EXPLANATORY MEMORANDUM TO

THE INCOME TAX (EXEMPTION OF SOCIAL SECURITY BENEFITS) (NO. 2) REGULATIONS 2024

2024 No. 901

1. Introduction

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

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.

2.2 Philip Batchelor, Deputy Director for Income Tax Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Keshini Jayasekera, at HMRC email: Keshini.jayasekera@hmrc.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to exempt payments made under the Scottish Government's Pension Age Disability Payment from income tax.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

Scottish Social Security Payments

5.1 Social security payments are administered by a number of different government departments and the devolved administrations in the United Kingdom.

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

5.3 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.

Pension Age Disability Payment

5.4 The Scottish Government is introducing the Pension Age Disability Payment in Scotland as a new social security payment through the Social Security (Scotland) Act 2018. That Act also allows the Scottish Ministers to legislate the eligibility conditions for each social security payment.

5.5 Pension Age Disability Payment will replace the Department for Work and Pensions Attendance Allowance, for Scottish claimants. Social Security Scotland will administer and make decisions about the entitlement to Pension Age Disability Payments. Individuals currently in receipt of Attendance Allowance will be transferred to the Pension Age Disability Payment. Under current taxation principles, payments made under the Pension Age Disability Payment scheme could be chargeable to income tax covered by the 'annual payments' provisions in part 5, chapter 7 Income Tax (Trading and Other Income) Act 2005 ("ITTOIA").

5.6 As payments made under the Pension Age Disability Payment could be taxable under the annual payment rules, the Government is clarifying the tax treatment of these payments as a non-taxable social security benefit, in line with the Fiscal Framework.

What was the previous policy, how is this different?

5.7 The Pension Age Disability Payments are being introduced from 21 October 2024. This instrument will confirm that payments will not be subject to income tax.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 13 of the Finance Act 2020 contains a power for HM Treasury, by regulations, to amend Chapter 4 or 5 of Part 10 of Income Tax (Earnings and Pensions) Act 2003 ("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)).

6.2 The instrument will amend Chapter 5 of Part 10 of ITEPA 2003 by inserting Pension Age Disability Payment into Part 1 of Table B in section 677, which will have the effect of wholly exempting this social security benefit from Income Tax.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No formal consultation exercise has been held as these changes are wholly relieving to the taxpayer.

8. Applicable Guidance

8.1 Guidance will be provided via the body administering the payment.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

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

Impact on businesses, charities and voluntary bodies

9.2 There is no significant, impact on business, charities or voluntary bodies because these payments are made to a small number of individuals. Therefore, there are no wider impacts on businesses, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no significant impact on the public sector because these payments are made to approximately one hundred and forty thousand individuals living in Scotland. Therefore, there are no wider impacts on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

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

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

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).