

EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT) REGULATIONS
2018

2018 No. 120

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

Optional remuneration arrangements

- 2.1 Part 1 of this instrument changes the valuation of a non-cash voucher for the purposes of calculating its Class 1 National Insurance contribution (NICs) liability where it is provided to an employee through an optional remuneration arrangement (OpRA). An OpRA involves an employee giving up a portion of their cash salary in exchange for a benefit-in-kind (BiK), which could include a non-cash voucher. OpRA is also commonly known as salary sacrifice. A non-cash voucher is a voucher that can be exchanged for goods or services, e.g. a voucher for a car parking space. The amendments made are consequential to changes to the income tax treatment of non-cash vouchers made by Finance Act 2017 and which are already in force.

Qualifying childcare vouchers

- 2.2 Part 2 of this instrument removes the availability of employer supported childcare (ESC) from employees who do not fall within the definition of an “eligible employee” in section 270A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). The changes made are purely consequential to amendments to the income tax treatment of ESC that had effect from April 2017.

Sporting testimonial payments

- 2.3 Part 3 of this instrument will prevent a Class 1A NICs liability falling on an employer from 6 April 2018, where a sporting testimonial payment has been made by an independent sporting testimonial committee.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

Optional remuneration arrangements

- 4.1 Section 7 and Schedule 2 Finance Act 2017 limits the income tax advantages and Class 1A NICs advantages previously available where BiKs are provided through

OpRA. It does so by basing the charge to tax and Class 1A NICs on a BiK on the greater of the amount of salary given up, or the taxable value of the BiK that would otherwise arise under existing legislation.

- 4.2 This measure is a consequential amendment to ensure that the Class 1 NICs treatment of a non-cash voucher provided through OpRA mirrors its tax treatment.

Qualifying childcare vouchers

- 4.3 Paragraphs 6B to 7A of Part V of Schedule 3 to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (SSCR) provide for payments of qualifying childcare vouchers to an employee to be disregarded in the calculation of liability to Class 1 NICs.
- 4.4 Section 270A ITEPA provides a limited and corresponding exemption from income tax for the provision of qualifying childcare vouchers to an employee.
- 4.5 Section 63 of the Childcare Payments Act 2014 (CPA 2014) restricted the scope of the income tax exemption in section 270A ITEPA by inserting the term “eligible employee” into this section and created section 270AA ITEPA where the definition of “eligible employee” is given. Section 270AA ITEPA defines an “eligible employee” as an employee who meets three conditions in that definition, known as Conditions A to C.

Sporting testimonial payments

- 4.6 The Social Security (Miscellaneous Amendments) Regulations 2017 inserted new regulation 40B into the SSCR. Regulation 40B prevented a Class 1A NICs liability falling on an employer where a sporting testimonial payment has been made by an independent sporting testimonial committee. It only applied for the tax year 2017-18. This measure will provide the same exemption, but not restricted to only one particular tax year.
- 4.7 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 regulations 3 to 7 of this instrument.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 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

Optional remuneration arrangements

- 7.1 OpRAs are more commonly known as salary sacrifice schemes. The majority of employees pay tax on a cash salary, however, in salary sacrifice schemes, employees agree to exchange some of their salary for a non-cash benefit in kind. Prior to Finance Act 2017, many salary sacrifice schemes would have provided a NICs saving to both

the employer and the employee, and a tax saving to the employee, because many BiKs received through salary sacrifice were subject to a lower amount of income tax than the corresponding salary sacrificed by an employee, or not taxed at all.

- 7.2 Finance Act 2017 introduced changes to the income tax and Class 1A NICs treatment of most BiKs provided through salary sacrifice schemes. Since April 2017, most BiKs provided under salary sacrifice schemes have been subject to the same tax as cash income and to a corresponding amount of Class 1A NICs.
- 7.3 This instrument mirrors these changes for a non-cash voucher provided through OpRA. As a result, the Class 1 NICs charge in respect of such a voucher will be calculated on the greater of the amount of salary given up by the employee, or the taxable value of the voucher which would otherwise arise under existing legislation.
- 7.4 The instrument also removes the NICs advantages to reimbursing certain motoring expenses through an OpRA. This change also mirrors previous changes to the tax treatment of motoring expenses.

Qualifying childcare vouchers

- 7.5 Childcare vouchers and directly contracted childcare are ESC schemes under which employers support their employees with the costs of childcare. Childcare vouchers are issued to employees usually through a salary sacrifice arrangement. Directly contracted childcare operates through the employer contracting with a provider for childcare and paying for that childcare. Tax Free Childcare (TFC) is a new government scheme which offers support to parents with childcare costs. It has always been the government's intention to replace these elements of ESC with TFC. Consequently the CPA 2014 included provisions to close these elements of ESC to new entrants. It was announced in Spring Budget 2016 that this would start with ESC being closed to new entrants from April 2018.
- 7.6 These regulations make very limited consequential changes to the NICs disregards for childcare vouchers in paragraphs 6B to 7A of Part V of Schedule 3 to the SSCR. The regulations limit the availability of these disregards in the same manner as the corresponding income tax exemption, by restricting their availability to "eligible employees". The definition of "eligible employee" is taken from the corresponding income tax definition of this term in s270AA ITEPA.
- 7.7 These regulations do not make any amendments in connection with directly contracted childcare as the NICs disregard for these schemes mirrors the scope of the corresponding income tax exemption automatically. Amendments that have been made to the tax exemption for this scheme have therefore been matched by a corresponding amendment to the NICs disregard without the need for separate NICs legislation.
- 7.8 The effect of these amendments is that the availability of the disregards in these paragraphs will be limited in the same way as the tax exemption is currently limited. This means that the NICs disregards: (1) will cease to be available to employees who do not meet Condition C in the definition of "eligible employee" with immediate effect, once the regulations come into force (which means employees that have already given their employer a "childcare account notice" in order to open a TFC Childcare Account will be unable to access these disregards); and (2) will additionally cease to be available to employees who do not meet Conditions A or B in the definition of an "eligible employee" from a date to be appointed by HM Treasury, known as the "relevant day", onwards (which means that employees who did not enter

into a voucher scheme before the relevant day or who had fallen out of their employer's scheme before then will be unable to access these disregards). It was announced at Spring Budget 2016 that the relevant day would be set as 6 April 2018.

Sporting testimonial payments

- 7.9 Sporting testimonial matches can be organised by an independent committee at the end of a sportsperson's career. Profits from the match can be paid to the sportsperson to support their retirement.
- 7.10 Following Autumn Statement 2015, the government announced that it would be reforming the income tax and National Insurance treatment of payments derived from non-contractual and non-customary sporting testimonials organised by an independent sporting testimonial committee.
- 7.11 Tax changes were brought in by Finance Act 2016, and came in to effect on 6 April 2017. One effect of the tax changes was that where an independent sporting testimonial committee organised a testimonial match for a sportsperson, the employer becomes liable for the Class 1A NICs charge. This is an unintended consequence and contrary to the policy intention, which is that the NICs charge should fall on the independent sporting testimonial committee who organise the testimonial payment.
- 7.12 It was previously intended that the National Insurance Bill 2017 would place the NICs charge properly with the independent sporting testimonial committee. Due to the time delay between tax and NICs, the Social Security (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/307) ensured that employers did not unfairly have a Class 1A NICs liability for the 2017-18 tax year.
- 7.13 The government announced on 2 November 2017 that the National Insurance Bill 2017 will be delayed. The Social Security (Miscellaneous Amendments) Regulations 2017 only exempted employers from an unfair Class 1A NICs liability for the 2017-18 tax year: this instrument will ensure that the exemption will continue for the 2018-19 tax year, and beyond. It therefore ensures that the employer/sports club does not become liable for a NICs charge on a sporting testimonial match that they have not organised.

Consolidation

- 7.14 There are no plans to consolidate the Social Security (Contributions) Regulations 2001.

8. Consultation outcome

Optional remuneration arrangements

- 8.1 A separate consultation was not held for this measure as the NICs position was included in the income tax consultation. The consultation can be found on GOV.UK at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/549682/Salary_sacrifice_for_the_provision_of_benefits-in-kind_HMRC_consultation.pdf

Qualifying childcare vouchers

- 8.2 The Government consulted over TFC in summer 2013. The response document was published 17 March 2014. This confirmed that when TFC is introduced ESC would be closed to new entrants. This decision was confirmed by the current government at Budget 2016.

Sporting testimonial payments

- 8.3 The measure supports an existing policy, which has already been subject to consultation.

9. Guidance

Optional remuneration arrangements

- 9.1 Guidance will be updated as necessary.

Qualifying childcare vouchers

- 9.2 Relevant guidance will be updated.

Sporting testimonial payments

- 9.3 No changes to guidance are necessary for this measure.

10. Impact

Optional remuneration arrangements

- 10.1 This measure is expected to have a negligible impact on businesses. It mirrors existing changes to the tax treatment of a non-cash voucher. Employers currently value the same non-cash voucher provided through OpRA differently for tax purposes, and for NICs purposes. This measure will reduce the burden on employers, as a non-cash voucher provided through OpRA will be valued the same way for both tax and NICs purposes.

- 10.2 There is no impact on the public sector.

- 10.3 A Tax Impact and Information Note covering the package of changes to the taxation and NICs treatment of benefits-in-kind provided through OpRA was published at <https://www.gov.uk/government/publications/income-tax-limitation-of-salary-sacrifice/income-tax-limitation-of-salary-sacrifice>

Qualifying childcare vouchers

- 10.4 There is no impact on business, charities or voluntary bodies.

- 10.5 There is no impact on the public sector.

- 10.6 An Impact Assessment has not been prepared for this measure. An updated Impact Assessment for the CPA 2014 was published on 13 March 2017.

Sporting testimonial payments

- 10.7 There is not expected to be any impact on business, charities or voluntary bodies.

- 10.8 There is no impact on the public sector.

- 10.9 A Tax Information and Impact Note covering this measure was published at <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> on 16 March 2016. It remains an accurate summary of the impacts that apply to this measure.

11. Regulating small business

Optional remuneration arrangements

11.1 The legislation may have a negligible impact on small businesses, as set out above in paragraph 10.1.

11.2 Qualifying childcare vouchers

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

Sporting testimonial payments

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

12. Monitoring & review

Optional remuneration arrangements

12.1 This legislation will be kept under review through communication with affected stakeholder groups.

Qualifying childcare vouchers

12.2 HMRC will monitor the practical effects of this legislation to ensure the objectives of it are met.

Sporting testimonial payments

12.3 No review or monitoring is considered necessary.

13. Contact

Optional remuneration arrangements

13.1 Lowri Barber at HMRC – telephone 03000 563 479 or email: lowri.barber@hmrc.gsi.gov.uk can answer any queries regarding optional remuneration arrangements.

Qualifying childcare vouchers

13.2 Ativie Edebiri at HM Revenue & Customs Telephone: 03000 584748 or email: ativie.edebiri@hmrc.gsi.gov.uk or Phil Mattacks Telephone 03000 585501 or email: phil.mattacks@hmrc.gsi.gov.uk can answer any queries regarding qualifying childcare vouchers.

Sporting testimonial payments

13.3 Lowri Barber at HMRC – telephone 03000 563 479 or email: lowri.barber@hmrc.gsi.gov.uk can answer any queries regarding sporting testimonial payments.