

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT) REGULATIONS
2019

2019 No. 85

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument clarifies that outstanding loans provided through third parties treated as employment income on 5 April 2019 will create a Class 1 National Insurance contributions (NICs) liability.

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 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 Part 7A of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 treats employment income provided through third parties as employment income of the employee when a 'relevant step' is taken. A relevant step includes the earmarking (setting aside) of or the payment of a sum of money.
6.2 Schedule 11 of Finance (No. 2) Act 2017 introduced a charge to tax on employment income provided through a third party in the form of loans. It treats a person as taking a relevant step for the purposes of Part 7A of ITEPA 2003 where there is such a loan made on or after 6 April 1999, which is outstanding on 5 April 2019.

- 6.3 The Social Security Contributions and Benefits Act (SSCBA) 1992 creates a Class 1 NICs liability where earnings are paid to or for the benefit of an earner in respect of an employed earner's employment.
- 6.4 Regulation 22B of the Social Security (Contributions) Regulations 2001 treats an amount which counts as employment income by virtue of Part 7A of ITEPA 2003 as remuneration derived from an employed earner's employment.
- 6.5 This instrument clarifies the position that the amount treated as employment income by virtue of Schedule 11 of Finance (No. 2) Act 2017 and Part 7A of ITEPA 2003 will be treated as an amount paid to or for the benefit of an earner in respect of their employment for the purposes of Part 1 of SSCBA 1992.

7. Policy background

What is being done and why?

- 7.1 In 2011, the Government introduced anti-avoidance legislation to tackle abusive arrangements where employment income is provided through third parties, such as offshore trusts, often in the form of loans.
- 7.2 This legislation was strengthened in 2017 by creating a charge to tax on employment income provided through a third party in the form of loans. This charge will apply to such loans made on or after 6 April 1999 if they are still outstanding on 5 April 2019 and an agreement has not been made with HMRC to settle the income tax and NICs due on the loans.
- 7.3 A Class 1 NICs liability is created when earnings are paid to or for the benefit of an employee in respect of their employment.
- 7.4 Where there is no actual transfer of money or money's worth, a payment is notional. A notional payment does not involve the actual transfer of money from the employer to the employee. Notional payments include amounts treated as employment income on 5 April 2019 under the 2017 legislation (in combination with the 2011 legislation).
- 7.5 This instrument clarifies that this amount is treated as a payment of earnings for the purposes of creating a NICs liability, as intended by Parliament when the 2017 legislation was introduced.

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 No consultation was carried out on this instrument simply clarifies an existing position.

11. Guidance

- 11.1 This instrument clarifies an existing position, so there will be no changes to HMRC guidance.
- 11.2 HMRC has published its internal National Insurance Manual. This can be found here: <https://www.gov.uk/hmrc-internal-manuals/national-insurance-manual>
- 11.3 HMRC has also published guidance on National Insurance contributions for employers. This can be found here: <https://www.gov.uk/government/publications/cwg2-further-guide-to-payee-and-national-insurance-contributions/2017-to-2018-employer-further-guide-to-payee-and-nics#sec3>

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 An Impact Assessment has not been prepared for this instrument because it clarifies an existing position.
- 12.4 There is no significant impact because the instrument clarifies an existing position.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that this instrument clarifies an existing position.

14. Monitoring & review

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

15. Contact

- 15.1 Liam Williams at HMRC (03000 521589 or incometax.structure@hmrc.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Jackie McGeehan at HM Revenue and Customs can confirm that this explanatory memorandum meets the required standard.
- 15.3 The Financial Secretary to the Treasury at HM Treasury can confirm that this explanatory memorandum meets the required standard.