

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) REGULATIONS
2017

2017 No. 307

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.

2. Purpose of the instrument

Sporting Testimonials

- 2.1 This instrument will prevent a Class 1A NICs liability falling on an employer in the tax year 2017/18, where a sporting testimonial payment has been made by an independent sporting testimonial committee.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 2.2 This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (“the Contributions Regulations”) and makes provision for a Class 1 secondary National Insurance contributions (NICs) disregard from earnings to apply where an employee, former employee or prospective employee arranges pension advice which the employer later reimburses the employee for, or where the employer otherwise meets costs incurred by or in respect of the employee in obtaining such advice. The disregard is limited to the first £500 of costs per tax year for each employment or former employment that an employee holds.

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- 2.3 This instrument amends the Social Security (Categorisation of Earners) Regulations 1978 (S.I. 1978/1689) (“the Categorisation Regulations”) so as to exempt certain employees of the International Finance Corporation (IFC) and the Asian Infrastructure Investment Bank (AIIB) from liability to pay primary class 1 NICs. In order to qualify for the exemption employees must: (a) already be exempt from tax on their employment income under an international agreement signed by the United Kingdom and brought into legal force by an Order in Council and (b) also be members of a scheme set up by their employer which provides for a pension or any other benefit once the employment has ceased.

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

Sporting Testimonials

- 4.1 This instrument inserts new regulation 40B into the Contributions Regulations to exempt secondary contributors from liability to pay Class 1A contributions relating to the sporting testimonial payment which has been paid by the controller of an independent sporting testimonial committee. This regulation will only apply for the tax year 2017-18.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 4.2 This measure provides for a new Class 1 NICs disregard for payments and reimbursements by an employer of the costs of pensions advice, as recommended as an outcome of the recent Financial Advice Market Review (FAMR). The FAMR discovered there was a particular advice gap in relation to pensions. As one of a number of measures, the government would like to encourage employers to provide advice to make it more affordable and accessible.
- 4.3 The Finance Bill 2017 provides for an income tax exemption for the first £500 of employer-provided pensions advice or payments and reimbursements of the costs of such advice, with this measure providing for a Class 1 NICs disregard for payments and reimbursements of the costs of pensions advice by the employer.

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- 4.4 This measure provides for Class 1 NICs exemption for non-UK employees of the IFC and AIIB already exempt from Income Tax under their respective Orders in Council (1955 & 2015). Employment of employees by the IFC and AIIB where those employees have the benefit of a tax exemption referred to above and are also members of a work place scheme designed to provide post termination benefits are added as a new category of prescribed employment to the list of employments set out in Schedule 1 Part 3 of the Categorisation Regulations.

5. Extent and Territorial Application

Sporting Testimonials

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

NICs exemption for payments and reimbursements of the costs of pensions advice

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- 5.5 The extent of this instrument is Great Britain.
- 5.6 The territorial application of this instrument is Great Britain.

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

Sporting Testimonials

- 7.1 Following Autumn Statement 2015, the government announced that it would be reforming the income tax and NICs treatment of payments derived from non-contractual and non-customary sporting testimonials organised by an independent sporting testimonial committee. Tax changes were brought in by Finance Act 2016 and will take effect from 6 April 2017. The NICs changes will be brought in by the National Insurance Bill 2017. Due to the time delay between tax and NICs changes, this instrument will ensure that employers do not unfairly have a Class 1A NICs liability in year 2017/18, before the NICs Bill is enacted.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 7.2 A Class 1A NICs exemption for employer-provided pension advice is currently in place as derived from the Income Tax (Exemption of Minor Benefits) Regulations 2002 (S.I. 2002/205). However, this is narrowly focussed and applies only where similar advice is offered to all employees, the nature of the advice does not extend beyond pensions to general financial and tax advice and the cost is no more than £150 per employee per year. The exemption cannot be applied to the first £150 spent if an employer spends more than £150 on advice for an employee. It also doesn't apply to payments and reimbursements by an employer of the cost of pensions advice where this is obtained by an employee independently. The government would like to encourage employers to provide advice, making it more affordable and accessible. This measure is for a Class 1 NICs disregard for payments and reimbursements of the costs of pensions advice by the employer. The new disregard can be applied to the first £500 of any payments or reimbursements of the costs of an employee, or prospective or ex-employee, in obtaining relevant pension advice. It will apply to advice not only on pensions, but also on the general financial and tax issues relating to pensions.

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- 7.3 Some international organisations enjoy immunities and these can include income tax and NICs exemptions. In line with this, these regulations exempt certain employees of the IFC and AIIB from NICs. The exemption will be restricted to non-UK nationals who enjoy an income tax exemption and are members of a work place scheme which pays benefits on cessation of employment.

Consolidation

- 7.4 There are no plans to consolidate either the Contributions Regulations or the Categorisation Regulations.

8. Consultation outcome

Sporting Testimonials

- 8.1 This instrument supports an existing policy on which has already been consulted.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 8.2 A technical consultation was held on the draft Finance Bill clauses from 5 December 2016 – 1 February 2017. A consultation was not held for this measure as the income tax position was included in the Finance Bill technical consultation. The consultation can be found on GOV.UK at: <https://www.gov.uk/government/publications/finance-bill-2017-draft-legislation-overview-documents>.

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- 8.3 A consultation has not been held for this measure. However, it has been discussed with the international organisations concerned.

9. Guidance

Sporting Testimonials

- 9.1 No changes to guidance are necessary for this instrument.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 9.2 The Employer Bulletin has included information about the measure to ensure employers are aware of the changes from April 2017.

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- 9.3 No changes to general guidance are necessary for this instrument as it only affects two organisations.

10. Impact

Sporting Testimonials

- 10.1 There is not expected to be any impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact note was prepared for the Income Tax exemption which this measure mirrors and was published at <https://www.gov.uk/government/publications/income-tax-update-to-treatment-of-income-from-sporting-testimonials/income-tax-update-to-treatment-of-income-from-sporting-testimonials> on 16 March 2016. It remains an accurate summary of the impacts that apply to this instrument.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 10.4 The measure is expected to have a negligible impact on businesses. Pensions advice is currently a taxable benefit unless it is very restricted in scope and costs £150 or less per individual in the relevant year. Employers therefore currently have to report the value of the benefit if this amount is exceeded; under this measure they will no longer have to report those between £150 and £500 provided the other conditions are met.
- 10.5 There is no impact on civil society organisations or the public sector.
- 10.6 An Impact Assessment has not been prepared for this instrument.
- 10.7 A Tax Information and Impact Note was prepared for the Income Tax exemption, which this measure mirrors, and is published on GOV.UK at:

<https://www.gov.uk/government/publications/employer-arranged-pensions-advice-exemption>.

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- 10.8 There is no impact on business, charities or voluntary bodies.
- 10.9 There is no impact on the public sector.
- 10.10 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

Sporting Testimonials

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 11.2 The legislation may have a negligible impact on small businesses, as set out above in paragraph 10.4.

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- 11.3 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

Sporting Testimonials

- 12.1 No review or monitoring is considered necessary.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 12.2 No review or monitoring is considered necessary.

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- 12.3 No review or monitoring is considered necessary.

13. Contact

Sporting Testimonials

- 13.1 Oliver Mathers at HMRC - telephone: 03000 578 883 or email: oliver.mathers@hmrc.gsi.gov.uk can answer any queries regarding this instrument.

NICs exemption for payments and reimbursements of the costs of pensions advice

- 13.2 Lowri Barber at HMRC – telephone 03000 563 479 or email: lowri.barber@hmrc.gsi.gov.uk can answer any queries regarding this instrument.

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- 13.3 Lowri Barber at HMRC - telephone: 03000 563 479 or email: lowri.barber@hmrc.gsi.gov.uk can answer any queries regarding the instrument.