSTRUMENTS

2020 No. 218

SOCIAL SECURITY

The Employment Allowance (Excluded Persons) Regulations 2020

Made - - - -	*4th March 2020*
Coming into force - -	*6th April 2020*

These Regulations are made by the Treasury in exercise of the power to amend the employment allowance provisions(**a**) conferred by section 5(1)(b) of the National Insurance Contributions Act 2014(**b**).

A draft of this instrument was laid before Parliament in accordance with section 5(5) of the National Insurance Contributions Act 2014 and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Employment Allowance (Excluded Persons) Regulations 2020 and come into force on 6th April 2020.

Amendment to the National Insurance Contributions Act 2014

2. The National Insurance Contributions Act 2014 is amended as follows.

3. In section 2 (exceptions), after subsection (4A)(**c**) insert—

"*Excluded persons: secondary Class 1 liability limit of £100,000 or more*

(4B) A person cannot qualify for an employment allowance for a tax year if the total of the following items is £100,000 or more—

(a) the person's qualifying liabilities for the previous tax year, and

(b) where the person is a company, the qualifying liabilities for that previous tax year of each company (if any) to which the person is connected at any time in that previous tax year, and

(c) where the person is a charity, the qualifying liabilities for that previous tax year of each charity (if any) to which the person is connected at any time in that previous tax year.

(4C) A person who is a company or a charity cannot qualify for an employment allowance for a tax year if there is a time in the tax year when the relevant total is £100,000 or more; and for this purpose "the relevant total" at any particular time in the tax year is the

(**a**) Employment allowance provisions is defined by section 1(7) of the National Insurance Contributions Act 2014 (c.7).
(**b**) 2014 c. 7.
(**c**) Subsection (4A) was inserted into section 2 by regulation 2 of S.I. 2016/344.

total of the qualifying liabilities for the previous tax year of each other company or charity (as the case may be) to which the person is connected at the particular time.

(4D) For the purposes of subsections (4B) and (4C)—

(a) a company is "connected" with another company if they are connected with one another for the purposes of section 3(1);

(b) a charity is "connected" with another charity if they are connected with one another for the purposes of section 3(2).

(4E) In subsections (4B) to (4D) and this subsection—

(a) "charity" has the same meaning as in the Small Charitable Donations Act 2012(**a**) and includes a company which is treated as a charity by paragraph 8(5) of Schedule 1;

(b) "company" has the meaning given by section 1121(1) of the Corporation Tax Act 2010(**b**) (meaning of "company") and includes a limited liability partnership;

(c) "qualifying liabilities" means any liabilities to pay secondary Class 1 contributions under SSCBA 1992(**c**) or SSCB(NI)A 1992(**d**) excluding any liabilities which are excluded liabilities by virtue of subsection (4).

Excluded persons: receipt of de minimis state aid

(4F) A person cannot qualify for an employment allowance for a tax year if, were the person to receive the maximum employment allowance available for that tax year, it would in the person's case be state aid that is not de minimis state aid.

(4G) For the purpose of subsection (4F)—

"de minimis state aid" means state aid which is exempted from notification under Article 108(3) of the Treaty on the Functioning of the European Union by–

(a) Commission Regulation (EU) No 1407/2013 (de minimis aid except in the agriculture and fisheries sectors)(**e**),

(b) Commission Regulation (EU) No 1408/2013 (de minimis aid in the agriculture sector)(**f**),

(c) Commission Regulation (EU) No 717/2014 (de minimis aid in the fisheries sector)(**g**), or

(d) Commission Regulation (EU) No 360/2012 (de minimis aid to undertakings providing a service of general economic interest)(**h**);

"the maximum employment allowance", in relation to a tax year, means the amount in section 1(2)(a) converted into euros using the exchange rate quoted by the European Central Bank for the second to last day of March in the previous tax year or, if no rate is quoted for that date, the rate quoted for the closest day to that date for which a rate is quoted.".

Iain Stewart
Maggie Throup

4th March 2020 — Two of the Lords Commissioners of Her Majesty's Treasury

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(**a**) 2012 c. 23.
(**b**) 2010 c. 4.
(**c**) Social Security Contributions and Benefits Act 1992 (c. 4).
(**d**) Social Security Contributions and Benefits (Northern Ireland) Act 1991 (c. 7).
(**e**) OJ L 352/1 24.12.2013.
(**f**) OJ L 352/9 24.12.2013.
(**g**) OJ L 190/45 28.6.2014.
(**h**) OJ L 114/8 26.4.2012.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Insurance Contributions Act 2014 (c. 7) ("the Act"). Section 1 of the Act allows a secondary contributor to claim an employment allowance towards their liability to pay secondary Class 1 National Insurance contributions. Section 2 of the Act contains exceptions and in particular provides that certain persons are not able to qualify for an employment allowance.

Regulations 2 and 3 insert new subsections (4B) to (4G) into section 2 of the Act.

The new subsection (4B) prevents a person from qualifying for the employment allowance if they incur qualifying liabilities of £100,000 or more in the tax year prior to claiming the employment allowance.

The new subsection (4C) prevents a person from qualifying for the allowance where the person is connected to a company or charity in a tax year and any company or charity within the connected group has incurred qualifying liabilities for the previous tax year of £100,000 or more.

The new subsection (4D) provides the definitions for the term 'connected' used in subsections (4B) and (4C).

The new subsection (4E) provides the definitions for terms used in subsections (4B) to (4E).

The new subsection (4F) prevents a person from qualifying for the allowance in the tax year of claim if, upon acceptance of the full allowance, that person would exceed their applicable de minimis state aid limit (once converted into euros). Limits to the amount of de minimis state aid that may be granted to particular undertakings are set out in EU Regulations and are calculated over a period of three fiscal years.

The new subsection (4G) sets out the definition of de minimis state aid for the purpose of subsection (4F), and the EU Regulations which determine de minimis limits according to relevant economic sectors.

A Tax Information and Impact Note covering this instrument was published on 25 June 2019 alongside a consultation draft of this instrument and is available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810548/_draft__Employment_Allowance__Excluded_Persons__Regulations_tax_information_and_impact_note.pdf. It remains an accurate summary of the impacts that apply to this instrument.

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