

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 4)
REGULATIONS 2016

2016 No. 1067

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument makes consequential amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (the "Principal Regulations"). The amendments cover:-

- Updates to legislative cross-references in regulation 114 of the Principal Regulations regarding certification requirements for UK continental shelf (UKCS) workers;
- The insertion of a missing cross-reference in regulation 40 of the Principal Regulations – exclusion from liability to Class 1A National Insurance contributions (NICs) of payments of travel expenses and costs of certain overseas employees;
- The addition of a new sub-paragraph (da) to paragraph 6 of Part 5 of Schedule 3 to the Principal Regulations to provide a disregard from Class 1 NICs for certain low-value benefits in kind ("trivial BiKs").
- The introduction of a transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence (T&S).

3. Matters of special interest to Parliament

Matters of special interest to the Joint 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

Exclusion of payments of travel expenses and costs of certain overseas employees from liability to Class 1A NICs

4.1 Class 1A NICs are payable by secondary contributors in respect of benefits in kind provided to or for the benefit of employees.

- 4.2 Regulation 40 of the Principal Regulations sets out categories of general earnings of an employee in respect of which Class 1A NICs are not payable. Regulation 40(2)(b) provides that this includes general earnings that fall within paragraph 4 of Part VIII of Schedule 3 to the Principal Regulations.
- 4.3 Schedule 3 to the Principal Regulations was previously amended by S.I. 2004/770. This amendment expanded paragraph 4 of Part VIII of Schedule 3 into new paragraphs 4, 4A, 4B, 4C and 4D (which cover payments of travel, subsistence and accommodation expenses and costs of certain overseas employees), but it did not update regulation 40(2)(b) of the Principal Regulations to refer to new paragraphs 4A to 4D. The instrument puts this update into place and clarifies that Class 1A NICs are not payable in respect of general earnings that fall within these paragraphs.

Certification for UKCS workers

- 4.4 Regulation 114(4) of the Principal Regulations appoints a secondary contributor for UKCS workers including where the employer is not present in Great Britain. The secondary contributor is liable for Class 1 secondary NICs in respect of those workers.
- 4.5 Regulation 114(5) of the Principal Regulations excludes certain UKCS workers from the application of the rule in regulation 114(4) if they hold a certificate of competency and are required to be present on a merchant ship in order to meet requirements for the safe manning of that ship. Paragraphs 5 and 6 and Table 1 of regulation 114 cross-reference two Department for Transport regulations under which these certificates were previously issued and in which this safe manning requirement was contained: S.I. 1997/348 and S.I. 1997/1320. These regulations have since been superseded by the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (S.I. 2015/782). The instrument updates these cross-references so they refer to S.I. 2015/782, rather than the obsolete 1997 regulations.

NICs disregard for trivial BiKs

- 4.6 The amendment made by regulation 5 of this instrument adds a new sub-paragraph (da) to paragraph 6 of Part 5 of Schedule 3 to the Principal Regulations. It provides that any payment which is exempted from income tax under section 323A of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA”) will also be disregarded for the purposes of calculating an individual’s earnings for NICs. Section 323A was inserted into ITEPA by section 13 of the Finance Act 2016 (c.24) (“FA 2016”). The section introduces a new statutory exemption from income tax for trivial BiKs provided by employers to employees.

Transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence

- 4.7 FA 2016 introduced two new sections (339A and 688B) into ITEPA and a new chapter (Chapter 3B) into Part 4 of the Income Tax (Pay As You Earn) Regulations 2003. These provisions restrict eligibility for tax relief on T&S for those engaged through an employment intermediary.
- 4.8 The Social Security (Contributions) (Amendment No2) Regulations 2016 (S.I. 2016/352) were introduced to replicate this legislation for NICs to ensure that the NICs disregard for T&S was restricted in the same way. Following amendment this was introduced from 6 July 2016.

4.9 Alongside these changes FA 2016 introduced two transfers of liability to improve compliance with the legislation. Following Royal Assent this instrument ensures that the position for NICs continues to reflect that of tax and a similar transfer of liability is in place for both.

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

Exclusion of payments of travel expenses and costs of certain overseas employees from liability to Class 1A NICs

7.1 It was not intended that payments of general earnings that fall within paragraphs 4A to 4D would alternatively be capable of giving rise to a liability to Class 1A NICs. The changes made by S.I. 2004/770 did not make this clear and so regulation 3 amends regulation 40(2)(b) of the Principal Regulations to specify that Class 1A NICs are also not payable in respect of payments of general earnings that fall within these paragraphs.

Certification for UKCS workers

7.2 Regulation 114 of the Principal Regulations sets out a rule for determining the identity of the secondary contributor for certain UKCS workers. Regulation 114 currently refers to provisions in regulations from 1997 that have been superseded by S.I. 2015/782 and which will cease to be valid for transitional purposes from 1st January 2017. The instrument thus updates regulation 114 to cross-reference relevant provisions of S.I. 2015/782.

7.3 S.I. 2004/770 inserted new paragraphs 4A to 4D into Part VIII of Schedule 3 to the Principal Regulations. These paragraphs provide a disregard from liability to Class 1 NICs in respect of payments of travel, subsistence and accommodation expenses and costs of certain overseas employees.

NICs disregard for trivial BiKs.

7.4 Regulation 5 of this instrument provides a disregard from liability for Class 1 NICs for the cost of trivial BiKs provided by employers to their employees which would otherwise attract Class 1 NICs, such as certain non-cash vouchers. This reflects section 323A of ITEPA which provides that such benefits in kind are exempted from income tax. This exemption includes a £300 annual monetary cap (the annual exempt amount) for office holders or directors of close companies and any members of their families and households who are employees of the same close companies. The cap will therefore also apply for NICs purposes.

Transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence.

- 7.5 The government has restricted the NICs disregard on T&S expenses for home-to-work commuting for workers who supply their services through an employment intermediary, such as an umbrella company, and who carry out their work under supervision, direction or control. For individuals working through Personal Service Companies (PSCs), the disregard is restricted where the intermediaries legislation (IR35) applies, that is where the worker would be considered an employee if engaged directly, rather than through a limited company.
- 7.6 Two transfers of liability are being introduced to help ensure compliance with the new regulations. One will transfer any NICs liability to an organisation, or individual (except the worker) that has produced a fraudulent document intended to constitute evidence that a NICs disregard on T&S can be claimed. The second will transfer liability to the director of an employment intermediary where they have provided a NICs disregard to a worker without any evidence that the worker was not under supervision, direction or control in the manner they undertake their work, or as appropriate, would not be considered as an employee if they were engaged directly.

Consolidation

- 7.7 There are no plans to consolidate the Principal Regulations.

8. Consultation outcome

Exclusion of payments of travel expenses and costs of certain overseas employees from liability to Class 1A NICs

- 8.1 As this amendment clarifies existing policy, consultation was not considered necessary.

Certification for UKCS workers

- 8.2 As this amendment clarifies existing policy, consultation was not considered necessary.

NICs disregard for trivial BiKs

- 8.3 This instrument was published in draft on the HMRC website for consultation from 9 December 2015 to 3 February 2016. No changes have been made to the regulations following the consultation.

Transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence.

- 8.4 Although this instrument has not been previously issued in draft, the legislative draft 'Travel expenses of workers providing services through intermediaries' was published on the GOV.UK website for comment from 9 December 2015 until 3 February 2016.

<https://www.gov.uk/government/publications/income-tax-employment-intermediaries-and-relief-for-travel-and-subsistence>

9. Guidance

Exclusion of payments of travel expenses and costs of certain overseas employees from liability to Class 1A NICs.

9.1 No changes to guidance are necessary.

Certification for UKCS workers

9.2 No changes to guidance are necessary.

NICs disregard for trivial BiKs

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

Transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence

9.4 No changes to guidance are necessary.

10. Impact

Exclusion of payments of travel expenses and costs of certain overseas employees from liability to Class 1A NICs

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A Tax Information and Impact Assessment covering this instrument has been published and is available on the GOV.UK website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

Certification for UKCS workers

10.4 The impact on business, charities or voluntary bodies is negligible.

10.5 The impact on the public sector is negligible.

10.6 A Tax Information and Impact Assessment covering this instrument has been published and is available on the GOV.UK website at <https://www.gov.uk/government/publications/national-insurance-contributions-uk-continental-shelf-workers-secondary-class-1>

NICs disregard for trivial BiKs

10.7 This measure is expected to create negligible ongoing administrative savings for those businesses and civil society organisations that provide such benefits, as it will reduce the burden associated with filing forms P11D and making PAYE Settlement Agreement applications.

10.8 The measure is expected to create an administrative saving for HMRC as a result of a reduced number of benefits in kind recorded on P11D forms and PAYE Settlement Agreements. The administrative savings are anticipated to be negligible.

10.9 A Tax Information and Impact Note covering this instrument was published on GOV.UK at <https://www.gov.uk/government/publications/national-insurance-contributions-clarity-for-employers-whose-workers-perform-duties-abroad-class-1a>

alongside the draft Finance Bill 2016. It remains an accurate summary of the impacts that apply to this instrument.

Transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence

- 10.10 The impact on business, charities or voluntary bodies is negligible.
- 10.11 The impact on the public sector is negligible.
- 10.12 A Tax Information and Impact Assessment covering this instrument has been published and is available on the GOV.UK website at <https://www.gov.uk/government/publications/income-tax-employment-intermediaries-and-relief-for-travel-and-subsistence>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

Exclusion of payments of travel expenses and costs of certain overseas employees from liability to Class 1A NICs

- 11.1 The legislation applies to activities that are undertaken by small businesses, but is expected to have a minor impact.

Certification for UKCS workers

- 11.2 The legislation applies to activities that are undertaken by small businesses, but is expected to have a minor impact.

NICs disregard for trivial BiKs

- 11.3 The provisions in this instrument apply to all employers. There will be a negligible impact on small business.

Transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence

- 11.4 The legislation applies to activities that are undertaken by small businesses.
- 11.5 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.6 The basis for the final decision on what action to take to assist small businesses was that the impact on small and micro businesses is negligible

12. Monitoring & review

Exclusion of payments of travel expenses and costs of certain overseas employees from liability to Class 1A NICs

- 12.1 As this measure clarifies existing policy, no review or monitoring is considered necessary.

Certification for UKCS workers

- 12.2 As this measure clarifies existing policy, no review or monitoring is considered necessary.

NICs disregard for trivial BiKs

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

Transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence.

- 12.4 The measure will be kept under review through communication with affected groups, regarding the wider regulatory changes that this measure alters i.e. the restrictions to the availability of a NICs disregard on the costs of travel and subsistence, introduced from 6 April 2016.

13. Contact

Certification for UKCS workers

- 13.1 Emma Barker at HMRC, Tel: 03000 586778 or e-mail: emma.robinson3@hmrc.gsi.gov.uk can answer any queries regarding the treatment of UKCS workers.

Exclusion of payments of travel expenses and costs of certain overseas employees from liability to Class 1A NICs

- 13.2 Emma Barker at HMRC, Tel: 03000 586778 or e-mail: emma.robinson3@hmrc.gsi.gov.uk can answer any queries regarding the treatment of regulation 40.

NICs disregard for trivial BiKs

- 13.3 Raj Nayyar at HMRC, Telephone: 03000 586543 or email: raj.nayyar@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Transfer of liability for employment intermediaries who do not comply with recent regulations restricting the NICs disregard for travel and subsistence.

- 13.4 Philip Horswill at HM Revenue and Customs, Tel: 03000 518361 or e-mail: Philip.horswill@hmrc.gsi.gov.uk can answer queries regarding the restrictions to travel and subsistence expenses for those engaged through an employment intermediary.