EXPLANATORY MEMORANDUM TO

THE INCOME TAX (BENEFITS IN KIND) (EXEMPTION FOR WELFARE COUNSELLING) (AMENDMENT) REGULATIONS 2020

2020 No. 291

1. Introduction

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

2. Purpose of the instrument

2.1 Employment related benefits provided by an employer are usually chargeable to income tax, although welfare counselling services provided by an employer for its employees as part of an employee assistance programme are exempt from tax under the Income Tax (Benefits in Kind) (Exemption for Welfare Counselling) Regulations 2000 (S.I. 2000/2080) ("the existing Regulations"). Welfare counselling services which also include medical treatment of any kind are currently specifically excluded from scope of the exemption, meaning that an employer cannot provide specialist counselling services such as Cognitive Behavioural Therapy (CBT) or Interpersonal Therapy (IPT), without a tax liability being incurred. This instrument amends the existing Regulations by removing the specific exclusion of medical treatments from the exemption, thereby widening the range of employer-provided welfare counselling services which will not be taxable.

3. Matters of special interest to Parliament

Matters of special interest to the Select 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 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 In general, Chapter 10 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) provides that employment-related benefits provided for an employee by reason of the employment will be chargeable to income tax. Section 210 of ITEPA allows the Treasury to make provision by regulations for exempting minor benefits from the application of this Chapter. Any exemption conferred by such regulations is also conditional on the benefit being made available to the employer's employees generally on similar terms.

6.2 The existing Regulations were made under section 155ZB of the Income and Corporation Taxes Act 1988, which was the equivalent provision to section 210 of ITEPA prior to the Tax Law Rewrite project. The effect of the existing Regulations is that a benefit consisting of welfare counselling, within the meaning of that instrument, is exempted from the charge to income tax. For the purposes of the current exemption, welfare counselling means counselling of any kind except medical treatment of any kind, or advice on finance (other than advice on debt problems), or advice on tax, or advice on leisure or recreation, or legal advice.

7. Policy background

What is being done and why?

7.1 The welfare counselling exemption in the existing Regulations is tightly drawn and there is no intention that all types of welfare counselling should be exempted from tax. The type of counselling services the exemption is intended to cover include: stress, problems at work, debt problems, alcohol and other drug dependency, career concerns, bereavement, equal opportunities, ill-health, sexual abuse, harassment and bullying, conduct and discipline and personal relationship difficulties.

7.2 However, the specific exclusion of medical treatment from the scope of the current welfare counselling exemption prevents employers from supporting employees through the provision of certain counselling based medical treatments without incurring a charge to income tax on the provision of such treatment. This includes specialist counselling services such as Mindfulness-based Cognitive Therapy, CBT and IPT.

7.3 The welfare counselling exemption was introduced to provide tax relief on a broad range of counselling services and advice, and the government does not want to discourage the use of specialist counselling treatments as part of an employer's occupational health provision.

7.4 The welfare counselling exemption was first introduced in 2000, when specialist counselling treatments were not yet developed as an effective form of treatment. It was not envisaged that medical treatments such as CBT would be provided widely as part of an employer's welfare counselling services to their employees.

7.5 The intention is to bring the provision of all specialist counselling treatments within the scope of the welfare counselling exemption, including those which would constitute a medical treatment, and to ensure employers can offer them as part of their welfare counselling services without any tax liabilities being incurred.

7.6 Therefore, the existing Regulations will be updated so that they no longer exclude the provision of specialist counselling services which are also medical treatments, where these services are provided to the employee as part of the employer's welfare

counselling services. This is to ensure that specialist counselling services, such as CBT which currently fall within the definition of medical treatment, are no longer excluded from the exemption.

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 This instrument will amend the existing Regulations for the first time. There are no current plans for consolidation.

10. Consultation outcome

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

11. Guidance

11.1 The guidance for welfare counselling can be found in the Employment Income Manual (EIM21845) which will be updated to reflect the amendment to the existing Regulations as the changes come into force on 6 April 2020.

12. Impact

12.1 This measure is expected to impact employers who provide welfare counselling services.

12.2 This measure ensures that employer provision of counselling services which are also medical treatments, such as Cognitive Behavioural Therapy (CBT) or Interpersonal Therapy (IPT), will no longer be a taxable benefit under the terms of the welfare counselling exemption. One-off costs will include familiarisation with this change. There are expected to be no ongoing costs. Ongoing savings for employers could include no longer having to record information relating to medical treatment within their welfare counselling services, and no longer having to submit this information to HMRC. There are expected to be no impacts on civil society organisations unless they provide welfare counselling services in their capacity as an employer.

12.3 Customer experience is expected to remain broadly the same as this measure does not significantly change how employers interact with HMRC.

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

12.5 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 who provide welfare counselling services.

13.2 No specific mitigating 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.

15. Contact

15.1 Sheikh Hossain, policy lead at HMRC Telephone: 03000 563895 or email: employmentincome.policy@hmrc.gov.uk which be contacted with any queries regarding the instrument.

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.