

# NATIONAL INSURANCE CONTRIBUTIONS (TERMINATION AWARDS AND SPORTING TESTIMONIALS) ACT 2019

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes refer to the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act (c. 23) which received Royal Assent on 24 July 2019.

- These Explanatory Notes have been prepared by HM Revenue & Customs (HMRC) in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each section of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

# Table of Contents

Subject	Page of these Notes
<b>Overview of the Act</b>	<b>3</b>
<b>Policy background</b>	<b>3</b>
Termination Awards	3
Sporting Testimonials	3
<b>Legal background</b>	<b>4</b>
<b>Territorial extent and application</b>	<b>4</b>
Scotland	4
Wales	4
Northern Ireland	4
<b>Commentary on provisions of Act</b>	<b>4</b>
Termination Awards	4
Section 1: Termination awards: Great Britain	4
Section 2: Termination awards: Northern Ireland	5
Sporting Testimonials	6
Section 3: Sporting testimonials: Great Britain	6
Section 4: Sporting testimonials: Northern Ireland	6
General	7
Section 5: Extent, commencement and short title	7
<b>Related documents</b>	<b>7</b>
<b>Annex A – Hansard References</b>	<b>8</b>

*These Explanatory Notes relate to the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019 (c. 23) which received Royal Assent on 24 July 2019*

# Overview of the Act

- 1 The Act deals with the following matters:
  - Aligning the National Insurance contributions (NICs) treatment of termination awards made to employees with the income tax treatment; and
  - Aligning the NICs treatment of income from sporting testimonials with the income tax treatment.

## Policy background

### Termination Awards

- 2 The Government announced at Budget 2016 that it would be reforming the tax and NICs treatment of termination awards. Currently, certain forms of termination awards are exempt from employee and employer NICs and the first £30,000 is free from income tax.
- 3 The changes to the NICs treatment of termination awards place an employers' (Class 1A) NICs liability on the amount of a termination award that exceeds £30,000 mirroring the income tax treatment. The new Class 1A liability does not affect individuals as it is paid by the employer.
- 4 The Act introduces a new Class 1A NICs liability which will be payable on payments made on termination of employment which are in excess of £30,000 and which are not already charged to Class 1 NICs as earnings.
- 5 It amends the existing section 10 of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992) by providing for the new Class 1A NICs liability on termination awards, whilst keeping the existing provisions for Class 1A contributions payable on benefits in kind provided to employees, and defining which subsection applies.

### Sporting Testimonials

- 6 As part of the 2015 Autumn Statement, the Government announced that it would be reforming the income tax and NICs treatment of payments derived from sporting testimonials. The changes for income tax were legislated for in the Finance Act 2016, and came into effect on 5 April 2017.
- 7 The changes to the NICs treatment of sporting testimonials places a Class 1A NICs liability (which mirrors the income tax liability) on the amount of a testimonial payment that exceeds £100,000. The new Class 1A liability does not affect individuals as it is to be paid by the controller of the sporting testimonial.
- 8 The changes will bring payments from sporting testimonials that are non-contractual, non-customary and organised by an independent testimonial committee within the scope of both income tax and NICs. The new £100,000 exemption applies to only one testimonial in a person's lifetime, which could come from one event or a series of events held over a 12 calendar month testimonial year.

## Legal background

- 9 The legislation relating to the existing system of NICs and social security benefits is set out in a combination of primary and subordinate legislation. The relevant provisions are:
- Social Security Contributions and Benefits Act (SSCBA 1992);
  - Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992);
  - The Social Security Administration Act 1992;
  - The Social Security Administration (Northern Ireland) Act 1992;
  - The Social Security (Contributions) Regulations 2001 (SI 2001/1004).
- 10 These provisions will continue to be the main legislation dealing with NICs.

## Territorial extent and application

- 11 Sections 1 and 3 extend to England and Wales and Scotland. Sections 2 and 4 extend to Northern Ireland. Section 5 extends to the whole of the United Kingdom. An amendment or repeal in the Act has the same extent as the provision amended or repealed.
- 12 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.

### Scotland

- 13 The matters to which the provisions of the Act relate are not within the legislative competence of the Scottish Parliament.

### Wales

- 14 The Act does not contain any provisions relating to matters within the legislative competence of the National Assembly of Wales.

### Northern Ireland

- 15 Under the provisions of Schedule 2 to the Northern Ireland Act 1998 NICs are an excepted matter. The Act therefore applies to the relevant Northern Ireland legislation relating to NICs.

## Commentary on provisions of Act

### Termination Awards

#### Section 1: Termination awards: Great Britain

- 16 Subsection (1) provides for amendments to section 10 of the SSCBA 1992.
- 17 Subsection (2) inserts new subsections (1A), (1B) and (1C) into section 10 of the SSCBA 1992.
- 18 New subsection (1A) provides that a Class 1A contribution is payable in respect of an amount of a payment or benefit received by an earner in connection with the termination of the earner's employment (termination award). It further clarifies that the amount paid as a

- termination award, and on which the new Class 1A liability will arise, must count as employment income under section 403 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) and that the earner is chargeable to tax on the termination award under section 403 ITEPA 2003.
- 19 New subsection (1B) prevents double charging by providing that Class 1A contributions payable under new subsection (1A) are not payable on an amount of earnings on which Class 1 contributions are also payable.
  - 20 New subsection (1C) clarifies that the employment from which the termination award arises must be the employed earner's employment.
  - 21 Subsection (3) amends section 10(2) of the SSCBA 1992 so that the section's existing purpose, clarifying who is liable to pay a Class 1A contribution, is restricted to Class 1A contributions other than that paid on a termination award.
  - 22 Subsection (4) inserts new subsection (3A) into section 10 of the SSCBA 1992. New subsection (3A) clarifies who is liable to pay a Class 1A contribution on termination awards under new subsection (1A). It is the person who would be liable to pay secondary Class 1 NICs if the amount of earnings were subject to Class 1.
  - 23 Subsection (5) amends section 10(4) of the SSCBA 1992 so that the section's existing purpose, explaining how the amount of a Class 1A contribution is calculated, is restricted to Class 1A NICs other than that paid on a termination award.
  - 24 Subsection (6) inserts a new subsection (4A) into section 10 of the SSCBA 1992. New subsection (4A) clarifies how the amount of a Class 1A NICs payable on a termination award is calculated by using the Class 1A percentage.
  - 25 Subsection (7) amends section 10(5) of the SSCBA 1992 so that it applies to both existing subsection (4) and new subsection (4A).
  - 26 Subsection (8) amends subsection (9)(a) of section 10 of the SSCBA 1992 so that the Treasury may by regulations provide that Class 1A NICs are not to be payable in respect of general earnings or termination awards.
  - 27 Subsection (9) inserts new subsection (12) after subsection (11) of section 10 of the SSCBA 1992. This new subsection clarifies that a termination award means a payment or benefit received by an earner (or their spouse, civil partner, blood relative or dependent) in connection with the termination of the earner's employment.
  - 28 Subsection (10) amends the heading of section 10 of the SSCBA 1992, removing reference to "benefits in kind etc." to reflect that the provisions of the section now apply more widely than just to Class 1A NICs due on benefits in kind.
  - 29 Subsection (11) amends section 162(5)(c) of the Social Security Administration Act 1992 to ensure that Class 1A NICs paid on termination awards are included in the calculation of the allocation of payments to the National Health Service.

## Section 2: Termination awards: Northern Ireland

- 30 This section mirrors the effect of section 1 in Northern Ireland legislation.

## Sporting Testimonials

### Section 3: Sporting testimonials: Great Britain

- 31 This section provides for any Class 1A NICs liability arising on taxable sporting testimonial payments by virtue of section 226E of ITEPA 2003 and section 10 of the SSCBA 1992 to be met by third party controllers of sporting testimonials.
- 32 The controller will be liable to pay Class 1A NICs due on sporting testimonial payments that comprise cash as well as benefits in kind.
- 33 Subsection (1) provides for amendments to the SSCBA 1992.
- 34 Subsection (2) inserts into section 10 of the SSCBA 1992 a reference to new section 10ZBA which will provide for the new Class 1A NICs liability on sporting testimonial payments to be placed on the controller of a sporting testimonial.
- 35 Subsection (3) inserts into section 10ZA of the SSCBA 1992 new subsection (1A). This new subsection makes clear that section 10ZA will not apply if the benefit being provided by the third party consists of a sporting testimonial payment.
- 36 Subsection (4) inserts into the SSCBA 1992 new section 10ZBA.
- 37 New section 10ZBA(1) defines the circumstances in which a sporting testimonial controller will be liable to pay Class 1A contributions. Three conditions must be satisfied:
  - a Class 1A NICs liability must be payable for the tax year in respect of general earnings paid to an earner;
  - those general earnings must consist in a sporting testimonial payment; and
  - the controller of the sporting testimonial making the payment must not be the person who, but for new section 10ZBA, would be liable to pay Class 1A NICs on those general earnings.
- 38 New subsection 10ZBA(2) provides that the controller of the sporting testimonial is liable to pay the Class 1A NICs due in respect of the sporting testimonial payment instead of the earner's employer.
- 39 New subsections 10ZBA(3), (4) and (5) deal with cases where the controller of the sporting testimonial pays an amount to discharge any liability of the earner to pay income tax in the relevant tax year in respect of a sporting testimonial payment. Normally, a payment of an earner's income tax by someone other than the earner himself constitutes a payment of earnings for NICs purposes on which a Class 1 NICs liability arises. New subsection (4) provides that where such an amount is paid by the controller of the sporting testimonial, that amount is to be treated as a payment of general earnings and is to be ignored in the computation of the earner's earnings for Class 1 NICs purposes. The combined effect of subsections (3), (4) and (5) is to require the controller of a sporting testimonial to pay Class 1A NICs on any payment made by him to discharge the earner's tax liability on the sporting testimonial payment.
- 40 New subsection 10ZBA(6) provides that the expressions used in this section have the same meaning as in section 226E of ITEPA 2003.

### Section 4: Sporting testimonials: Northern Ireland

- 41 This section mirrors the effect of section 3 in Northern Ireland legislation.

## General

### Section 5: Extent, commencement and short title

- 42 Subsection (1) provides that sections 1 and 3 of the Act extend to England and Wales and Scotland. Sections 2 and 4 extend to Northern Ireland. This section extends to England and Wales, Scotland and Northern Ireland.
- 43 Subsection (2) provides that section 5 comes into force on the day the Act is passed.
- 44 Subsection (3) provides that the other provisions of the Act come into force on such a day as the Treasury may appoint by regulations made by statutory instrument.
- 45 Subsection (4) provides that regulations:
- may appoint different days for different purposes or different areas; and
  - may include transitional, transitory or saving provision.
- 46 Subsection (5) provides for the Act to be known as the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019.

## Related documents

- 47 The following documents are relevant to the Act and can be read at the stated locations:
- Draft legislation and explanatory notes for termination awards and sporting testimonial payments, December 2016  
<https://www.gov.uk/government/collections/national-insurance-contributions-bill-2016>
  - Termination awards tax information impact note (TIIN), December 2016 (updated April 2018) <https://www.gov.uk/government/publications/income-tax-and-national-insurance-contributions-treatment-of-termination-payments/income-tax-and-national-insurance-contributions-treatment-of-termination-payments>
  - Sporting testimonials TIIN, March 2016 (updated November 2017)  
<https://www.gov.uk/government/publications/income-tax-update-to-treatment-of-income-from-sporting-testimonials/income-tax-update-to-treatment-of-income-from-sporting-testimonials>
  - Table 2.1 Budget 2016, March 2016  
<https://www.gov.uk/government/publications/budget-2016-documents>
  - Table 2.2 Budget 2017, March 2017  
<https://www.gov.uk/government/publications/spring-budget-2017-documents>

## Annex A – Hansard References

48 The following table sets out the dates and Hansard references for each stage of the Acts passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	25 April 2019	<a href="#">Vol. 658 Col 931</a>
Second Reading	30 April 2019	<a href="#">Vol. 659 Col. 153</a>
Public Bill Committee	14 May 2019	<a href="#">Col. 1 Col. 29</a>
Report and Third Reading	10 June 2019	<a href="#">Vol. 661 Col. 453</a>
<i>House of Lords</i>		
Introduction	11 June 2019	<a href="#">Vol. 798</a>
Second Reading	26 June 2019	<a href="#">Vol. 798</a>
Order of Commitment discharged: House of Lords	10 July 2019	<a href="#">Vol. 798</a>
Third Reading	23 July 2019	<a href="#">Vol. 799 Col. 673</a>
Royal Assent	24 July 2019	<a href="#">House of Commons Vol. 663</a>
		<a href="#">House of Lords Vol. 799</a>

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