

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT ALLOWANCE (INCREASE OF MAXIMUM AMOUNT)
REGULATIONS 2016

2016 No. 63

AND

THE EMPLOYMENT ALLOWANCE (EXCLUDED COMPANIES) REGULATIONS
2016

2016 No. DRAFT

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 Instrument No. 2016/63 increases the maximum amount of the Employment Allowance from £2,000 to £3,000 for the tax year 2016-17, and subsequent tax years. The Employment Allowance entitles the vast majority of business, charities, and Community Amateur Sports Clubs to a reduction in their secondary Class 1 National Insurance Contributions (NICs) up to the value of the allowance.
- 2.2 The Employment Allowance (Excluded Companies) Regulations 2016 (“the Excluded Companies Regulations”) set out that companies where there is only a single employee, who is also a director of the company, cannot qualify for the Employment Allowance from 6th April 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Instrument No. 2016/63 is the first use of the power in section 5(1)(a) of the National Insurance Contributions Act 2014 (“NICA 2014”). The power enables the Treasury to amend the employment allowance provisions in NICA 2014 so as to increase or decrease the amount of a person's Employment Allowance for a tax year.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 The Employment Allowance was introduced by NICA 2014, which provides that an allowance of up to £2,000 a year may be offset against all eligible secondary Class 1 NICs liabilities by business, charities, and Community Amateur Sports Clubs.

Secondary Class 1 NICs are paid by employers. NICA 2014 also specified exceptions to the allowance in section 2.

- 4.2 Instrument No. 2016/63 amends section 1(2)(a) of NICA 2014 to increase the maximum amount of the Employment Allowance to £3,000 following a decision announced at Summer Budget 2015.
- 4.3 The Excluded Companies Regulations amend section 2 of NICA 2014 to add a new exception to the allowance for companies where there is a single employee who is the director. This follows an announcement at Summer Budget 2015. This is done under the power conferred by section 5(1)(b) of NICA 2014.

5. Extent and Territorial Application

- 5.1 The extent of these instruments is the United Kingdom.
- 5.2 The territorial application of these instruments is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Financial Secretary to the Treasury Mr David Gauke MP has made the following statement regarding Human Rights:

In my view the provisions of the Employment Allowance (Increase of Maximum Amount) Regulations 2016 are compatible with the Convention rights.

And

In my view the provisions of the Employment Allowance (Excluded Companies) Regulations 2016 are compatible with the Convention rights.

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 Community Amateur Sports Clubs towards their employer NICs bill. This was done with the intention to support businesses, particularly small businesses wanting to hire their first employee or expand their workforce. Response to the measure has been positive, with take-up estimated at 89% of those eligible as of April 2015.
- 7.2 It was announced at Summer Budget 2015 that the Employment Allowance would be increased by £1,000, to a maximum amount of £3,000 a year, from April 2016. Instrument No. 2016/63 will bring this into effect. The significance of this change is that it is intended to support businesses and charities with additional wage costs. The increase will mean firms will be able to continue to employ four workers on the new National Living Wage next year, without paying any NICs.
- 7.3 It was also announced at Summer Budget 2015 that from April 2016, companies where the director is the sole employee will no longer be able to claim the Employment Allowance. The Excluded Companies Regulations will bring this into effect. This will ensure that the Employment Allowance is focussed on businesses and charities that support employment.

Consolidation

- 7.4 As these statutory instruments amend primary legislation, there is no consolidation required.

8. Consultation outcome

- 8.1 A consultation on the draft regulations was held for five and a half weeks between 26.11.15 and 3.1.16. This timeline was selected in order that the regulations should have sufficient time to go through the parliamentary process to come into effect in April 2016. In particular comment was sought from contractors working through limited companies, payroll agencies, and accountancy and tax advisory firms. Some stakeholders raised concerns that the measure may be vulnerable to avoidance behaviour, but no other significant issues with the draft regulations were raised.

9. Guidance

- 9.1 GOV.UK guidance which states the amount of Employment Allowance, as well as specifying which businesses and organisations cannot claim, will be updated in advance of these measures coming into effect in April 2016.

10. Impact

- 10.1 For the Instrument No. 2016/63, the impact on business and charities will be financially positive, granting all those eligible to a maximum additional £1,000 a year deducted from their employer NICs cost. For the Excluded Companies Regulations, this will affect around 150,000 businesses where there is a single employee, the director, in so far as they will no longer be eligible for the Employment Allowance. However, it is not expected to increase administration or general costs.
- 10.2 There is no impact on the public sector.
- 10.3 Tax Information and Impact Notes covering each instrument will be published on the government website at <http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small business.
- 11.2 The impact on businesses' ongoing administrative burdens is expected to be negligible. There are likely to be negligible one-off costs as businesses familiarise themselves with the new rules.
- 11.3 The basis for the final decision on what action to take to assist small business will be responses to the technical consultation on the Excluded Companies Regulations, to ensure that the measure does not have any unintended consequences.

12. Monitoring & review

- 12.1 Take-up statistics for the Employment Allowance will continue to be reported, and this will inform future policy decisions.

13. Contact

- 13.1 Emma Barker at HMRC, Tel: 03000 586778 or email: emma.robinson3@hmrc.gsi.gov.uk can answer any queries regarding the instruments.