EXPLANATORY MEMORANDUM TO

THE INCOME TAX (TAX TREATMENT OF CARER SUPPORT PAYMENT AND EXEMPTION OF SOCIAL SECURITY BENEFITS) REGULATIONS 2023

2023 No. 1148

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs on behalf of His Majesty's Treasury and is laid before the House of Commons by Command of His Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of the instrument is to clarify that the Scottish Government's Carer Support Payment ("CSP") is a taxable social security benefit. It also exempts four social security payments from income tax, with retrospective effect. This includes:

- payments made by the Devolved Administrations (DAs) to provide food and drink in relation to children eligible to receive Free School Meals (FSM), from the tax year 2019-20;
- payments under the Scottish Government's Best Start Foods ("BSF") scheme, made from the tax year 2019-20;
- payments under the Healthy Start ("HS") scheme, from the tax year 2021-22; and
- payments under the Family Network Support Package ("FNSP") trialled in the Family Network Pilot, from the tax year 2023-24.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 Section 27 of the Finance (No. 2) Act 2023 conferred on the Treasury the power to provide that specified devolved social security benefits are chargeable to income tax by making regulations. This instrument is made in the first exercise of that power.

3.2 Section 13 of the Finance Act 2020 ("FA 2020") conferred on the Treasury the power to exempt social security payments from income tax with retrospective effect by making regulations.

3.3 The parliamentary procedure for this instrument is contained in section 1014 of the Income Tax Act 2007, which applies to all regulation-making powers under the Income Tax Acts (subject to exclusions, which are not relevant here). The Interpretation Act 1978 defines "the Income Tax Acts" as being all enactments relating to income tax, which includes section 27 of the Finance (No. 2) Act 2023 and section 13 of the FA 2020. Under section 1014(4) of the Income Tax Act 2007, regulations under these powers are subject to the negative procedure in the House of Commons.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 Victoria Atkins MP, the Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the Income Tax (Tax Treatment of Carer Support Payment and Exemption of Social Security Benefits) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made to set out the tax treatment of five new social security payments. The instrument will provide that one of these payments is chargeable to income tax, and four are exempt from income tax with retrospective effect from the date of their respective introduction.

6.2 Section 27 of the Finance (No. 2) Act 2023 contains a power for the Treasury, by regulations, to amend Chapter 3 of Part 10 of Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003"), so as to provide that a specified devolved social security benefit is chargeable to income tax (section 27(1)). This instrument is made in the first exercise of that power.

6.3 Section 13 of the FA 2020 contains a power for the Treasury, by regulations, to amend Chapter 4 or 5 of Part 10 ITEPA 2003, so as to provide that no liability to income tax arises on social security benefits of a description specified in the regulations (section 13(1)).

6.4 The instrument will amend Chapter 5 of Part 10 of ITEPA 2003 by inserting payments by the DAs to provide food and drink in relation to children eligible for Free School Meals, and payments under the Best Start Foods and Healthy Start schemes into Part 1 of Table B at section 677, which will have the effect of wholly exempting these three social security benefits from income tax.

6.5 The instrument will also modify Chapter 5 of Part 10 of ITEPA 2003, as if there were inserted into Part 1 of Table B at section 677, payments under the Family Network Support Packages as part of the Family Networks Pilot and Families First for Children Pathfinder schemes. This will have the effect of wholly exempting this social security benefit from income tax.

6.6 The instrument will also amend Chapter 3 of Part 10 of ITEPA 2003 by inserting Carer Support Payment into Table A at section 660, which will have the effect of confirming that CSP is taxable as a social security benefit, and amending section 661.

6.7 The instrument will also make consequential amendments and specify when the amendments to ITEPA have effect.

7. Policy background

What is being done and why?

Scottish Social Security Payments

7.1 Social security payments are administered by a number of different government departments and the DAs in the United Kingdom.

7.2 The tax treatment of social security payments is legislated for in income tax legislation, and the tax treatment of each new one should be confirmed when introduced.

7.3 The Scottish Government's updated Fiscal Framework 2023 ("the Fiscal Framework") underpins the powers over tax and welfare that are devolved to Scotland through the Scotland Act 1998. The Fiscal Framework states that a new benefit introduced by the Scottish Government will not be deemed to be income for tax purposes, unless it 'tops up' a taxable benefit.

Carer Support Payment (CSP)

7.4 The Scottish Government are introducing CSP, to replace the Department for Work and Pensions' Carer's Allowance (CA) in Scotland. CSP will be administered by Social Security Scotland.

7.5 Under current taxation principles, CSP would be chargeable to income tax under the income tax annual payment rules provided for in section 683 of the Income Tax (Trading and Other Income) Act 2005 ("ITTOIA 2005"). CSP is replacing CA, which is taxable as a social security benefit. Therefore, CSP will also be taxed as a social security benefit, to ensure consistency with UK payments and in line with the Fiscal Framework.

7.6 As CSP would be taxable under the annual payment rules, the Government is clarifying the tax treatment of this scheme as a taxable social security benefit to comply with the Fiscal Framework.

Payments to provide food and drink in relation to children eligible for Free School Meals (FSM)

7.7 Since the COVID-19 pandemic, all UK nations have started to provide support to families during the school holidays and in some cases during term time. The support is in the form of cash or vouchers provided to families who have children eligible for FSM. In order to qualify for FSM, a parent or guardian must be in receipt of certain benefits. This criterion differs across the nations.

7.8 Some of the payments are being made under the Household Support Fund (HSF) or equivalent in the devolved nations. Payments made under the HSF or equivalent DA schemes are subject to an income tax exemption introduced in May 2022.

7.9 However, the DAs have powers to make payments to provide food and drink in relation to children eligible for FSM independent of the HSF, whereas if such schemes continue beyond the HSF end date of 31 March 2024, the payments could be subject to income tax under the income tax annual payments rules in section 683 of the ITTOIA 2005, if certain conditions are met. The Government wishes to clarify the tax treatment of payments to provide food and drink to children eligible for FSM as exempt from income tax, so that individuals know that they do not need to report receipt of the payments to HMRC.

7.10 The exemption only applies to payments to provide food and drink in relation to children eligible for FSM in Wales, Scotland and Northern Ireland under powers available to the DAs. Payments to provide food and drink in relation to children eligible for FSM in England are currently covered by the HSF, which was exempted from income tax by Statutory Instrument (S.I. 2022/529).

Best Start Foods

7.11 The Scottish Government introduced BSF as a new social security payment through the Social Security (Scotland) Act 2018. That Act also allows Scottish Ministers to legislate the eligibility conditions for each social security payment.

7.12 BSF replaced the Department of Health and Social Care (DHSC) HS scheme in Scotland from 12 August 2019.

7.13 BSF was introduced by the Scottish Government as part of a package of support, including Best Start Grants, to help families on low incomes in Scotland. BSF provides financial support to eligible persons who are pregnant or looking after a young child to purchase specific healthy foods, milk and first infant formula.

7.14 BSF could be chargeable to income tax, as a matter of law, under the income tax annual payments rules in section 683 of the ITTOIA 2005, if certain conditions are met.

7.15 As BSF could be taxable under the annual payment rules, the Government wishes to clarify the tax treatment of payments under BSF as exempt from income tax, so that individuals know that they do not need to report receipt of the payments to HMRC and in order to comply with the Fiscal Framework.

Healthy Start scheme

7.16 The DHSC introduced the HS scheme in November 2006, replacing the Welfare Food Scheme, to help families on low incomes in the UK. The scheme provides financial support to eligible persons who are pregnant or looking after a young child to purchase specific healthy foods, milk and infant formula. The scheme now applies only to England, Wales and Northern Ireland since the Scottish Government introduced BSF in Scotland.

7.17 HS should not be taxable, as the scheme it replaced was never taxable. However, in its current format, payments under the HS scheme could be chargeable to income tax, as a matter of law, under the income tax annual payments rules provided for in section 683 of the ITTOIA 2005, if certain conditions are met.

7.18 As HS could be taxable under the annual payment rules, the Government wishes to clarify that the tax treatment of payments under BSF as exempt from income tax, so that individuals know that they do not need to report receipt of the payments to HMRC.

Family Network Support Package (FNSP)

7.19 The Department for Education announced the FNSPs, which will be trialled in the Family Networks Pilot and Families First for Children Pathfinder schemes, earlier this year. The primary objective is that FNSPs will create sustainable solutions to keep children living within their family networks, where appropriate and in their best interests.

7.20 Payments provided under FNSPs are not prescriptive and could be in the form of cash, bank transfers or vouchers. FNSPs are currently being trialled in local authorities in England.

7.21 Without an exemption, payments made under FNSPs could be taxable as income tax under miscellaneous income rules provided for in section 687 of the ITTOIA 2005, if certain conditions are met.

7.22 As FNSP could be taxable under the miscellaneous income rules, the Government wishes to clarify the tax treatment of payments made under FNSPs as part of the Family Networks Pilot and Families First for Children Pathfinder schemes as exempt from income tax, so that individuals know that they do not need to report receipt of the payments to HMRC.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans for consolidation. This instrument amends ITEPA. However, it would not be proportionate to carry out a consolidation exercise of that Act on the basis of the minor revisions contained in this instrument.

10. Consultation outcome

10.1 No formal consultation exercise was held on the taxation of CSP, as this replaces another benefit which is taxable.

10.2 No formal consultation exercise has been held for the exempted social security benefits as these are minor changes which are wholly relieving to the taxpayer.

11. Guidance

11.1 HMRC will update the guidance on non-taxable social security benefits guidance in line with the changes made by the instrument. That guidance can be found at: www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim76100

11.2 HMRC will update the guidance on taxable social security benefits guidance in line with the changes made by the instrument. That guidance can be found at: https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim76101

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 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

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

14. Monitoring & review

14.1 There are no plans to monitor or review the instrument.

14.2 The instrument does not include a statutory review clause because it does not make or amend regulatory provisions that relate to business activity.

15. Contact

15.1 Keshini Jayasekera, at HM Revenue and Customs email: keshini.jayasekera@hmrc.gov.uk, and Eunice Gonyora at HM Revenue and Customs, email: eunice.gonyora@hmrc.gov.uk (for CSP, BSF and HS), can be contacted with any queries regarding the instrument.

15.2 Philip Batchelor, Deputy Director for Income Tax Policy, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.