EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 3) REGULATIONS 2024

2024 No. 306

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Nigel Huddleston MP, Financial Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Edmund Hair, Deputy Director for National Insurance Policy, International & Student Finance at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Richard Greaves at HMRC Telephone: 03000 590820 or email: richard.greaves2@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 This instrument makes amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (the "NICs Regulations") which make provision for the assessment, collection and recovery of National Insurance contributions (NICs) under the Pay As You Earn (PAYE) system. The changes have effect from 6 April 2024.

4.2 The amendments are intended to simplify the reporting process for employers whose employees receive salary advances, either directly from the employer or through a third party. To ease the administrative burden, employers will delay reporting a salary advance to HMRC's Real Time Information (RTI) system until the payment of the remainder of that salary instalment at the regular interval.

Where does the legislation extend to, and apply?

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

4.4 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?

5.1 The measure relates to arrangements which allow employees access to some of their earned salary before the normal pay day. Such arrangements can be made through an employer or through a third party. These arrangements are commonly known as salary advance or earned wage access schemes.

5.2 Where the advance is made by a third-party scheme provider, the reporting obligation will nevertheless fall on the employer where the scheme provider is acting on the employer's behalf.

5.3 The instrument makes changes to reporting requirements and deductions working sheets requirements in respect of certain advances of salary.

5.4 These amendments change the application of the 'on or before' RTI reporting requirement in some cases where a salary advance is made. Currently, employers are required to make a Full Payment Submission (FPS) shortly before or at the time of making a payment to an employee (see 6.5).

5.5 The amendments require employers to report earnings for a pay period on one FPS. Employers are required to report by the date on which the remainder of the salary instalment at the regular interval that follows the advance payment is made and not the earlier payment dates of individual salary advances.

5.6 The amendments apply where the employee's salary is ordinarily paid at regular intervals of between one week and one month and the employer pays part of the salary in advance. For the purposes of the amendments, advances must reasonably represent work undertaken or obligations performed by the employee in accordance with the employee's contract with the employer in respect of which no other payment of earnings has been made.

5.7 The amendments apply where an employee receives a payment or payments for work undertaken or obligations performed before the regular interval and the employer makes a subsequent payment of earnings to the employee at the regular interval (reduced by reference to advance payments made to the employee) that follows the making of the advance payment.

5.8 As well as easing employer reporting burdens, the new process minimises the risk of coding or Universal Credit errors that could arise from processing multiple returns within a pay period.

5.9 Other advance payments to employees or loans are covered by existing HMRC rules and guidance. Such payments fall outside the scope of this measure.

What was the previous policy, how is this different?

5.10 These amendments are being made because the current RTI rules require employers to report each salary advance when it is made or before it is made. This could result in multiple reports being made during a pay period. Furthermore, the employer may not always know about a salary advance paid through a third party in time to report it when or before the payment is made. The amendments now require employers to report earnings on one FPS at the regular interval.

5.11 An additional amendment is being made to the NICs regulations in respect of advances made in one tax year and the remainder of the salary instalment made in the following tax year (see 6.2 and 6.3). All payments will now be treated as payments

made in the following tax year. This ensures the reporting treatment for advances for both PAYE and NICs remain aligned.

6. Legislative and Legal Context

How has the law changed?

6.1 The NICs Regulations include record-keeping and reporting requirements to ensure that information relating to payments of earnings made to employees is accurate and complete.

6.2 New regulation 1(2) provides the definitions of 'advance payment', 'completed service' and 'reduced regular interval payment'.

6.3 Regulation 7 of the NICs Regulations provides for treatment of earnings paid otherwise than at regular intervals, with regulation 7(3) prohibiting a payment of earnings made in one tax year to be treated as made in another tax year (where the conditions are met).

6.4 This instrument inserts regulation 7(3A) into the NICs regulations that provides for regulation 7(3) to not apply in circumstances where certain advance payment of earnings are made in one year and the payment of earnings at the regular interval are made in another year. All advance payment of earnings will instead be treated as if they were a payment of earnings made at the regular interval.

6.5 This instrument also provides for how an employer should treat advance payment of earnings for the purposes of paragraphs 6(1)(a), 7(13) and 21A of Schedule 4, and Schedule 4A, to the NICs Regulations.

6.6 Paragraph 6(1)(a) requires an employer to prepare a deductions working sheet for an employee when making a payment of earnings. Paragraph 7(13) requires an employer to record details about every payment of earnings made to the employee in a deductions working sheet. Paragraph 21A of Schedule 4 of the NICs Regulations requires that on or before making a payment of earnings to an employee, the employer sends HMRC the information listed in Schedule 4A to the NICs Regulations.

6.7 New paragraph 21AE provides that, where an employee receives a salary advance, the advance payment and the payment of earnings that follows the advance payment which has been reduced by reference to advance payments made to the employee (reduced regular interval payment) should be treated as a single payment, made on the date that the reduced regular interval payment is made. This is in respect of both the deductions working sheet and the return to HMRC.

6.8 New paragraph 21AE also provides that the requirements of paragraphs 6(1)(a), 7(13), 21A of Schedule 4 and Schedule 4A of the NICs Regulations do not apply to advance payments in the period beginning with the making of the advance payment and ending with the making of the reduced regular interval payment.

6.9 This instrument is related to the Income Tax (Pay As You Earn) (Amendment) Regulations 2024 (S.I. 2024/305), which makes amendments to S.I. 2003/2682 in respect of PAYE reporting obligations for salary advances.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 HMRC published an open technical consultation on 11 September 2023, inviting interested parties to identify any issues for employers and payroll service providers in operating the changes set out in the draft amendment regulations. The consultation closed on 9 October 2023.

7.2 The consultation received 19 responses from representatives of employers, payroll service providers and the media.

7.3 The measure was received positively by the majority of respondents and was generally seen as meeting HMRC's objectives of simplifying the reporting process and reducing administrative burdens.

7.4 One respondent expressed some general concern about the operation of commercial salary advance schemes and the potential impact on lower paid employees. Arrangements for making advances are matters between the employer and the employee, falling outside the remit of HMRC. The aim of this measure is to help employers better meet their RTI reporting obligations, when reporting employee remuneration which includes advances of salary.

7.5 Responses also sought clarity regarding how schemes arranged by third parties were covered by the easement, and whether the easement was restricted to advances of accrued earnings. HMRC has amended the draft legislation such that the measure only applies to advances of pay already earned by the time of payment of the salary advance. On the question of third parties, the reporting obligation will fall on the employer where a third-party scheme provider is acting on the employer's behalf.

8. Applicable Guidance

8.1 The policy intent and initial guidance was published in HMRC's Agent Update 102 on 16 November 2022[1].

8.2 Further guidance will be published on GOV.UK by 6 April 2024.

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. Legislative changes arising from this instrument contain no substantive changes to tax policy.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislative changes arising from this instrument contain no substantive changes to tax policy.

9.3 The legislation does impact small or micro businesses.

9.4 As the measure represents an easement of current tax reporting obligations, HMRC does not anticipate any adverse impact affecting small or micro businesses.

[1] HMRC's Agent Update 102: https://www.gov.uk/government/publications/agent-update-issue-102

9.5 There is no, or no significant, impact on the public sector because the legislative changes arising from this instrument contain no substantive changes to tax policy.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to the monitoring of this legislation is through normal compliance activity and regular communication with affected taxpayer groups.

10.2 In accordance with section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015, this instrument does not include a statutory review clause because it is made in relation to the imposition of a tax, duty, levy or other charge.

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”).