

### SEISS: follow up advice – labour conditionality

#### Introduction

This advice contains a number of further decision points which directly affect policy delivery. As such, we would be grateful for a readout on these areas by COP Friday 17 April. This will ensure HMRC are able to continue to progress delivery to the current timetable.

You are also receiving advice regarding the newly self-employed and those remunerated through dividends alongside this note and will receive further advice on delivery decisions next week.

#### Public sector conditionality

##### Ministry of Defence: Reservists

1. There are two main issues that the MOD are working through on the SEISS with regards to reservists.
  - i. Reservists on longer term call up in 2018-19
2. Reservists are paid by the MOD for time spent on duty, usually weekends and evenings. Normally, the expectation is that self-employed reservists would have more than 50% of total income from self-employment as their employment income from MOD reservists work is part-time.
3. However, there will be cases where reservists have been on a longer term call up, may be 12 months, during the 3 years in which we test for SEISS eligibility. In these cases, an individual will have no self-employment income during that 12 months which could make them ineligible; failing the 50% test. For those that remain eligible the period of call up will significantly reduce their grant. There may even be a small number who had no self-employment income in 18/19 as a result of a 12 month call up and will thus be ineligible via that criterion.
4. It would be very difficult at this stage to carve out reservists for unexpected spikes in income, which would ensure being a reservist that has been on long-term call up is not negatively impacted for SEISS purposes. A manual process relying on reservists contacting HMRC is likely to be the only option to help them at this late stage. However, we do not recommend carving this group out. We recommend treating employment income from reservist pay in the same way we are treating any other source of non-trading income in the SEISS. Moving away from this risks creating various 'me too' requests from other special interest groups, and would complicate the scheme design. However, we expect MOD might push back on this and we will need to work with them at official level in the first instance.

#### **DECISION: do you agree to treat employment pay from reservist work in the same way as other sources of non-trading income?**

##### ii. Reservists called up in 2020-21

5. The MOD will be calling up between 1,000 to 3,000 reservists shortly. They want to advise those called up who are self-employed that they will be ineligible for SEISS because they will be ceasing trading activity. MoD have raised this as a concern because they a) are concerned that it represents 'double funding' from the public purse and b) they also pay self-employed expenses.
6. MoD are correct to raise this: double funding of this nature raises propriety, value for money and presentational concerns, as parliament will not expect reservists or any other public sector worker to be effectively funded twice by the public purse. However, we think this is justifiable.

because a) the SEISS grant and pay for reservists, or any other public sector role, are clearly for different purposes, b) entering employment is permissible under the scheme, c) in practice it will be extremely administratively challenging for MoD to identify SEISS recipients, d) it's important that public sector employers have access to the same set of employees as private sector, and e) we want SEISS recipients to be able to undertake useful economic activity in the public sector.

7. We are recommending making clear in the guidance that it is permissible to claim the SEISS and continue trading or enter employment (see paras 16 - 22) and should advise MOD that this also applies to reservists. We do not expect MOD to push back on this.

**DECISION: do you agree that we should clarify guidance with MOD that reservists can be called up and still access the SEISS grant?**

Department of Health and Social Care: emergency volunteers

8. The DHSC compensation scheme for emergency volunteers (those with the skills to support front line services) will, if triggered by the Health Secretary, allow for individuals who are working to be compensated for loss of earnings that have been sacrificed, or for expenses for individuals who are not working (e.g. on benefits, retirees and students).
9. If the scheme is triggered before June, it is possible that self-employed individuals not on Universal Credit will be able to claim both the SEISS grant and the loss of earnings compensation from the DHSC scheme, meaning a double payment which could create some difficult presentational issues. However, HMRC have advised that it is not possible to alter the SEISS design to mitigate this issue and deliver to the current June timetable.
10. However, after June when it is known whether a person is eligible for the SEISS, it would be possible to mitigate this and DHSC would only pay those who are eligible for the SEISS expenses rather than loss of earnings. This position is consistent with the wider position that self-employed on the SEISS can be paid within the public sector, as the Volunteer Compensation Scheme focuses on compensating loss of income rather than providing pay.

**DECISION: do you agree that those participating in the emergency volunteering scheme can claim both a grant from the SEISS and loss of income compensation in the volunteer scheme until June?**

**Wider labour market conditionality**

Definition of 'adversely affected'

11. As you know, we have designed the SEISS to support individuals whose incomes have been negatively impacted by COVID-19, and we are asking for applicants to self-certify that this is the case. This is necessary to ensure that the scheme is allowable under State Aid rules but may also have a behavioural impact by dissuading those who do not need to claim the grant from applying.
12. A strict interpretation of this criterion would be to specify that "trading profits have fallen"; which is an approach that some other countries have taken (e.g. France stipulate a 70% fall in income, New Zealand a 30% fall in revenue). This would constitute a significant shift in policy, introducing a further criterion for eligibility and making the scheme less generous. However, another option is to specify that their "business has been adversely affected". In either case, it will be very difficult for HMRC to police.
13. Both phrases have been used: currently SEISS guidance on Gov.UK says that one of the conditions for individuals being eligible to claim is that they have "lost trading profits due to coronavirus" as well as stating "you will need to confirm to HMRC that your business has been adversely affected by coronavirus."
14. The profits of a period will not be known until accounts have been prepared, taking account of income and expenses of the period. We recommend the application asks individuals to confirm

that their “business adversely affected” as this is easier to understand and less likely to prompt taxpayers seeking professional advice in order to apply for the scheme.

15. However, relying on a less specific restriction may prompt further questions from taxpayers and stakeholders on what is allowable to be considered an adverse impact. We suggest that we include some examples of the most likely situations we expect for those applying to experience in the guidance, making use of the CJRS scheme as a starting point (e.g. loss of business, additional childcare, shielding or self-isolating) to provide more certainty for applicants.

**DECISION: do you agree that applicants to SEISS should be required self-certify that “their business has been adversely affected by COVID-19”?**

16. The following subsections, are specific examples of ‘labour conditionality’ where individuals have self-certified that their business has been adversely affected but they have found other forms of income that either mitigate that impact, or could potentially improve their overall situation once the SEISS support is factored in.

Intention to carry on trading

17. In addition to taxpayers self-certifying that their business has been adversely affected by COVID-19, the application form asks individuals to confirm they are currently trading, and intend to carry on trading. It is possible for HMRC to police if individuals are currently trading but HMRC believe it is impossible to police the latter, as even if records show an individual ceased trading, this may not have been their intention at the time of application.
18. However, we recommend that you agree this restriction on the application form as the declaration is helpful for State Aid purposes; providing evidence that the intention of the policy is not to overcompensate individuals. In addition, it may act as a ‘nudge’ that helps avoid no-longer-trading self-employed individuals from claiming the grant, even though it is not possible for HMRC to police individuals’ intentions.

**DECISION: do you agree that applicants to SEISS should be required to self-certify that they 1) are currently trading and 2) intend to carry on trading?**

Starting a new trade

19. It is possible that some individuals whose trade is adversely affected by coronavirus and who apply for SEISS will commence a new trade. The eligibility for the grant is based on historic results so carrying on a new trading activity is not prohibited under SEISS rules, although goes somewhat against the spirit of the scheme.
20. In some cases, individuals will subsequently revert to their original trade whereas others may decide to continue with the new trade. In those circumstances HMRC’s view is that it will be impossible to police the customer’s intentions after the event and doing so may discourage individuals from seeking alternative remunerative work.
21. Seeking and taking on new work has potential labour market benefits. Firstly, this is the labour market working effectively and facilitating a match between businesses and individuals with the right skills. This is especially important at a time when the market is disrupted due to the Non Pharmaceutical Interventions in effect and could support the hiring needs of key industries (e.g. delivery firms, [REDACTED] etc.) who are seeing increased demand due to COVID-19 restrictions.
22. Given, it is almost impossible to police and may have beneficial consequences on the real economy we recommend that access to the grant is not lost when undertaking a new trade in 2019-20, and this should be clarified within the published guidance.

**DECISION: do you agree that SEISS claimants can start a new trade and retain grant eligibility and to clarify this in the published guidance?**

Taking on an employed role

23. Starting an employed role has many of the same interactions as starting a new trade (discussed in section above). However, it is possible that this situation will, additionally, mean that an individual claiming SEISS grant could have less than 50% of total income in 2020-21. This does not affect eligibility, which is based on income from 2018-19, it doesn't meet with the spirit of the SEISS; as the individual is potentially better off as a result of COVID-19 support than they would have otherwise been.
24. As noted above, the individual will need to self-certify that they have been "adversely affected" by COVID-19 which may have a small behavioural impact in reducing the number of cases like this, although this relies on taxpayer goodwill. Similar to starting a new trade, it will be difficult for HMRC to police this at the time of applying for the grant.
25. Therefore, in line with our recommendation on continuing to trade, reservists being called up, and DHSC emergency volunteers, we recommend you allow individuals to remain eligible for SEISS even if they secure an employed role while claiming the grant.

**DECISION: do you agree that SEISS claimants can secure an employed role and retain grant eligibility?**

**Other decision points**

£50,000 threshold and 50% self-employment income test

26. As you know, the eligibility criteria for the SEISS includes a £50,000 threshold and 50% of income from self-employment test. However, the language used to describe these criteria needs to be precise to ensure we are clear to taxpayers who is and isn't eligible.
27. In the current guidance this criterion is stated as "no more than £50,000" and "more than 50%" which would mean an individual with profits of exactly £50,000 would be eligible but would need 50.01% from self-employment to be eligible. However, in 'Dear Colleague' letter the threshold was described as "less than £50,000" which would mean that an individual with exactly £50,000 of trading profits would not be eligible. Similarly, the language around the 50% test has been expressed as "at least" which would mean having *exactly* 50% from self-employment would be sufficient to access the scheme.
28. Clarifying language in these areas is unlikely to affect many individuals, however, given the use of the marginally more generous language in some places we recommend clarifying guidance to ensure it is clear that those exactly at the thresholds are eligible for the scheme.

**DECISION: do you agree that SEISS eligibility should allow those earning *exactly* £50,000 and with *exactly* 50% of income from self-employment to access the scheme?**

Non-Resident and Non-Domiciled individuals

29. For taxpayers who are UK tax resident and domiciled the relevant information needed to calculate the self-employed share of total income, for the 50% criteria, is contained in the self-assessment return.
30. However, non-residents may carry on a trade wholly or partly in the UK and may be taxable in the UK on their trading profits. They may also be non-resident partners in a partnership which trades in the UK and be taxable in the UK on their share of the partnership's UK profit. HMRC records show that 2% of all self-assessment returns were from non-UK residents in 2018/19.
31. Resident non-domiciled taxpayers can choose to be taxed on a remittance basis under which they are liable to UK income tax on UK source income but only pay tax on non-UK source income remitted to the UK. HMRC records show that 0.4% of all 2018/19 self-assessment returns were from taxpayers not domiciled on a remittance basis.
32. For both groups of individuals, HMRC does not hold information on the customer's worldwide income, only their UK income and remitted income. This makes it impossible to carry out 50%

eligibility test. Therefore, it is not possible to treat these groups of individuals in the same way as resident and domiciled individuals.

33. We have considered a number of potential options for dealing with these groups of individuals:

- **Option A:** Exclude individuals from the scheme who are not UK resident or UK resident but non domiciled and being taxed on a remittance basis (i.e. those groups for whom we do not know their worldwide total income). This would be the simplest option but would exclude individuals whose UK businesses have contributed to the UK economy and paid tax. [REDACTED]
- **Option B:** Require individuals in the affected groups to provide additional information in the application form that their UK trading profits comprise more than 50% of their worldwide total income, although it would be difficult to police this. This would allow individuals in those groups to qualify for SEISS if the other conditions were met.
- **Option C:** instead of testing whether the non-resident's UK trading income comprises more than 50% of total income test whether it comprises more than 50% of total UK taxable income. This would be likely to be passed by most non-residents but would carry a presentational risk that those with very high worldwide income that would otherwise fail the 50% test could access the scheme.

34. Based on the pros and cons of these measures across delivery, complexity, fairness and presentational considerations, we recommend proceeding with Option B.

**DECISION: do you agree that non-resident and non-domiciled individuals need to self-certify that their worldwide income does not make them ineligible when applying for the grant?**

35. The following sections are for information, and do not require a decision.

#### Taxpayers with enquiries

36. Once HMRC has identified potential SEISS claimants, it will invite them to apply for a grant, and calculate the amount of grant based on information from filed tax returns (including 2018/19 returns filed late provided they are filed by 23 April).

37. The result of an enquiry into a return could, if taken into account in the SEISS calculation, affect eligibility, by pushing trading profits over the £50,000 threshold or increase the amount of grant, by increasing the profits on which the grant is based. HMRC does not intend to consider amendments to returns arising from open enquiries or the results of closed enquiries settled by contract settlement.

38. Many current enquiries will not be settled by 23rd April and therefore HMRC intends to use the information in the filed return to calculate the grant. Many closed enquiries will have been dealt with by a contract settlement comprising all outstanding tax interest and penalties in a single sum rather than amendments to individual tax returns.

39. There will be cases where the enquiry has been concluded but no agreement has been reached, the return has been amended to allow the customer to formally appeal against the amendment and the appeal to proceed to a tribunal. In exceptional cases, HMRC could consider individual cases on a case-by-case basis using its existing payment and management powers.

#### Loan charge

40. You have agreed to adapt the scheme rules for the small population of SEISS applicants who are also loan charge individuals, by disregarding their 2018-19 self-assessment returns and instead using their returns from the two preceding years to determine their eligibility.

41. To follow the rationale of the main scheme, we will require loan charge individuals to have self-employment income in 2017-18 (rather than 2018-19) and will use the average of their 2016-

17 and 2017-18 profits to determine eligibility and the amount they will receive. If they had self-employment income 2017-18 but not 2016-17, we would use 2017-18 only. If they had self-employment income in 2016-17 but not in 2017-18, they will not be eligible for the scheme.

42. HMRC have communicated the adapted rules to those affected and are developing a special process for identifying and inviting them to apply.