EXPLANATORY MEMORANDUM TO

THE INCOME TAX (EXEMPTION OF SOCIAL SECURITY BENEFITS) REGULATIONS 2021

2021 No. 1341

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her 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 exempt four social security payments from income tax, with retrospective effect. Two of the payments exempted by this instrument have been introduced by the Scottish Government: Winter Heating Assistance (WHA), from November 2020; and Short Term Assistance (STA), from July 2021. The other two payments have been introduced by the United Kingdom Government: the Covid Winter Grant Scheme (CWGS) which was paid out to recipients from December 2020 until April 2021; and the Covid Local Support Grant (CLSG) which was paid out from April 2021 until September 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 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. This instrument is made in the first exercise of that power. It is a negative procedure instrument. 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. The Interpretation Act 1978 defines "the Income Tax Acts" as being all enactments relating to income tax, which includes section 13 of FA 2020.

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 the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt Hon Lucy Frazer QC MP, the Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the Income Tax (Exemption of Social Security Benefits) Regulations 2021 are compatible with Convention rights".

6. Legislative Context

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

6.2 Section 13 of FA 2020 contains a regulation-making power for the 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)).

6.3 The instrument will amend Chapter 5 of Part 10 of ITEPA 2003 by inserting WHA and STA into Part 1 of Table B in section 677, which will have the effect of wholly exempting these social security benefits from income tax.

6.4 The instrument will also modify Chapter 5 of Part 10 of ITEPA 2003, as if there were inserted into Part 1 of Table B in section 677, payments made: under the Covid Winter Grant Scheme; the Covid Local Support Grant; or any scheme or grant in Scotland, Wales or Northern Ireland corresponding to the Covid Winter Grant Scheme or the Covid Local Support Grant. This will also have the effect of wholly exempting these social security benefits from income tax.

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 devolved administrations (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 payment should be confirmed when it is introduced.

7.3 The Scottish Government's Fiscal Framework 2016 ("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.

7.4 The Scottish Government introduced various social security payments through the Social Security (Scotland) Act 2018, including WHA and STA. That Act also allows the Scottish Ministers to legislate as to eligibility conditions for each social security payment.

7.5 At present, the Scottish Ministers have only legislated to set eligibility criteria for payments of WHA to children and young people, in order to support families with the most seriously disabled children and young people by providing help with fuel costs over the winter months. The relevant legislation came into effect in November 2020. WHA is an annual payment of £202 for 2021-22.

7.6 STA was launched in July 2021. It will be paid where Social Security Scotland has made a decision to reduce or stop specified continuing welfare payments, and that decision is subject to a request for re-determination or an appeal. To ensure an individual is not discouraged from challenging that decision by having to manage for

a period with a reduced income, the STA is not repayable regardless of the outcome of the re-determination or appeal. If the individual wins their appeal, any arrears of the relevant social security payments subject to appeal are paid net of any STA received.

7.7 Both payments should not be taxable, as a matter of principle, under the Fiscal Framework. However, they could both be chargeable to income tax, as a matter of law, under the income tax annual payment rules set out at section 683 Income Tax (Trading and Other Income) Act 2005 if certain conditions are met.

7.8 As WHA and STA could be taxable under the annual payment rules, the Government wishes to confirm the tax treatment for both payments as exempt from income tax in order to comply with the 2016 Fiscal Framework.

Covid Support Grants and Schemes

7.9 The Department for Work and Pensions introduced the Covid Winter Grant Scheme in December 2020. It was an England-only fund delegated to Local Authorities (LAs) to provide additional support for families during the Covid-19 pandemic. The scheme supported those in need across England with the cost of food, energy (heating, cooking, lighting), water bills (including sewerage) and other essentials.

7.10 DAs received equivalent funding in December 2020.

7.11 The Covid Winter Grant Scheme was replaced by the Covid Local Support Grant in April 2021. The Covid Local Support Grant then ended on 30 September 2021.

7.12 The funding was provided to county councils and unitary authorities (including metropolitan councils and London boroughs), under section 31 of the Local Government Act 2003 ("LGA 2003"), to administer the grants and provide assistance to vulnerable families with children and other vulnerable households particularly affected by the pandemic.

7.13 Payments made under the Covid Winter Grant Scheme and Covid Local Support Grant are unlikely to be taxable under current income tax legislation, but the government wishes to confirm the tax treatment of the payments for clarity, so that individuals know that they do not need to report receipt of the payments to HM Revenue and Customs (HMRC).

7.14 The exemption applies equally to any schemes or grants in the DAs corresponding to the Covid Winter Grant Scheme or the Covid Local Support Grant.

7.15 The question of whether or not a scheme or grant in the DAs corresponds to the Covid Winter Grant Scheme or the Covid Local Support Grant can be determined by reference to various objective criteria, including: firstly, that the method of administration of payments in a DA would need to be similar to a grant or scheme made to LAs under section 31 of the LGA 2003; and, secondly, that the purpose of the assistance would need to be the same as that set out in paragraph 7.9 above.

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 has been held 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: https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim76100.

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 Domna Georgala (telephone: 03000 559411, email: domna.georgala@hmrc.gov.uk) and Katherine Gross-Niklaus (telephone: 03000 531323, email: katherine.grossniklaus@hmrc.gov.uk) at HM Revenue and Customs can be contacted with any queries regarding the instrument.

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

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.