

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (EXEMPTION OF MINOR BENEFITS) (CORONAVIRUS)
REGULATIONS 2020

2020 No. 1293

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf on HM Treasury, and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This explanatory memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument provides for a new temporary income tax exemption for the 2020-21 tax year, to ensure that employees who are provided with a coronavirus antigen test by their employer, will not be liable to an income tax benefit in kind charge.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments on Statutory Instruments

- 3.1 This instrument will apply in relation to any relevant employer-provided coronavirus antigen tests provided on or after 8 December 2020. For any relevant tests which have been provided earlier in the tax year before this instrument comes into force, HMRC will exercise its collection and management discretion, and will refrain from collecting any income tax and National Insurance contributions (NICs) due.

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 A benefit is defined in section 201(2) of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA03) as “a benefit or facility of any kind”. When a benefit is provided to an employee (or to any member of his family or household) by reason of the

employment, it is defined as an “employment-related benefit”. The amount of a benefit which is chargeable as earnings is the “cash equivalent” of the benefit less any amount made good by the employee.

- 6.2 The definition of what is a benefit is thus very wide and currently includes an employer-provided antigen test, as it is not covered by existing exemptions.
- 6.3 The provision of a coronavirus antigen test does not fit in to the existing exemptions for employer-provided health screening, medical check-ups (section 320B ITEPA03) or medical treatment (section 320C ITEPA03). As testing would in most instances be expected to be repeating and the benefit cost would exceed £50, the exemption for trivial benefits (section 323A ITEPA03) would also not apply.
- 6.4 To minimise the financial burdens on employees, and the Class 1A NICs liabilities and reporting requirements on employers who provide a coronavirus antigen test, this instrument provides a new income tax exemption will be introduced under section 210 ITEPA03 (power to exempt minor benefits) to ensure that relevant tests provided by the employer are exempt from tax.
- 6.5 The NICs treatment of employer-provided coronavirus antigen tests will follow the tax treatment, so once this tax exemption is in force no Class 1A NICs liability will arise.
- 6.6 To be eligible for the exemption, a relevant coronavirus antigen test is defined as a test which can detect the presence of a viral antigen or viral ribonucleic acid (RNA) specific to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- 6.7 As required by section 210(2) ITEPA03, the exemption provided for in this instrument will be conditional on the benefit of any provision in respect of relevant coronavirus antigen test being made available to all of an employer’s employees generally on similar terms.
- 6.8 The exemption is a temporary measure and will have effect for relevant tests provided on or after 8 December 2020 until 5 April 2021.

7. Policy background

What is being done and why?

- 7.1 The government recognises the importance of coronavirus testing. Currently, regular tests are available through the government testing programme to all care home residents and staff, and anyone who displays the coronavirus symptoms whatever their age or occupation. If an individual is tested through the government testing programme, the tests are provided free of charge and no tax liability will arise.
- 7.2 Under normal rules, the provision of a test by an employer to an employee, either directly or by purchasing tests that are carried out by a third party, would constitute a benefit in kind, and the cost of providing the test would be subject to income tax.
- 7.3 However, the government announced an exemption through a Written Ministerial Statement on 9 July 2020, and this instrument will ensure that income tax will not be charged on relevant employer-provided antigen tests carried out during the tax year 2020-21.
- 7.4 The exemption specifically applies to relevant coronavirus antigen tests only, and does not extend to coronavirus antibody tests. This is because antibody tests do not work for everyone, as some people who've had the virus do not have antibodies.

Furthermore, antibody tests only provide a historic view of whether an individual has previously contracted the coronavirus, and unlike the antigen test, it does not inform whether the individual is currently affected by the coronavirus and needs to self-isolate to prevent spreading the virus to other people.

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, as this is a stand-alone instrument.

10. Consultation outcome

10.1 No consultation has been held as this is a minor change which is wholly relieving to the taxpayer.

11. Guidance

11.1 Guidance will be published on the gov.uk website.

12. Impact

12.1 The impact on business, charities or voluntary bodies is expected to be positive as the proposal will ensure that employers no longer need to report the provision of a benefit and pay the associated Class 1A NICs liabilities. There will be a one-off cost in the form of familiarisation with the change. There are not expected to be continuing costs. There will be one-off saving from not having to report information on the provision of a relevant test for this year. Customer experience is expected to stay broadly the same as this proposal does not significantly change how employers interact with HMRC. There is expected to be no additional impact on civil society organisations.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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 is that the legislation does not impose new requirements on small businesses. It was therefore considered that no mitigating action was required, as it is a wholly relieving measure.

14. Monitoring & review

14.1 This instrument will be monitored and reviewed as appropriate through communication with affected taxpayer groups.

14.2 This regulation does not include a statutory review clause because of a tax exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015, and because the regulation is only in force for the current tax year.

15. Contact

15.1 Sheikh Hossain, policy lead at HMRC can be contacted by email with any queries regarding the instrument at: employmentincome.policy@hmrc.gov.uk.

15.2 Jackie McGeehan, Deputy Director, Income Tax Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, the Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.