

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 2)
REGULATIONS 2019

2019 No. 1009

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

- 2.1 These regulations provide for a Class 1 National Insurance contributions (NICs) disregard for payments made as part of the new armed forces accommodation allowance in the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 8(1) of the Finance Act 2018 introduced a new income tax exemption for accommodation allowance payments made to members of the armed forces in section 297D of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”).
6.2 The new accommodation allowance will be a payment of earnings for Class 1 NICs purposes, and accordingly will attract a Class 1 NICs liability, under section 6 of the Social Security Contributions and Benefits Act 1992. To avoid this outcome, these Regulations introduce a disregard from liability to Class 1 NICs for accommodation allowance payments that benefit from the income tax exemption in section 297D of ITEPA.

- 6.3 These Regulations are being introduced alongside the Income Tax (Accommodation Allowances of Armed Forces) Regulations 2019 (“the Income Tax Regulations”), which provide further details on the types of payment that meet the definition of an “accommodation allowance” for the purposes of section 297D of ITEPA.
- 6.4 The Secretary of State for Work and Pensions and the Northern Ireland Department for Communities have concurred to the making of the final text of regulation 2 of this instrument.

7. Policy background

What is being done and why?

- 7.1 The Ministry of Defence (MoD) are changing their accommodation model¹. This is part of a large strategic programme, known as the Future Accommodation Model, which the MoD are introducing to offer service personnel greater freedom of where they live.
- 7.2 The MoD currently provides living accommodation for service personnel. The provision of this accommodation is exempt from income tax and not liable for NICs. Under the Future Accommodation Model, the MoD intends to offer service personnel the choice of living in private accommodation, and to pay a cash allowance to these personnel towards the costs of this accommodation.
- 7.3 The model will be piloted in a handful of locations from September 2019. The pilot will be evaluated in due course before a decision is made whether it should be rolled out more widely.
- 7.4 To facilitate this pilot and to support the wider strategic programme, legislation was passed in Finance Act 2018 that provides for certain types of payments that will be made to service personnel under this new model, known as “accommodation allowances”, to be exempt from income tax. This legislation effectively continues the current tax position under which the MoD provides accommodation free of income tax to service personnel. These Regulations introduce a disregard from liability to NICs in respect of these payments that corresponds to the income tax exemption introduced by the Finance Act 2018.
- 7.5 The Finance Act legislation did not specify the full details of the conditions that must be met in order for a payment to be within the definition of an accommodation allowance. The Income Tax Regulations will further define these conditions and therefore the types of payments that fall within the scope of the tax exemption and NICs disregard.
- 7.6 The following types of payments will be included in the definition of an accommodation allowance:
- Payment toward rental costs and mortgage costs. This will cover payments towards service personnel living accommodation, situations where there is an obligation for service personnel to pay two rents due to school commitments and additional allowances to cover the cost of living in different areas.

¹ <https://www.gov.uk/government/publications/future-accommodation-model-what-you-need-to-know/what-you-need-to-know-about-fam>

- Payments to compensate service personnel for the difference in their rate of council tax to the national average.
- Costs incurred in the course of sourcing and signing a tenancy agreement.

7.7 Further details of these types of payments and the Future Accommodation Model can be found at the Joint Service Publication 464 Tri-Service Accommodation Regulations Volume 4: Future Accommodation Model (FAM) Pilot – UK which is published at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805339/20190531-JSP_464_Volume_4_Part_1-FAM_Pilot_Policy_v1.0.pdf

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans for consolidation as this is a stand-alone instrument.

10. Consultation outcome

10.1 No formal consultation exercise was conducted as this instrument effectively continues an existing disregard. However, the MoD have been consulted during the drafting of these regulations.

10.2 The MoD have conducted a survey on the Future Accommodation Model that was sent out to all serving personnel. The results of the survey can be found here:

<https://www.gov.uk/government/statistics/mod-future-accommodation-model-survey-2016>

11. Guidance

11.1 Guidance will be available on the gov.uk website when the regulations come into effect.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is limited to MoD personnel only. There will be limited impact to MoD personnel as this new exemption effectively continues the existing employer provided living accommodation tax exemption.

12.3 A Tax Impact and Information Note for the Employee Benefits and Expenses Exemption was published on 22 November 2017 and is available at:

<https://www.gov.uk/government/publications/income-tax-armed-forces-accommodation-allowance-exemption/income-tax-armed-forces-accommodation-allowance-exemption>

It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to monitor and review it, as appropriate, within the context of the wider tax framework.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Jesse Norman has made the following statement:

“This regulation does not include a review clause because of a tax exemption in section 28(3)(a) of the Small Business, Enterprise, and Employment Act 2015”.

15. Contact

15.1 Lowri Barber at HM Revenue and Customs Telephone: 03000 563 479 or email: lowri.barber@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Nixon, Deputy Director for National Insurance Policy, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman MP Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.