

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 2)**  
**REGULATIONS 2020**

**2020 No. 300**

**1. Introduction**

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

**2. Purpose of the instrument**

2.1 The National Insurance Contribution (Termination Awards and Sporting Testimonials) Act 2019 ('the Act') received Royal Assent on 24 July 2019 and has been commenced with effect from 6 April 2020. This Act created a new Class 1A National Insurance contributions (NICs) liability on termination awards over £30,000 and income from sporting testimonials above £100,000. This instrument requires employers and independent sporting testimonials to pay and report this new liability through Pay As you Earn (PAYE) in real time to HMRC.

**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 not subject to parliamentary 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.

**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 Where a person's employment is terminated, any payments made to them by their employer that fall under Section 403 of the Income Tax (Earnings and Pensions) Act 2003 are free of income tax up to £30,000. There is no employer or employee NICs liability on any part of the payment.

6.2 The Act introduces a new Class 1A NICs liability on employers which will be payable on payments made on termination of employment which are in excess of £30,000 and which are not already charged to Class 1 NICs as earnings. It amends section 10 of

the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by providing for the new Class 1A NICs liability on termination awards.

- 6.3 Finance Act 2016 introduced legislation to bring income from sporting testimonials that are non-contractual, non-customary and organised by an independent testimonial committee within the scope of income tax. This introduced a new exemption threshold, currently £100,000, for this income. This measure came into force for income tax on 6 April 2017. Previously, both income tax and NICs relied on Extra Statutory Concessions based on longstanding case law (*Reed v Seymour*) which decided these payments were not earnings. From 6 April 2017 to 5 April 2020 there was a misalignment between tax and NICs.
- 6.4 The Act introduces a new Class 1A NICs liability on testimonial committees for payments to a sportsperson above £100,000 from sporting testimonials. This change mirrors the income tax liability.
- 6.5 This instrument is made under existing powers in the Social Security Contributions and Benefit Act 1992, and amends Parts 3 and 7 of Schedule 4 of the Social Security (Contributions) Regulations 2001.

## **7. Policy background**

### *What is being done and why?*

- 7.1 At Budget 2016 the government announced that from April 2018 the rules would be aligned so an employer's Class 1A NICs charge would be due on termination payments paid above £30,000 that are already subject to income tax but not Class 1 NICs. The government later decided to delay the introduction of this new employers Class 1A NICs charge until April 2020.
- 7.2 There are around 320,000 termination awards made each year, of those, 72,000 are above £30,000 and would be affected by this measure. No individual will be liable as the Class 1A NICs liability is placed on the employer alone.
- 7.3 As part of the 2015 Autumn Statement, the government announced that it would be reforming the income tax and NICs treatment of payments derived from sporting testimonials. This measure was introduced to produce certainty for sportspeople. The changes for income tax were legislated for in the Finance Act 2016, and came into force on 6 April 2017.
- 7.4 Research indicates that there are around 220 sporting testimonials annually, of which only a small proportion are non-contractual or non-customary. Furthermore, only a fraction will generate income over the £100,000 threshold and be liable to income tax and NICs.
- 7.5 Employers and sporting testimonial committees will be required to report this new charge through PAYE in real time for cash or cash equivalent payments, and for benefits in kind given to an ex-employee or sportsperson. Where a benefits in kind is provided to an ex-employee or sportsperson, the current P11D process to report Class 1A NICs liabilities will continue to be used.

## **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 to consolidate the Social Security (Contributions) Regulations 2001.

## **10. Consultation outcome**

- 10.1 A three-month informal technical consultation was carried out from 16 October 2019 to 16 January 2020. HMRC published a draft instrument and a technical note that gave an overview of the instrument. Employers, businesses, sporting testimonials committees and their advisers were invited to comment on the draft regulations.
- 10.2 There were four consultation responses that covered minor technical points. These were considered when drafting the final instrument. Where additional points of clarity are needed, but not appropriate for legislation, these have been reflected in the associated guidance.

## **11. Guidance**

- 11.1 Guidance on this measure will be made available before these regulations come into effect. This will be published in the National Insurance Manuals at <https://www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim13000>.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is not expected to have any significant macroeconomic effect. The additional cost to employers is expected to be reflected in lower wages and profit margins, with a reduction in total wages and salaries of 0.1% during the year 2020-21.
- 12.2 If a sportsperson chooses to make a donation to charity from their testimonial payment then the amount donated will reduce any tax and Class 1A liability arising on that testimonial payment, providing the testimonial committee make that donation through Payroll Giving.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 Tax Impact and Information Notes were published on these measures when the primary legislation was introduced to Parliament and are available at <https://www.gov.uk/government/publications/income-tax-and-national-insurance-contributions-treatment-of-termination-payments/income-tax-and-national-insurance-contributions-treatment-of-termination-payments> and <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>. They remain an accurate summary of the impacts that apply to this instrument.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to incorporate the process for paying and reporting the new Class 1A NICs charge within the PAYE process. It is already a requirement to report termination awards through this process for income tax purposes.

13.3 The basis for the final decision on what action to take to assist small business was to minimise administrative burdens so that the NICs could be collected alongside income tax.

**14. Monitoring & review**

14.1 The government keeps all areas of the tax system under review, and that includes this instrument.

14.2 The instrument does not include a statutory review clause. None is required under Section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 because the power by which this instrument is made is being exercised so as to make or amend provisions imposing, abolishing or varying any tax duty, levy or other charge or provisions in connection with such provisions.

**15. Contact**

15.1 Leonardo Kellaway at HMRC Telephone: 03000 517325 or email: leonardo.kellaway@hmrc.gov.uk can be contacted with any queries regarding the instrument.

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

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