

NATIONAL INSURANCE CONTRIBUTIONS (TERMINATION AWARDS AND SPORTING TESTIMONIALS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill as brought from the House of Commons on 11 June 2019 (HL Bill 184).

- These Explanatory Notes have been prepared by HM Revenue & Customs (HMRC) in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each clause of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill as brought from the House of Commons on 11 June 2019 (HL Bill 184)

Overview of the Bill

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

Policy background

Termination Awards

- 2 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.
- 3 The changes to the NICs treatment of termination awards place an employers (Class 1A) NICs liability on the amount of a termination award that exceeds £30,000 mirroring the income tax treatment. The new Class 1A liability does not affect individuals as it is paid by the employer.
- 4 The Bill introduces a new Class 1A NICs liability which will be payable on payments made on termination of employment which are in excess of £30,000 and which are not already charged to Class 1 NICs as earnings.
- 5 It amends the existing section 10 of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992) by providing for the new Class 1A NICs liability on termination awards, whilst keeping the existing provisions for Class 1A contributions payable on benefits in kind provided to employees, and defining which subsection applies.

Sporting Testimonials

- 6 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. The changes for income tax were legislated for in the Finance Act 2016, and came into effect on 5 April 2017.
- 7 The changes to the NICs treatment of sporting testimonials places a Class 1A NICs liability (which mirrors the income tax liability) on the amount of a testimonial payment that exceeds £100,000. The new Class 1A liability does not affect individuals as it is to be paid by the controller of the sporting testimonial.
- 8 The changes will bring 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 NICs. The new £100,000 exemption applies to only one testimonial in a person's lifetime, which could come from one event or a series of events held over a 12 calendar month testimonial year.

Legal background

- 9 The legislation relating to the existing system of NICs and social security benefits is set out in a combination of primary and subordinate legislation. The relevant provisions are:
 - Social Security Contributions and Benefits Act (SSCBA 1992).
 - Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992).
 - The Social Security Administration Act 1992.
 - The Social Security Administration (Northern Ireland) Act 1992.
 - The Social Security (Contributions) Regulations 2001 (SI 2001/1004).
- 10 These provisions will continue to be the main legislation dealing with NICs.

Territorial extent and application

- 11 Clauses 1 and 3 extend to England and Wales and Scotland. Clauses 2 and 4 extend to Northern Ireland. Clause 5 extends to the whole of the United Kingdom. An amendment or repeal in the Bill has the same extent as the provision amended or repealed.
- 12 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.

Scotland

- 13 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament and no Legislative Consent Motion is being sought in relation to any provisions of the Bill. If there are amendments relating to the legislative competence of the Scottish Parliament consent will be sought for them.

Wales

- 14 The Bill does not contain any provisions relating to matters within the legislative competence of the National Assembly of Wales. If there are amendments which relate to such matters, consent will be sought for them.

Northern Ireland

- 15 Under the provisions of Schedule 2 to the Northern Ireland Act 1998 NICs are an excepted matter. The Bill therefore applies to the relevant Northern Ireland legislation relating to NICs. If there are amendments which relate to non-excepted matters, consent of the Northern Ireland Assembly will be sought for them.
- 16 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Termination Awards

Clause 1: Termination awards: Great Britain

- 17 Subsection (1) provides for amendments to section 10 of the SSCBA 1992.
- 18 Subsection (2) inserts new subsections (1A), (1B) and (1C) into section 10 of the SSCBA 1992.
- 19 New subsection (1A) provides that a Class 1A contribution is payable in respect of an amount of a payment or benefit received by an earner in connection with the termination of the earner's employment (termination award). It further clarifies that the amount paid as a termination award, and on which the new Class 1A liability will arise, must count as employment income under section 403 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) and that the earner is chargeable to tax on the termination award under section 403 ITEPA 2003.
- 20 New subsection (1B) prevents double charging by providing that Class 1A contributions payable under new subsection (1A) are not payable on an amount of earnings on which Class 1 contributions are also payable.
- 21 New subsection (1C) clarifies that the employment from which the termination award arises must be the employed earner's employment.
- 22 Subsection (3) amends section 10(2) of the SSCBA 1992 so that the section's existing purpose, clarifying who is liable to pay a Class 1A contribution, is restricted to Class 1A contributions other than that paid on a termination award.
- 23 Subsection (4) inserts new subsection (3A) into section 10 of the SSCBA 1992. New subsection (3A) clarifies who is liable to pay a Class 1A contribution on termination awards under new subsection (1A). It is the person who would be liable to pay secondary Class 1 NICs if the amount of earnings were subject to Class 1.
- 24 Subsection (5) amends section 10(4) of the SSCBA 1992 so that the section's existing purpose, explaining how the amount of a Class 1A contribution is calculated, is restricted to Class 1A NICs other than that paid on a termination award.
- 25 Subsection (6) inserts a new subsection (4A) into section 10 of the SSCBA 1992. New subsection (4A) clarifies how the amount of a Class 1A NICs payable on a termination award is calculated by using the Class 1A percentage.
- 26 Subsection (7) amends section 10(5) of the SSCBA 1992 so that it applies to both existing subsection (4) and new subsection (4A).
- 27 Subsection (8) amends subsection (9)(a) of section 10 of the SSCBA 1992 to clarify that the Treasury may by regulations provide that Class 1A NICs are not to be payable in respect of general earnings or termination awards.
- 28 Subsection (9) inserts new subsection (12) after subsection (11) of section 10 of the SSCBA 1992. This new subsection clarifies that a termination award means a payment or benefit received by an earner (or their spouse, civil partner, blood relative or dependent) in connection with the termination of the earner's employment.
- 29 Subsection (10) amends the heading of section 10 of the SSCBA 1992, removing reference to "benefits in kind etc." to reflect that the provisions of the section now apply more widely than just to Class 1A NICs due on benefits in kind.

- 30 Subsection (11) amends section 162(5)(c) of the Social Security Administration Act 1992 to ensure that Class 1A NICs paid on termination awards are included in the calculation of the allocation of payments to the National Health Service.

Clause 2: Termination awards: Northern Ireland

- 31 This clause mirrors the effect of clause 1 in Northern Ireland legislation.

Sporting Testimonials

Clause 3: Sporting testimonials: Great Britain

- 32 This clause provides for any Class 1A NICs liability arising on taxable sporting testimonial payments by virtue of section 226E of ITEPA 2003 and section 10 of the SSCBA 1992 to be met by third party controllers of sporting testimonials.
- 33 The controller will be liable to pay Class 1A NICs due on sporting testimonial payments that comprise cash as well as benefits in kind.
- 34 Subsection (1) provides for amendments to section 10 of the SSCBA 1992.
- 35 Subsection (2) inserts into section 10 of the SSCBA 1992 a reference to new section 10ZBA which will provide for the new Class 1A NICs liability on sporting testimonial payments to be placed on the controller of a sporting testimonial.
- 36 Subsection (3) inserts into section 10ZA of the SSCBA 1992 new subsection (1A). This new subsection makes clear that section 10ZA will not apply if the benefit being provided by the third party consists of a sporting testimonial payment.
- 37 Subsection (4) inserts into the SSCBA 1992 new section 10ZBA.
- 38 New section 10ZBA(1) defines the circumstances in which a sporting testimonial controller will be liable to pay Class 1A contributions. Three conditions must be satisfied:
- a Class 1A NICs liability must be payable for the tax year in respect of general earnings paid to an earner;
 - those general earnings must consist in a sporting testimonial payment; and
 - the controller of the sporting testimonial making the payment must not be the person who, but for new section 10ZBA, would be liable to pay Class 1A NICs on those general earnings.
- 39 New subsection 10ZBA(2) provides that the controller of the sporting testimonial is liable to pay the Class 1A NICs due in respect of the sporting testimonial payment instead of the earner's employer.
- 40 New subsections 10ZBA(3), (4) and (5) deal with cases where the controller of the sporting testimonial pays an amount to discharge any liability of the earner to pay income tax in the relevant tax year in respect of a sporting testimonial payment. Normally, a payment of an earner's income tax by someone other than the earner himself constitutes a payment of earnings for NICs purposes on which a Class 1 NICs liability arises. New subsection (4) provides that where such an amount is paid by the controller of the sporting testimonial, that amount is to be treated as a payment of general earnings and is to be ignored in the computation of the earner's earnings for Class 1 NICs purposes. The combined effect of subsections (3), (4) and (5) is to require the controller of a sporting testimonial to pay Class 1A NICs on any payment made by him to discharge the earner's tax liability on the sporting testimonial payment.
- 41 New subsection 10ZBA(6) provides that the expressions used in this section have the same meaning as in section 226E of ITEPA 2003.

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Clause 4: Sporting testimonials: Northern Ireland

42 This clause mirrors the effect of clause 3 in Northern Ireland legislation.

General

Clause 5: Extent, commencement and short title

- 43 Subsection (1) provides that sections 1 and 3 of the Bill extend to England and Wales and Scotland. Sections 2 and 4 extend to Northern Ireland. This section extends to England and Wales, Scotland and Northern Ireland.
- 44 Subsection (2) provides that section 5 comes into force on the day the Bill is passed.
- 45 Subsection (3) provides that the other provisions of the Bill come into force on such a day as the Treasury may appoint by regulations made by statutory instrument.
- 46 Subsection (4) provides that regulations:
- may appoint different days for different purposes or different areas; and
 - may include transitional, transitory or saving provision.
- 47 Subsection (5) provides for the Bill to be known as the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019.

Financial implications of the Bill

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

- 48 Aligning the NICs treatment of termination awards is now estimated to increase receipts by £190M for 2020-21 rising to £210M for 2023-24. Combined with the rule reform for termination awards, it is now estimated to increase receipts by £440M for 2020-21 rising to £480M for 2023-24.
- 49 The table below updates the original costing of this policy change to reflect the delay in introducing the reforms relating to the NICs treatment of termination awards. This updates the original costing at Budget 2016 also published in the tax information impact note (see original in paragraph 57).

Exchequer impact (£m)

2017 to 2018	2018 to 2019	2019 to 2020	2020 to 2021	2021 to 2022	2022 to 2023	2023 to 2024
+35	+205	+220	+440	+460	+470	+480

- 50 The Exchequer impact of the measure was previously set out in table 2.1 of Budget 2016 as 'Removing employer tax advantage of different forms of remuneration: pay-offs over £30,000'. This measure is not expected to have any significant macroeconomic impacts. The additional cost to employers is expected to be reflected in lower wages and profit margins, with a reduction in total wages and salaries of 0.1 % by 2020 to 2021.
- 51 Changes will be required to HMRC's IT systems to support implementation of this measure. These costs are currently estimated at between £1 million and £1.5 million in relation to both tax and NICs.

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

- 52 This measure is expected to have a negligible impact on the Exchequer and is not expected to have any significant macroeconomic impacts.
- 53 There will be no significant operational impacts on HMRC arising from this measure. The IT changes required to support implementation of the termination awards measure will also be used by this measure.

Parliamentary approval for financial costs or for charges imposed

- 54 The Bill required a ways and means resolution to cover the increase in the National Health Service allocation as a result of clauses 1(11) and 2(11) of the Bill. The resolution was passed on 30 April 2019.

Compatibility with the European Convention on Human Rights

- 55 The Rt Hon. Lord Young of Cookham, has made the following statement regarding Human Rights:

“In my view the provisions of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill are compatible with the Convention Rights”.
- 56 The provisions of this Bill engage and potentially interfere with the rights provided for in Article 1, Protocol 1 to the European Convention of Human Rights (protection of property). However the Bill is considered to be compatible with the Convention as this Article expressly does not impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions (which would, in this case, relevantly include National Insurance contributions). Furthermore, HMRC is of the view that any interference would be proportionate because it is well within the broad margin of appreciation afforded to the state in fiscal matters.

Related documents

57 The following documents are relevant to the Bill and can be read at the stated locations:

- Draft legislation and explanatory notes for termination awards and sporting testimonial payments, December 2016 <https://www.gov.uk/government/collections/national-insurance-contributions-bill-2016>
- Termination awards tax information impact note (TIIN), December 2016 (updated April 2018) <https://www.gov.uk/government/publications/income-tax-and-national-insurance-contributions-treatment-of-termination-payments/income-tax-and-national-insurance-contributions-treatment-of-termination-payments>
- Sporting testimonials TIIN, March 2016 (updated November 2017) <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>
- Table 2.1 Budget 2016, March 2016 <https://www.gov.uk/government/publications/budget-2016-documents>
- Table 2.2 Budget 2017, March 2017 <https://www.gov.uk/government/publications/spring-budget-2017-documents>

Annex A – Territorial extent and application in the United Kingdom

58 Clauses 1 and 3 extend to England and Wales and Scotland. Clauses 2 and 4 extend to Northern Ireland. Clause 5 extends to the whole of the United Kingdom. There are no clauses or Schedules in the Bill that apply only to England or only to England and Wales, as set out in the table below. It is therefore not necessary to consider, for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business, whether any provisions have minor or consequential effects outside England and Wales, or whether any provisions would be within the competence of any of the devolved legislatures.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion?
Clause 1	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 2	No	No	No	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 4	No	No	No	Yes	N/A	N/A	N/A	No
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

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