EXPLANATORY MEMORANDUM TO

THE INCOME TAX (TRAVEL EXPENSES OF MEMBERS OF LOCAL AUTHORITIES ETC.) REGULATIONS 2016

2016 No. 350

1. Introduction

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

2. Purpose of the instrument

2.1 Sections 235A and 295A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) provide an exemption from income tax for qualifying payments made by a relevant authority in respect of travel expenses incurred by a member of the authority.

2.2 Sections 235A(6) and 295A(4) provide that the Treasury may by regulations provide for specified bodies to be relevant authorities and define a "qualifying payment". The purpose of these regulations is to set out those definitions.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Sections 235A and 295A of ITEPA were inserted by section 29 of the Finance Act (No. 2) 2015. They set out an exemption from income tax for qualifying payments made by a relevant authority in respect of travel expenses incurred by a member of the authority, including expenses for a journey between home and permanent workplace. The exemption only applies to travel between the member's home and permanent workplace where their home is within the authority area or within 20 miles of the boundary of the area.

4.2 Subsections 235A(6) and 295A(4) of ITEPA set out that the Treasury may by regulations:

- specify bodies to be relevant authorities;
- prescribe a description of a member of a relevant authority;
- define a "qualifying payment";

for the purposes of the exemption.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

5.2 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Travel expenses paid to members of a local authority are generally subject to the current rules that govern the tax treatment of payments to all employees and office-holders. Although travel undertaken in the performance of the duties of the employment, or travel for the employee's necessary attendance at a temporary workplace, will generally qualify for tax relief, tax relief is not usually available for travel between an employee's home and a permanent workplace i.e. ordinary commuting.

7.2 To ensure that individuals are not discouraged from undertaking a role as a councillor by the tax treatment of their travel expenses, the Government announced on 22nd July 2014 that it would introduce a tax exemption and National Insurance contribution (NIC) disregard where a local authority pays a member for travel expenses incurred, including expenses for journeys between the member's home and council offices.

7.3 The tax exemption will apply to qualifying payments made by a relevant authority to a member of that authority for certain travel expenses incurred. "Travel expenses" include any subsistence expenditure and other associated costs incurred in making the journey.

7.4 These Regulations provide a definition of "relevant authority" as councils at each level of local government that may make qualifying payments to their members in respect of travel expenses incurred. This includes county, district, community, parish, London borough and county borough councils, the Council of the Isles of Scilly and councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994. The Department will keep this definition under review.

7.5 A "qualifying payment" is defined as a payment by a relevant authority to a member of that authority, made under specified legislation. A qualifying payment must be made in connection with activities undertaken by the member on behalf of their relevant authority.

7.6 A qualifying payment made by a relevant authority to a member of the authority in respect of travel expenses incurred in using public transport, including expenses for a journey between home and permanent workplace, will be exempt from tax.

7.7 Where a qualifying payment is made by a relevant authority to a member of the authority for using their own vehicle to undertake a journey between their home and permanent workplace (a qualifying journey), the tax exemption will be restricted to the Approved Mileage Allowance Payment (AMAP) rates. Where the authority pays less than the AMAP rate, or no payment at all, Mileage Allowance Relief (MAR) will not be due in respect of qualifying journeys. The tax exemption will also apply to

qualifying payments made in respect of passengers up to the approved amount for passenger payments, but only where the passenger is also a member of the relevant authority.

7.8 The tax exemption will not apply to expenses incurred on journeys between the member's home and permanent workplace where the member's home is more than 20 miles outside the boundary of the authority area.

Consolidation

7.9 There are no plans for consolidation as this is a stand-alone instrument.

8. Consultation outcome

8.1 In accordance with the Government's Tax Consultation Framework, draft Regulations were published on the HMRC website for comment from 19 January 2015 to 16 March 2015.

8.2 Minor and technical changes have been made to the Regulations following consideration of comments received, although the scope of the definitions remain unchanged.

9. Guidance

9.1 Guidance will be made available when the exemption comes into effect.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There are likely to be implementation costs for relevant authorities due to the need to change some internal processes, but there will be ongoing administrative savings once implementation is complete.

10.3 A Tax Information and Impact Note was published on 10 December 2014 alongside the draft clauses and explanatory notes for Finance Bill 2015 and is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Regulations will be monitored and reviewed as appropriate within the context of the wider tax framework.

13. Contact

13.1 Lynn Meikle at HMRC Telephone: 03000 586644 or email: lynn.meikle@hmrc.gsi.gov.uk can answer any queries regarding the instrument.