

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 3)
REGULATIONS 2016

2016 No. 647

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes consequential amendments the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (the “Principal Regulations”). The amendments cover changes to the application of regulations restricting the NICs disregard for travel and subsistence for those working through an employment intermediary.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument corrects an error from earlier regulations. In accordance with SIP paragraph 3.4.12, the Department has discussed whether to use the free issue procedure with the SI Registrar. The Registrar has advised that the free issue procedure should be applied in the interests of transparency. The Department has decided to follow this advice.

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 Legislation was laid in the Finance Bill 2016 which introduced two new sections (339A and 688B) into the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and a new chapter (Chapter 3B) into Part 4 of the Income Tax (Pay As You Earn) Regulations 2003. These restricted eligibility for tax relief on travel and subsistence (T&S) for those engaged through an employment intermediary from 6 April 2016.
- 4.2 An instrument was introduced to replicate this legislation for NICs to ensure that the NICs disregard for T&S was restricted in the same way from 6 April 2016.
- 4.3 In response to a technical error that has been identified, a further amendment will now be made to the Finance Bill 2016, amending the new section 339A of ITEPA and changing the application of restrictions to tax relief on T&S for those engaged through an employment intermediary. This amendment will apply retrospectively from 6 April 2016.

4.4 This instrument ensures that the position for NICs continues to reflect that of tax, but is not be retrospective.

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 this 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

7.1 The government confirmed at Autumn Statement 2015 that from 6 April 2016, it would restrict tax relief 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), relief would be 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.

7.2 As a result of a technical error in the legislation, the test intended to determine whether the rules apply for PSCs has been applied to almost all employment intermediaries (including umbrella companies). This means that, rather than the employment intermediary simply having to consider whether a worker is under supervision, direction or control, as intended, the engager needs to consider the wider employment status case law tests.

7.3 The introduction of these changes corrects this error, and it follows a similar amendment made for income tax to ensure the two systems continue to align in this area.

Consolidation

7.4 There are no current plans to consolidate the relevant parts of The Social Security (Contributions) Regulations.

8. Consultation outcome

8.1 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

9.1 The current guidance will be amended to reflect this changes following its introduction.

10. Impact

- 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 Note 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>.
- 10.4 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 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 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

- 12.1 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

- 13.1 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.