

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 3)
REGULATIONS 2020

2020 No. 320

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury 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 Section 299B of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) provides an exemption from income tax where a voluntary office holder is paid or reimbursed for reasonable expenses incurred in the course of the office. This places the previous concessionary treatment of expenses paid to voluntary office holders on a statutory footing. Provided that voluntary office holders do not receive any reward for carrying out their duties of their office, and any payments or reimbursements made to them do no more than meet the expenses they incurred in carrying out the duties of that office, they will meet the exemption. Section 299B has effect for the tax year 2020-21 and subsequent tax years. The purpose of these Regulations is to provide that a Class 1 National Insurance Contributions (NICs) liability does not arise when the conditions specified in section 299B of ITEPA are met.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 It is regretted that this instrument is in breach of the rule requiring laying of an instrument at least 21 days before its provisions take effect. This is due to a dependency of this instrument on tax legislation. The income tax measure will have temporary statutory effect on the basis of a resolution to be passed by the House of Commons under section 1(2) of the Provisional Collection of Taxes Act 1968 (the PTCA), following the introduction of the Finance Bill 2020, and is to come into force on 6 April 2020. This instrument, which makes the parallel provisions for NICs, also comes into force on 6 April 2020. Unfortunately, due to the timing of the Budget, the PCTA resolution was not passed until 18 March 2020 and so it was not possible to lay this instrument 21 days before 6 April 2020.
- 3.2 Furthermore, laying this instrument less than 21 days before it comes into force does not negatively impact individuals as the measure puts an existing Extra Statutory Concession (ESC) on a statutory footing.

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)

- 3.3 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 299B of ITEPA sets out an exemption from income tax where a voluntary office holder is paid in advance or reimbursed for reasonable expenses incurred in carrying out the duties of that office, provided that the office holder meets the requirements in section 299A (2) and (3).
- 6.2 The new exemption places an ESC on a statutory footing. HMRC's long-standing practice has been that no tax or NICs charge will arise on expenses paid to voluntary office holders as long as they do not receive a reward for carrying out the duties of their office, and any payment or reimbursements do no more than meet the expenses they incurred whilst carrying out those duties. However, HMRC cannot allow extra-statutory treatment of expenses paid or reimbursed to voluntary office holders to continue indefinitely.
- 6.3 Under Part 1 of the Social Security Contributions and Benefits Act 1992, office holders are liable to pay National Insurance Contributions (NICs) on the earnings they receive from that office. This includes individuals who do unpaid work. Voluntary office holders that receive payment for non-business expenses are liable to pay Class 1 NICs on those earnings. These Regulations ensure that there will also be no Class 1 NICs liability when the conditions in section 299B of ITEPA are met.
- 6.4 This instrument will make an amendment to Schedule 3 of the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004), which provides for certain payments to be disregarded in the calculation of earnings for the purpose of establishing liability to Class 1 NICs. It inserts a new paragraph into Part 8 of Schedule 3, which will ensure that there will be no Class 1 NICs liability when the income tax exemption under section 299B of ITEPA applies.
- 6.5 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 current treatment of reasonable expenses paid to voluntary office holders is concessionary and it is not suitable in the long term. It was announced at Budget 2018

that a tax exemption will apply to those payments, and this instrument will replicate the tax rules for NICs purposes so that there will be no tax or NICs liability arising on reasonable expenses paid to voluntary office holders. These Regulations will provide certainty for the voluntary sector and will prevent a discrepancy between tax and NICs treatment of earnings for voluntary office holders.

- 7.2 A person who has been appointed to a position by an organisation and does voluntary unpaid work for that organisation may be an office holder. Voluntary office holders include, for example, magistrates and special constables. This instrument ensures that reasonable out-of-pocket private expenses paid or reimbursed to voluntary office holders, and which are linked to the duties of the office, remain exempt from NICs. This recognises the role of voluntary office holders and provides certainty by placing the treatment on a statutory footing. The total number of voluntary office holders is unknown. However, there are 11,500 special constables and 21,500 magistrates in the United Kingdom. There are also office holders in other parts of the voluntary sector, for example there are 168,000 registered charities and 7,000 Community Amateur Sports Clubs. There are also individuals who hold a volunteer position in a political party, but the number is unknown.

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 was conducted as this instrument puts on a statutory footing an extra-statutory concession that is relieving.

11. Guidance

- 11.1 Guidance on the exemption and the qualifying criteria will be made available once these Regulations come into effect.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Impact and Information Note covering the changes to the taxation of expenses payments to voluntary office holders was published alongside the draft clauses and Explanatory Notes for Finance Bill 2019 in July 2019 and is available on the HMRC website at <https://www.gov.uk/government/publications/income-tax-and-the-treatment-of-expenses-for-voluntary-office-holders>. It remains an accurate summary of the impacts that apply to this instrument.
- 12.4 There is no, or no significant, impact because this measure places an ESC on a statutory footing.

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

14.2 The regulation does not include a statutory review clause in line with the tax exemption in section 28(3)(a) of Small Business, Enterprise and Employment Act 2015.

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.