

**EXPLANATORY MEMORANDUM TO
THE INCOME TAX (EXEMPTION OF MINOR BENEFITS) (REVOCATION)
REGULATIONS 2009**

2009 No. 695

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations have the effect of revoking regulation 7 and part of regulation 2 of the Income Tax (Exemption of Minor Benefits) Regulations 2002 (SI 2002/205).

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 210 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) allows the Treasury to make regulations which remove minor benefits provided to an employee by an employer from the charge to income tax otherwise arising under Chapter 10 of Part 3 (taxable benefits: residual liability to charge) of ITEPA 2003.

4.2 These Regulations revoke the Income Tax (Exemption of Minor, Benefits) (Amendment) Regulations 2007, (SI 2007/2090) thereby removing regulation 7 (exemption in respect of the provision of health screening and medical check-ups) that provides for one health screening and one medical check-up per employee per year to be exempt from the charge to income tax. They also remove definitions of the terms “health screening” and “medical check-up” at regulation 2.

4.3 Whilst these regulations revoke SI 2007/2090 with effect from 6 April 2009, regulation 4 ensures that they continue to have effect until such time as a new section in ITEPA 2003 takes effect. A clause will be included in the Finance Bill 2009 which, if enacted, will create an exemption for health screenings and medical check-ups provided by employers, but without the condition in SI 2002/205 that these must be offered to all employees. An equivalent “disregard” for non-cash vouchers provided for these medicals is being inserted in Part 5 to Schedule 3 of the Social Security (Contributions) Regulations 2001 (see S.I 2009/600).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 It had long been the stated practice of HMRC that where an employer provides their employees with health screening or a medical check up it should not be considered a taxable benefit. Following discussion with interested parties we have decided to clarify this position in legislation.

7.2 It was decided to introduce regulations (SI 2007/2090) to formally exempt from tax the provision of health screening and medical check-ups that are made available by employers to all their employees. However, the power that was exercised to introduce these regulations contained a restriction that meant that for the exemption to apply the medical had to be provided to an employer's employees generally on similar terms. Ministers have agreed that legislation should be introduced in the Finance Bill 2009 that grants the exemption (without the need for regulations to be made) without that restriction.

7.3 This means that regulation 7 of SI 2002/205 will be superseded by primary legislation, and needs to be revoked, along with the related definitions in regulation 2.

- *Consolidation*

7.2 There are no plans to consolidate the instrument that is being amended. No free informal consolidated text is available.

8. Consultation outcome

8.1 HMRC consulted with employers and their representatives on the tax and National Insurance treatment of employer-funded medical check-ups. As a result, HMRC accepts that the current regulations clearly had an impact wider than had previously been anticipated and could affect adversely the tax-free status of check-ups provided by some employers to only a small number of employees for good business reasons.

8.2 Ministers agreed that HMRC introduce legislation in Finance Bill 2009 to exempt from tax the provision of one health screening and one

medical check-up a year without the proviso that they have to be available generally on similar terms.

9. Guidance

- 9.1 HMRC have already contacted those that had been identified as affected by the original legislation and also announced its intention to introduce this legislation on their website.
- 9.2 HMRC will update their published guidance in the Employment Income Manual which is available to the public on the HMRC website.

10. Impact

- 10.1 No impact on business, charities or voluntary bodies is foreseen.
- 10.2 No impact on the public sector is foreseen.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 A Small Firms Impact Test has not been undertaken because the legislation does not alter the operation of existing procedures.

12. Monitoring & review

- 12.1 HMRC will undertake an internal review after 24 months to ensure that the intended outcome has been achieved.

13. Contact

Paul Harris at HM Revenue and Customs Tel: 020 7147 2528 or email: pa.harris@hmrc.gsi.gov.uk can answer any queries regarding the instrument.