

New Clause 32: Enterprise management incentives: disqualifying events

Summary

1. This clause introduces a time limited exception for participants of enterprise management incentives (EMI) schemes who are not able to meet the necessary working time commitment, as a result of the coronavirus pandemic. The modifications take effect from 19 March 2020 and will come to an end on 5 April 2021. The clause also includes a provision for HM Treasury to extend the exception for a further twelve months by regulations if the coronavirus pandemic has not ended by April 2021.

Details of the clause

2. Subsection 1 provides that modifications to the working time requirement in Schedule 5 to Income Tax (Earnings and Pensions) Act 2003 (ITEPA) apply for the purpose of determining if a disqualifying event occurs under Section 535 of ITEPA.
3. Subsections 2 amends paragraphs 26 of Schedule 5. It provides for a new exception, “not being required to work for reasons connected to coronavirus”, which can apply so that employees continue to meet the committed time requirements for enterprise management incentives. ‘Coronavirus’ is defined as having the meaning given by the Coronavirus Act 2020.
4. Subsection 3 makes consequential amendments to paragraphs 27 of Schedule 5.
5. Subsection 4 amends Section 535 of ITEPA to provide the new exception applies to the ‘reckonable time in relevant employment’ requirement for EMI schemes.
6. Subsection 5 provides that the modifications made by the clause have effect from 19 March and will come to an end on 5 April 2021.
7. Subsection 6 provides a provision for HM Treasury to extend the exception for a further twelve months to 5 April 2022 by making regulations.

Background note

8. Those participating in an EMI scheme are required to meet the working time requirement. This means that the employee’s time committed to the company must be equal to or exceed the statutory threshold of 25 hours per week or if less, 75% of their working time. An inability to meet the working time requirement results in a ‘disqualifying event’. A disqualifying event means the options must be exercised

where permitted within 90 days for tax relief to apply.

9. This clause ensures that existing participants of EMI schemes do not suffer a disqualifying event and lose tax advantages as a result of taking unpaid leave, being furloughed or working reduced hours because of coronavirus.
10. The clause ensures that participants of EMI schemes are not forced to exercise their options earlier than planned because of coronavirus.