

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CLASS 2 NATIONAL INSURANCE CONTRIBUTIONS)
(CONSEQUENTIAL AMENDMENTS AND SAVINGS) REGULATIONS 2024

2024 No. 377

1. Introduction

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

2. Declaration

- 2.1 Nigel Huddleston MP, the Financial Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Edmund Hair, Deputy Director for National Insurance policy, International and Student Finance at HMRC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Toby Lawlor at HMRC Telephone: 03000 507187 or email: toby.lawlor@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument makes minor amendments to ensure that legislation relating to Class 2 National Insurance Contributions (NICs) and related benefits is consistent with the National Insurance (Reductions in Rates) Act 2023 (the Act) which removed the liability to pay Class 2 NICs from 6 April 2024. The legislation amended includes the Social Security Contributions and Benefits Act 1992 (and its Northern Ireland equivalent¹), the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004), and legislation about the benefits to which Class 2 NICs give entitlement, or where Class 2 NICs are used in entitlement calculations.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

¹ Social Security Contributions and Benefits (Northern Ireland) Act 1992

5. Policy Context

What is being done and why?

- 5.1 At Autumn Statement 2023, the Government announced that from 6 April 2024, self-employed people with profits above £12,570 (the lower profits threshold (LPT)) will no longer be liable to pay Class 2 NICs and instead will be treated as having paid Class 2 NICs.
- 5.2 This means that from 6 April 2024, no self-employed person will be liable to pay Class 2 NICs. Self-employed earners with profits at or above £6,725 (the small profits threshold (SPT)) will be treated as having paid Class 2 NICs. Those with profits under £6,725 will continue to be able to pay Class 2 NICs voluntarily to maintain access to contributory benefits. As now, qualifying women (including their spouse and civil partner) will continue to be able to pay Class 2 NICs before their profits are established (on filing their Self-Assessment Tax Return (SATR)) to ensure that their entitlement to Maternity Allowance is maintained. Those whose profits are subsequently confirmed as being at or above the SPT will be able to apply to HMRC for a refund.
- 5.3 This instrument makes amendments to ensure that NICs and contributory benefits legislation is consistent with the policy changes legislated for by the Act. For example, the instrument removes references to self-employed persons being liable to pay Class 2 NICs and to the LPT.
- 5.4 Class 2 NICs are included in calculations of the maximum amount of NICs that should be paid by a person with multiple employments where both employed and self-employed. Similarly, Class 2 NICs are also included in earnings calculations to determine eligibility to certain benefits including Housing Benefit, Jobseeker's Allowance and Employment and Support Allowance. Class 2 NICs are further included in calculations to determine reductions in Council Tax liability. With the removal of the liability to pay Class 2 NICs, Class 2 NICs no longer need to be included in these calculations as they would be a 'nil' figure in any calculation (voluntary contributions are not relevant to these calculations). This instrument therefore removes references to Class 2 NICs in these calculations.
- 5.5 This instrument saves relevant provisions to ensure that self-employed earners with profits at or above the SPT are still required to submit a SATR so that HMRC can establish that they should be treated as having actually paid Class 2 NICs.
- 5.6 The instrument also provides that where a self-employed earner files their SATR late, they will be treated for benefits purposes as having paid late. This aligns with the rules for self-employed earners who, prior to 6 April 2024, were liable to pay Class 2 NICs and paid their contributions late. This change applies retrospectively to the 2022-23 tax year and subsequent tax years as the Class 2 treated as paid category was first introduced on 6 April 2022. This corrects the omission of this change from the Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022 (S.I. 2022/1329). In view of including this provision and the provision described in the next paragraph, the procedure for free issue of this instrument has been applied and this instrument is being issued free of charge to all known recipients of S.I. 2022/1329. HMRC has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice (5th edition) to consult the SI Registrar.
- 5.7 This instrument also makes provision for a retrospective change to apply for the 2022-23 tax year and subsequent tax years to insert a residence and presence condition for

those who are treated as having paid Class 2. This clarifies that to be treated as paid you need to meet the existing residence and presence conditions for NICs.

What was the previous policy, how is this different?

- 5.8 The instrument makes minor amendments to ensure that legislation relating to NICs and related benefits is consistent with the policy changes legislated for through the Act. It also makes legislative changes to maintain the existing policy for the benefits consequences of late filing a SATR for those now treated as paid, who were previously liable to pay Class 2 NICs. It similarly makes legislative changes to clarify that the existing NICs residence and presence conditions apply to those eligible to be treated as having paid Class 2 NICs.

6. Legislative and Legal Context

How has the law changed?

- 6.1 From 6 April 2024, section 3 of the Act amends the Social Security Contributions and Benefits Act 1992 to remove the obligation to pay Class 2 NICs where a self-employed person's earnings exceed the LPT and treats those people as having paid Class 2 NICs. The section makes equivalent provisions for Northern Ireland by amending the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- 6.2 From 6 April 2022, the Social Security (Class 2 National Insurance Contributions Increase of Threshold) Regulations 2022 removed liability to pay Class 2 NICs for any self-employed person with profits from the SPT to the LPT and treated them as having actually paid Class 2 NICs to protect any corresponding entitlement to benefits including the State Pension and Maternity Allowance.
- 6.3 This instrument is the first use of the powers in the Act.

Why was this approach taken to change the law?

- 6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 There was no consultation because these changes are in line with the NICs policy changes introduced through the Act.

8. Applicable Guidance

- 8.1 Guidance on the changes to Class 2 National Insurance contributions will be updated to reflect these changes and will be published on GOV.UK.²

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A Tax Information and Impact Note covering this instrument was published on 23 November 2023 alongside the wider NICs rates changes announced at Autumn

² Guidance on the changes: <https://www.gov.uk/national-insurance>

Statement 2023 and is available online³. It remains an accurate summary of the impacts that apply to this instrument

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument is not changing their obligations to pay NICs.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because this instrument is not changing public sector organisations' NICs obligations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through normal audit activity and regular communication with affected taxpayer groups.
- 10.2 The instrument does not include a statutory review clause in line with the requirements of the Small Business, Enterprise and Employment Act.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

- 12.1 The Financial Secretary to the Treasury, Nigel Huddleston MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Social Security (Class 2 National Insurance Contributions) (Consequential Amendments and Savings) Regulations 2024 are compatible with the Convention rights”.

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).

³ The Tax Information and Impact Note covering the wider NICs rates change announced at Autumn Statement 2023 can be found here <https://www.gov.uk/government/publications/changes-to-national-insurance-contributions-from-6-january-2024/a-reduction-in-the-main-rates-of-primary-class-1-and-class-4-national-insurance-contributions-and-the-removal-of-the-requirement-to-pay-class-2-nation> and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>