

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 2)**  
**REGULATIONS 2010**

**2010 No. 188**

1. This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These Regulations remove from liability to National Insurance contributions (“NICs”) expenses paid for or reimbursed to ministers of religion in respect of heating, lighting, cleaning and gardening in connection with living accommodation provided with the employment. Similar relief is given in respect of allowances paid to ministers for the purpose of meeting such expenses.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None.

4. **Legislative Context**

- 4.1 These Regulations mirror a similar exemption from income tax for which a separate instrument being laid before the House of Commons makes provision. The Enactment of Extra-Statutory Concessions (No. 2) Order 2010 (“the ESC Order”; S.I. 2010/157) gives legal effect to an extra-statutory concession that has applied in relation to income tax on such expenses.
- 4.2 The Regulations substitute a new paragraph 8 in Part 10 of Schedule 3 to the Social Security (Contributions) Regulations 2001. Two new “disregards” of earnings are added in paragraph 8. These refer to relief for income tax that is being given by the ESC Order, thereby giving relief for NICs subject to the same conditions as for tax.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

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*

7.1 Generally, if an employer meets or reimburses an employee's heating, lighting or cleaning costs in respect of his home, this is treated as part of the employee's income and taxed accordingly. By concession, however, for many years HMRC has waived tax due on heating and other expenses reimbursed to or paid on behalf of a clergyman or other minister who earns less than £8,500 per annum where the expenses are in respect of accommodation owned or leased by a charity or ecclesiastical corporation and provided to the minister because of their office. This concession was referred to as "A61: Clergymen's heating and lighting etc. expenses".

7.2 In effect, this concessionary practice extended the statutory exemption in section 216 of the Income Tax (Earnings and Pensions Act 2003 for other expenses, e.g. insurance and repairs, incurred directly by the employer in providing a minister with such living accommodation (but only those who are "lower-paid").

7.3 This alignment of the income tax and NICs treatment of these expenses avoids an anomaly and reduces the compliance burden for employers.

- *Consolidation*

7.4 There are no plans to consolidate the instrument that is being amended. No free informal consolidated text is available.

## **8. Consultation outcome**

8.1 There was a consultation on the ESC Order in July 2009: "Extra-Statutory Concessions – Second Technical Consultation on Draft Legislation". As well as including as part of the ESC Order the provisions relating to A61, the consultation document confirmed that equivalent relief for NICs would be given by separate regulations. No objections to this proposal were received.

## **9. Guidance**

9.1 HMRC will update their published guidance to include reference to this legislation.

9.2 The previous concession was well known in ecclesiastical circles and HMRC will contact those religious bodies known to be affected to ensure that they are aware of these Regulations.

## **10. Impact**

- 10.1 No impact on business, charities or voluntary bodies is foreseen.
- 10.2 No impact on the public sector is foreseen.
- 10.3 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **11. Regulating small business**

- 11.1 The legislation applies to small businesses.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to legislate a practice which was previously applied via extra statutory concession. This means there will be no change to the NICs treatment where expenses are paid for or reimbursed to ministers of religion in respect of heating, lighting, cleaning and gardening in connection with living accommodation provided with the employment because these regulations ensures that the position remains the same as that when the ESC was in place.
- 11.3 In arriving at this conclusion we have spoken to our usual stakeholder groups which includes representatives of the people affected who are small businesses.

## **12. Monitoring & review**

- 12.1 HMRC will undertake an internal review after 24 months to ensure that the intended outcome has been achieved.

## **13. Contact**

Paul Harris at HM Revenue and Customs Tel: 020 7147 2528 or email: [pa.harris@hmrc.gsi.gov.uk](mailto:pa.harris@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.