

NATIONAL INSURANCE CONTRIBUTIONS (TERMINATION AWARDS AND SPORTING TESTIMONIALS) BILL

Memorandum from HM Revenue & Customs to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill (“the Bill”). The Bill was introduced in the House of Commons on 25 April 2019. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.
2. The Bill contains no new delegated powers. New clause 1(8) expands the existing power in section 10(9) Social Security Contributions and Benefits Act 1992 that provides that Class 1A NICs are not payable in certain circumstances. The proposed amendment ensures that this also includes Class 1A NICs on termination awards.

B. PURPOSE AND EFFECT OF THE BILL

3. The Bill will contain the following measures: -
 - Aligning the National Insurance contributions (NICs) treatment of termination awards made to employees with the tax treatment; and
 - Aligning the NICs treatment of income from sporting testimonials with the tax treatment.

Aligning the NICs treatment of termination awards made to employees with the tax treatment

4. The Government announced at Budget 2016 that it would be reforming the tax and NICs treatment of termination awards. Currently, certain forms of termination awards are exempt from employee and employer NICs and the first £30,000 is free from income tax.
5. The changes to the NICs treatment of termination awards place an employers (Class 1A) NICs liability (which mirrors the tax liability) on the amount of a termination award that exceeds £30,000. No employee will pay more employee NICs as a result of these changes The Class 1A NICs charge does not affect individuals as it is paid by the employer.
6. The Bill will align the NICs treatment of payments made on termination of employment, which are in excess of £30,000, with the income tax treatment for such payments. The income tax changes were made in the Finance (No. 2) Act 2017 and this Bill is making the corresponding NICs changes

Aligning the NICs treatment of income from sporting testimonials with the tax treatment

7. As part of the 2015 Autumn Statement, the Government announced that it would be reforming the income tax and NICs treatment of payments derived from sporting testimonials. These changes include:
 - Bringing payments from sporting testimonials that are non-contractual, non-customary and organised by an independent testimonial committee within the scope of both income tax and Class 1A (employer) NICs;
 - Treating income received from a sporting testimonial as earnings for income tax and for the purposes of Class 1A NICs subject to a limited exemption that applies to the first £100,000; and
 - The limited exemption will apply to only one testimonial in a lifetime, which could come from one event or a series of events held over a 12 calendar month 'testimonial year'.
8. The tax changes were made in the Finance Act 2016 and this Bill is making the corresponding NICs changes.

C. DELEGATED POWERS

Clause 1(8), amendment to section 10(9) SSCBA: Power for regulations to provide that Class 1A NICs is not payable in prescribed circumstances.

- ***Power conferred on: the Treasury***
- ***Parliamentary procedure: negative***

9. Clause 1(2) introduces a new Class 1A NICs liability on termination awards over £30,000 that are subject to income tax. Section 10(9) SSCBA currently provides a power that allows the Treasury to make regulations to provide that Class 1A NICs are not payable in particular circumstances.

10. New clause 1(8) expands the existing power in section 10(9) SSCBA that provide that Class 1A NICs are not payable in certain circumstances. The proposed amendment ensures that this also includes Class 1A NICs on termination awards.

11. Regulations made under the existing power at section 10(9) SSCBA are subject to the negative procedure. Any regulations made under this power must be relieving as they may provide that the Class 1A NICs in certain prescribed circumstances are not payable. As regulations made under this power do not effect benefit entitlement and would provide relief from payments of class 1A NICs in prescribed circumstances it is proposed that any regulations made under this power will continue to be subject to the negative procedure.

Clause 2(8), amendment to section 10(9) SSCB(NI)A: Power for regulations to provide that Class 1A NICs is not payable in prescribed circumstances.

- ***Power conferred on: the Treasury***
- ***Parliamentary procedure: negative***

12. Clause 2(8) contains the mirroring provision in respect of Northern Ireland for the amendment to section 10(9) SSCBA introduced by clause 17(8) of the Bill.

Clause 5: Power to bring into force the provisions of the Act.

- ***Power conferred on: the Treasury***
- ***Parliamentary procedure: none***

13. Clause 5 provides that the Act comes into force when specified by regulations that are to be made by the Treasury. Clause 5(4) provides that the regulations may include transitional, transitory or saving provision and may make different provision for different purposes or different areas.

HM Revenue & Customs
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