

EXPLANATORY MEMORANDUM TO
THE EMPLOYER-FINANCED RETIREMENT BENEFITS (EXCLUDED BENEFITS
FOR TAX PURPOSES) (AMENDMENT) REGULATIONS 2016

2016 No. 1036

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument provides a tax exemption for low-value benefits-in-kind provided by an employer to or for a former employee or members of the former employee's family or household. The benefits are those that would be exempt under the new statutory definition of a trivial benefit-in-kind provided by section 323A and 323B of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 These Regulations amend the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007 (S.I. 2007/3537) (the "2007 Regulations").

4.2 Relevant benefits provided under an employer-financed retirement benefits scheme ("EFRBS") are charged to tax as employment income under section 394 of ITEPA. An EFRBS is defined in section 393A of ITEPA as a scheme for the provision of benefits consisting of, or including, relevant benefits by an employer to or in respect of its employees or former employees. Section 393B of ITEPA defines "relevant benefits" and they can be in the form of any lump sum, gratuity or other benefit, including a non-cash benefit, provided for or in respect of an employee or former employee, either on or in anticipation of retirement, on death or after retirement or death in connection with past services.

4.3 Section 393B(3) of ITEPA provides that certain benefits, which are provided under an EFRBS, are not relevant benefits because they are excluded benefits. The description of excluded benefits may be extended by secondary legislation. As such these benefits do not count as employment income. These Regulations extend the description to cover the payments mentioned in paragraph 2 of this memorandum.

- 4.4 As the Regulations will have effect from 6 April 2016 they are retrospective. The authority for this is contained in section 393B(4A) which provides that regulations made under the power in section 393B(3)(d) may have effect in relation to times before they are made.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
5.2 The territorial application of this instrument is 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 The measure is intended to align with the approach for dealing with low value benefits-in-kind provided for employees. At present employers have to agree with HMRC whether certain benefits-in-kind can be treated as trivial. Where such agreement is reached, the trivial benefits do not need to be returned to HMRC after the end of the tax year.
- 7.2 Employers often want to continue to provide these low-value benefits to former employees when they retire or to their families or household (including after the death of the employee), but may be put off doing so by the burdensome process which is disproportionate to the amounts of tax and National Insurance contributions involved for both employers and HMRC.
- 7.3 Sections 323A and 323B of ITEPA were introduced by the Finance Act 2016. They provide a statutory definition of a trivial benefit-in-kind and an exemption for these benefits, together with a limit on the benefits provided where the employer is a close company. The exemption provided by this instrument will apply in the same way as the exemption under sections 323A and 323B of ITEPA for benefits provided to employees.
- 7.4 Where a trivial benefit-in-kind is provided for a member of the family or household of a director or office-holder where the employer is a close company, the value is apportioned between all directors and office-holders and contributes towards each of their limits. This measure enables part of the value of that trivial benefit-in-kind to be allocated to the limit on the benefits provided for former directors.
- 7.5 This will provide certainty to employers as to the treatment of such benefits-in-kind so that they do not have to contact HMRC to confirm the status of the benefits or report them.
- 7.6 A disregard of the National Insurance contributions charge on trivial benefits-in-kind is provided for in separate Regulations.

Consolidation

- 7.7 The Regulations will amend the 2007 Regulations. They will not be consolidated.

8. Consultation outcome

- 8.1 An exemption for low-value benefits-in-kind provided to or for employees or members of their family or household was implemented as a result of a 12-week public consultation. There were 48 written responses and 87% supported a monetary limit for benefits-in-kind with £50-75 the most popular option (40%). No further consultation is needed to align the tax treatment of similar benefits provided to or for former employees.
- 8.2 This instrument was published in draft on the HMRC website for consultation from 9 December 2015 to 3 February 2016. No substantive changes have been made to the regulations following the consultation.

9. Guidance

- 9.1 Guidance on this instrument will be included in the next available update of the HMRC Employment Income Manual.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is to reduce the burden associated with filing reports on benefits-in-kind. The legislation will create ongoing administrative savings for those businesses and civil society organisations that provide trivial benefits-in-kind.
- 10.2 The impact on the public sector is expected to create an administrative saving for HMRC as a result of a reduced number of benefits-in-kind that have to be recorded. The administrative savings are anticipated to be negligible.
- 10.3 A Tax Information and Impact Note was published on 9 December 2015 alongside the draft Finance Bill 2016 Measure to insert sections 323A to 323C into ITEPA 2003 and is available on the website at www.gov.uk/government/publications/income-tax-exemption-for-trivial-benefits-in-kind. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 There is no special provision to minimise the impact of the requirements on small businesses (employing up to 50 people), as the legislation reduces number of benefits-in-kind that need to be recorded for all employers.

12. Monitoring & review

- 12.1 The measure will be monitored and assessed alongside other measures in the government's package of employee benefits-in-kind and expenses simplifications, through communication with affected taxpayer groups.
- 12.2 The legislation also includes provision for the monetary limit for a trivial benefit-in-kind to be updated in the future. The government will keep the monetary limit under review.

13. Contact

- 13.1 Beverley Davies at HM Revenue and Customs Telephone: 03000 512336 or email: <mailto:mailtopensions.policy@hmrc.gsi.gov.uk> can answer any queries regarding the instrument.