



HM Revenue  
& Customs

# Employment Allowance: technical consultation on excluding employers of 'illegal workers'

## **Consultation document**

Publication date: 8 November 2016

Closing date for comments: 3 January 2017

<b>Subject of this consultation:</b>	<p>This is a technical consultation on draft regulations to exclude certain employers from claiming the Employment Allowance for one year, where:</p> <ul style="list-style-type: none"> <li>• the employer employed individuals subject to immigration control (illegal workers); and</li> <li>• the employer has been penalised by the Home Office; and</li> <li>• all appeal rights against that penalty have been exhausted.</li> </ul>
<b>Scope of this consultation:</b>	<p>At Budget 2016 the Chancellor announced that: ‘Employers who hire an illegal worker face civil penalties from the Home Office. The government will build on this deterrent by removing a year’s Employment Allowance from those receiving civil penalties, starting in 2018.’</p> <p>This consultation seeks comments on the draft regulation to implement the new exclusion.</p>
<b>Who should read this:</b>	This technical consultation will be of interest to accountancy and tax advisory firms
<b>Duration:</b>	The consultation will run for 8 weeks commencing on 8 November 2016 and ending on 3 January 2017.
<b>Lead official:</b>	Oliver Mathers and Emma Barker, HMRC
<b>How to respond or enquire about this consultation:</b>	Any comments should be sent to <a href="mailto:consultation.nic@hmrc.gsi.gov.uk">consultation.nic@hmrc.gsi.gov.uk</a>
<b>Additional ways to be involved:</b>	As this is a technical issue with specialist interests, this will be a largely written exercise. If you would like to have this document in Welsh or alternate formats including large print, audio and braille, please let us know and we will provide a copy.
<b>After the consultation:</b>	Responses to this technical consultation will be reviewed and the draft regulations will be revised as appropriate in advance of laying before Parliament. Guidance on changes to eligibility for the Employment Allowance will be made available on gov.uk in March 2017.
<b>Getting to this stage:</b>	The Employment Allowance was introduced in April 2014. This measure was announced at Budget 2016.

**Previous  
engagement:**

Explanatory notes to section 5 of the National Insurance Contributions Act 2014, which provides the power to modify the cases in which a person cannot qualify for the employment allowance can be found at <http://www.legislation.gov.uk/ukpga/2014/7/notes/division/5/5>.

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**On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats**

# 1. Introduction and background

1. Budget 2016 announced that from April 2018, the Employment Allowance would be removed for one year from those who receive civil penalties for employing illegal workers.
2. The Employment Allowance entitles the vast majority of businesses, charities, and community amateur sports clubs to a reduction of up to £3,000 per year on their employer National Insurance Contributions (NICs) bill. The Government introduced the allowance in April 2014 to support small businesses and charities with the cost of employment.
3. The Employment Allowance has very broad eligibility, subject only to certain exceptions outlined in the National Insurance Contributions Act 2014.
4. The Government believes that those who break the law by employing illegal workers should not benefit from the Employment Allowance. The purpose of this restriction is to ensure the allowance focuses on employers who are providing legitimate employment.

## Impact of the proposed change

5. This measure will only impact employers who have received a civil penalty from the Home Office for employing workers subject to immigration control and have exhausted their Home Office appeal rights in relation to that civil penalty. Early estimates suggest that around 2,000 employers will be affected.
6. Employers in the category listed above will not be eligible to claim the Employment Allowance for the tax year following the year in which they exhausted their appeals rights against the Home Office penalty or chose not to appeal. Employers who fall into this category will need to amend their payroll software to ensure they do not claim the Employment Allowance during the year in which they do not qualify.
7. For example, an employer who is penalised by the Home Office in September 2017 for employing individuals subject to immigration control, and exhausts their appeals right by January 2018, will not be eligible to claim the Employment Allowance from April 2018. They will need to amend their payroll software to ensure they do not claim the allowance during the year in which they are not eligible.

## 2. National Insurance Contributions Act 2014

8. The Employment Allowance was introduced by section 1 of the National Insurance Contributions Act (NICA) 2014. This states that a person qualifies for an Employment Allowance for a tax year if they incur liabilities to pay secondary Class 1 contributions in that tax year, in relation to one or more employed earners. The Act can be found at:  
<http://www.legislation.gov.uk/ukpga/2014/7/contents/enacted>
9. Section 2 of the Act outlines existing exceptions to the allowance, including in relation to employers who are public authorities, employment in relation to personal affairs, workers supplied by service companies, and in relation to transfers of businesses. Section 3 outlines a connected persons test to prevent the allowance being claimed by multiple connected companies or charities. Section 5(1)(b) provides that the Treasury may make regulations to modify the cases in which a person cannot qualify for an Employment Allowance for a tax year.

### 3. Technical consultation on draft regulations

10. The purpose of the regulations are to ensure that the Employment Allowance is focused on employers who provide legitimate employment. To achieve this, the measure will exclude for one year:
  - a. Employers who have received a civil penalty and exhausted all appeal rights associated with that civil penalty. The exclusion will apply to the tax year after appeal rights have been exhausted.
  - b. Employers connected with an employer who has received a civil penalty as set out in 'a' above.
11. Employers who fall into this category will need to amend their payroll software to ensure they do not claim the Employment Allowance during the year in which they do not qualify.
12. HM Treasury and HM Revenue and Customs have UK-wide responsibility for NICs policy. The regulations will apply in England, Wales, Scotland, and Northern Ireland.

#### Questions for consultation

**Question 1: Do the regulations as drafted achieve their objectives as described above?**

**Question 2: Do these draft regulations produce any unintended consequences?**

**Question 3:** The draft legislation works by imposing the restriction the financial year after the employer was penalised by the Home Office and exhausted their appeal rights. This is to avoid employers needing to pay back any Employment Allowance already claimed in the current year. **We are interested in hearing comments from stakeholders on the strengths and weaknesses of this approach.**

## 5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft legislation in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

### How to respond

Responses should be sent by 03/01/2017. Any comments should be sent to [consultation.nic@hmrc.gsi.gov.uk](mailto:consultation.nic@hmrc.gsi.gov.uk)

**Please do not send consultation responses to the Consultation Coordinator.**

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

### Next Steps

Responses to this technical consultation will be reviewed and the draft regulations will be revised as appropriate before they are laid before Parliament. Guidance on changes to eligibility for the Employment Allowance will be made available on gov.uk in March 2017.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact: John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [consultation.nic@hmrc.gsi.gov.uk](mailto:consultation.nic@hmrc.gsi.gov.uk)

**Please do not send responses to the consultation to this address.**

# Annex A: Draft Legislation

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*Draft Regulations laid before Parliament under section 5(5) of the National Insurance Contributions Act 2014, for approval by resolution of each House of Parliament.*

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## STATUTORY INSTRUMENTS

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**2017 No.**

### **SOCIAL SECURITY**

#### **The Employment Allowance (Disqualified Persons) Regulations 2017**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

These Regulations are made by the Treasury in exercise of the powers conferred by section 5(1)(b) of the National Insurance Contributions Act 2014<sup>(1)</sup>.

#### **Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Employment Allowance (Disqualified Persons) Regulations 2017 and come into force on 6th April 2017.

(2) The amendment made by these Regulations shall have effect in relation to any penalty notice given to an employer by the Secretary of State under section 15(2) of the Immigration, Asylum and Nationality Act 2006<sup>(2)</sup> in the tax year 2017/18 or any subsequent tax year.

#### **Amendment to the National Insurance Contributions Act 2014**

2. In section 2 of the National Insurance Contributions Act 2014 (exceptions), after subsection (4A)<sup>(3)</sup> (excluded companies) insert—

*“Persons employing adults subject to immigration control*

(4B) A person (“P”) cannot qualify for an employment allowance for the tax year following a tax year in which P or a person connected with P within the meaning of Parts 1 or 2 of Schedule 1, was required to pay an immigration penalty under section 15 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”).

(4C) For the purposes of subsection (4B) a person to whom a penalty notice under section 15 of the 2006 Act has been given is not to be treated as required to pay an immigration penalty under that section if—

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<sup>(1)</sup> 2014 c.7.

<sup>(2)</sup> 2006 c.13. Section 15 was amended by section 73 and paragraph 61 of Schedule 9 to the Immigration Act 2014 (c. 22) (“the 2014 Act”).

<sup>(3)</sup> Subsection (4A) was inserted by S.I. 2016/344.

- (a) the person is excused payment by virtue of section 15(3) of that Act, or
- (b) the penalty is cancelled by virtue of section 16<sup>(4)</sup> or 17<sup>(5)</sup> of that Act.

(4D) For the purposes of subsection (4B) a person to whom a penalty notice under section 15 of the 2006 Act has been given is not to be treated as required to pay an immigration penalty until such time as—

- (a) the period for giving a notice of objection under section 16 of that Act has expired and the Secretary of State has considered any notice given within that period, and
- (b) if a notice of objection was given within that period, the period for appealing under section 17 of that Act has expired and any appeal brought within that period has been finally determined, abandoned or withdrawn.”.

Name  
Name

Date Two of the Commissioners for Her Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the National Insurance Contributions Act 2014 (c. 7) (“the Act”).

Regulation 1 provides for citation, commencement and effect. The Regulations come into force from 6th April 2017 but will not prevent a person from claiming an employment allowance until the tax year 2018/19.

Regulation 2 inserts new subsections (4B), (4C) and (4D) into section 2 of the Act. The new subsections provide that a person will not be able to claim an employment allowance for one tax year if that person, or a person connected to that person, has been issued with a penalty notice by the Home Office under section 15 of the Immigration, Nationality and Asylum Act 2006 (c. 13) (“the 2006 Act”). Civil Penalty notices may be given to employers who have employed illegal immigrants where prescribed checks have not been carried out. Those issued with penalty notices can appeal to the Secretary of State and then on to the County Court or, in Scotland, the sheriff. The appeal process under the 2006 Act must have been exhausted in order for the disqualification period to be applied.

A Tax Information and Impact Note covering this Instrument is published on the HMRC website at:<http://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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<sup>(4)</sup> Section 16 provides that an employer may give a notice of objection to a penalty notice to the Secretary of State. The time limit for giving such a notice is set out in regulation 9 of S.I. 2007/3290.

<sup>(5)</sup> Section 17 provides that an appeal against a penalty notice may be made to the county court, or in Scotland the sheriff within the time limits set out in the section. Section 17 was amended by section 44 of the 2014 Act and paragraph 52 of Schedule 9 to the Crime and Courts Act 2013 (c.22).

# Annex B: Relevant Legislation

National Insurance Contributions Act 2014

<http://www.legislation.gov.uk/ukpga/2014/7/contents>

Income Tax Act 2007

<http://www.legislation.gov.uk/ukpga/2007/3/contents/enacted>