

April 2023 Brings Enterprise Management Incentive and Company Share Option Plan Changes

March 22, 2023

From 6 April 2023, a couple of changes to the UK Enterprise Management Incentive (EMI) scheme and the Company Share Option Plan (CSOP) will take effect automatically. We've summarised and provided FAQs for these changes below.

EMI changes from 6 April 2023

These changes to the EMI scheme will take effect automatically from 6 April 2023:

- The requirement for a company to set out details of share restrictions within the option agreement will be removed.
- The requirement for employees to sign a working time declaration will be removed.

EMI FAQ

1. My company has previously granted EMI options. Do I need to do anything?

These changes will take effect automatically from 6 April 2023, and you do not need to revise your existing EMI plans to benefit from these changes.

2. Do the new rules apply to unexercised EMI options granted prior to 6 April 2023?

Yes. The removal of the requirements to set out details of share restrictions within the option agreement and for employees to sign a working time declaration is retrospective, and it will benefit options granted prior to 6 April 2023 but exercised on or after 6 April 2023.

3. Do EMI option holders still have to meet the working time requirements?

Yes. It is just the requirement to actually sign a working time declaration that is being removed. Three different employee descriptions can satisfy the statutory working time requirements to receive EMI options:

- Employees who are required to spend, on average, at least 25 hours a week on the business of the EMI company (or if the EMI company is a parent company, the business of the group), regardless of any other economic activity they also undertake.
- Employees who are required to spend, on average, less than 25 hours a week on the business of the EMI company (or if the EMI company is a parent company, the business of the group), if employment with such company or group makes up on average at least 75% of the employees' working time if they also are self-employed or work elsewhere.
- Employees who have no other remunerative employment or self-employment, no matter how little time they are required to spend per week on the business of the company.

4. Is the time to notify HM Revenue & Customs of the grant of EMI options also changing?

Not yet. From 6 April 2024, the deadline for a company to notify HMRC of the grant of an EMI option will be extended from 92 days from the grant to the 6 July following the end of the tax year in which the EMI option was granted. This will be covered in separate, future legislation.

CSOP changes from 6 April 2023

These Company Share Option Plan (CSOP) changes also will take effect automatically from 6 April 2023:

- The per-person share options limit will increase from £30,000 to £60,000.
- Share class restrictions (i.e., shares included in a CSOP plan must be from a share class that is 'worth having', by being either 'open market' shares or 'employee-control' shares) will be removed.

CSOP FAQ

1. My company has more than one class of shares. Can we now grant CSOP options?

CSOP options are a tax-efficient alternative if a company is too big to satisfy the EMI qualification conditions.

Previously, private companies with more than one class of shares, and particularly venture-backed companies with a preference stack, found it difficult to meet either the 'employee-control' or 'open market' test regarding the class of shares to be placed under CSOP options. As such, many companies with more than one class of shares couldn't grant CSOP options even if they met the other CSOP qualifying conditions.

The removal of these share class restrictions will make it much easier for companies with more than one class of shares to qualify to grant CSOP options from 6 April 2023.

2. My company has previously granted CSOP options. Do I need to do anything?

These changes will take effect automatically from 6 April 2023. You do not need to revise your existing CSOP plans to benefit from these changes.

3. Do the new rules apply to unexercised CSOP options granted prior to 6 April 2023?

Yes. Unexercised CSOP options granted prior to 6 April 2023 – assuming they were qualifying CSOP options based on the rules in place at the time of grant – will benefit from these changes.

4. Will replacement CSOP options granted on a company reorganisation benefit from the new rules?

Yes. HMRC confirmed that the new rules will provide that, in the event of an exchange of CSOP options on a company reorganisation, the share class restrictions will no longer apply when determining whether the new options can be regarded as equivalent to the old options.

5. We are planning to submit a CSOP share valuation request to HMRC. Should we wait until 6 April 2023?

HMRC asks that companies or their agents to **not** submit valuation requests for shares under the new CSOP rules any earlier than 23 March 2023. You will need to tell HMRC if the company's circumstances change between submitting the valuation request and 6 April 2023.

If you have any further questions about EMI, CSOPs or share plans generally, please contact any of the Cooley lawyers listed below.

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