

**EXPLANATORY MEMORANDUM TO  
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 3)  
REGULATIONS 2013**

**2013 No. 1907**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends the Social Security (Contributions) Regulations (S. I. 2001/1004) (the Principal Regulations).

2.2 The instrument ensures that the National Insurance Contributions ("NICs") treatment of the shares received by employee shareholders follows the income tax treatment (i.e. the first £2,000 are free of NICs but thereafter NICs are chargeable). It disregards from earnings the cost of employer funded independent advice which must be provided to individuals before they become employee shareholders.

2.3 It also disregards from earnings certain travel expenses paid to elected representatives of the devolved administrations of Scotland, Wales and Northern Ireland.

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

3.1 None.

**4. Legislative Context**

*Employee shareholders*

4.1 Section 31 of the Growth and Infrastructure Act 2013 introduced, by amendment to the Employment Rights Act 1996, a new employment status known as "employee shareholder". The basis of this new employment status is that employees receive shares in their employer (in exchange for a reduction some employment protection). The intention in creating this new status was that the employee shareholders would receive the first £2,000 worth of shares without being liable to pay income tax or NICs. Any value above £2,000 is to be treated as earnings

4.2 As part of the Act, employee shareholders must receive independent advice on the terms and effect of the agreement. The reasonable cost of obtaining the advice must be met by the employer. This would, ordinarily, give rise to a potential income tax and NIC liability on the cost of the advice to the employee despite the fact they are obliged to obtain the advice. The income tax liability is removed by the Finance Act 2013.

*The new travel expenses disregard for members of Devolved Administrations*

4.3 The Finance Act 2013 amended the Income Tax (Earnings and Pensions) Act 2003 to formalise the income tax treatment of certain travel expenses paid to members of the Scottish Parliament, members of the National Assembly for Wales and members of the Legislative Assembly in Northern Ireland. The amendments introduced a new income tax exemption for certain travel expenses paid to the members of the three devolved administrations and codified long standing concessions.

4.4 This instrument introduces a new disregard to ensure that the tax and NICs treatment of these travel expenses are aligned.

## **5. Territorial Extent and Application**

5.1 The instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- *What is being done and why*

### *Treatment of shares provided as part of the employee shareholder agreement*

7.1 The amendment ensures the NICs treatment of the shares received by employee shareholders follows the income tax treatment (i.e. the first £2,000 are free of NICs but thereafter NICs are chargeable).

### *Employee shareholder disregard for independent advice*

7.2 The 'employee shareholder status' was established by the Growth and Infrastructure Act 2013. The new status will give staff a stake in their employer's future, and will give employers greater choice about the contracts they can offer to employees.

7.3 An amendment to the Growth and Infrastructure Act 2013 required that an individual considering a job under the new status must receive independent advice on the proposed employee shareholder agreement, and the employer should bear the reasonable costs of the advice. The government agreed that employers should bear the reasonable cost of this advice. This regulation ensures that no NICs liability will arise as a result of the advice provided.

### *The new travel expenses disregard for members of Devolved Administrations*

7.4 Following the creation of the Independent Parliamentary Standards Authority and the introduction of the new MPs Expenses Scheme legislation was introduced in 2010 to formalise the concessionary tax treatment that previously applied to certain expenses paid to MPs. Similar legislation was not introduced in relation to members

of devolved administrations because their allowances schemes were undergoing a full review at that time. Legislation to formalise the tax treatment of travel expenses paid to members of the devolved administrations is now included in the Finance Act 2013.

7.5 The concessionary treatment applying to travel expenses paid to members of devolved administrations ended on 6 April 2013. This amendment to the Principal Regulations will ensure that certain travel expenses incurred by elected representatives in the performance of their Parliamentary or Assembly duties will not be liable to Class 1 NICs. It will bring the NICs treatment of these expenses broadly in line with those of their Westminster counterparts.

- ***Consolidation***

7.6 There are currently no plans to consolidate the Principal Regulations.

## **8. Consultation outcome**

### *Employee shareholders*

8.1 The Department of Business Innovation & Skills consulted on the employee shareholder status between 18 October 2012 and 9 November 2012.

8.2 There were 209 responses from a wide variety of organisations. Each response was carefully considered and summarised in a government response consultation document, which is available on HM Government website [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/68731/12-1338-implementing-employee-owner-status-government-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/68731/12-1338-implementing-employee-owner-status-government-response.pdf)

### *The new travel expenses disregard for members of Devolved Administrations*

8.3 This regulation only applies to elected members of devolved administrations and brings the NICs treatment for travel expenses into line with the treatment of similar expenses paid to Westminster MPs. Accordingly there was no public consultation.

## **9. Guidance**

9.1 HMRC will update the guidance it provides to employers as appropriate.

## **10. Impact**

10.1 An impact assessment has not been prepared as there is expected to be a negligible impact on business or charities.

10.2 A Tax Information and Impact Note covering regulations 3 and 4(b) of this instrument was published on 4<sup>th</sup> June 2013 alongside an Amendment to the Finance Bill 2013 and is available on HM Government website <https://www.gov.uk/government/publications/finance-bill-2013> It remains an accurate summary of the impacts that apply to this instrument.

10.3 A Tax and Impact Note covering regulation 4(a) of this instrument was published on 11<sup>th</sup> December 2012 alongside the draft Finance Bill 2013 and is available on HMRC website <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

**11. Regulating small business**

11.1 The employee shareholder scheme applies to small businesses.

11.2 The provision relating to travel expenses for members of devolved administrations does not apply to small businesses.

**12. Monitoring & review**

12.1 HMRC will monitor the practical effects of this legislation to ensure the objectives of it are met.

**13. Contact**

Ativie Edebiri at HMRC, Tel: 0207 147 0235 or e-mail: [ativie.edebiri@hmrc.gsi.gov.uk](mailto:ativie.edebiri@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.