EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 5) REGULATIONS 2023

2023 No. 773

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 Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to disregard from earnings top-up payments announced through a written ministerial statement published on 29 June 2023 (HCWS896) made under the Post Office's Horizon Shortfall Scheme (HSS) from National Insurance contributions (NICs).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the 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 Section 3(2) and (3) of the Social Security Contributions and Benefits Act 1992, and section 3(2) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 contain a regulation-making power to establish the basis on which the amount of earnings shall be calculated, and that payments of a particular class or description can be disregarded from that calculation. In accordance with those sections this instrument is made with the concurrence of the Secretary of State and the Department for Communities (Northern Ireland).

6.2 Schedule 3 to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) specifies the payments which are to be disregarded in the calculation of earnings from employed earner's employment for the purpose of establishing liability to pay Class 1 NICs.

6.3 Similar provision for tax purposes is being made by the Post Office Horizon Shortfall Scheme Top-Up Payments (Tax Exemptions) Regulations 2023. That instrument exempts the top-up payments from Income Tax and Capital Gains Tax.

7. Policy background

What is being done and why?

7.1 Post Office Limited (POL), a wholly owned government company, set up the HSS to compensate postmasters who were affected by the Post Office Horizon scandal. HSS compensates individuals who repaid shortfalls to POL that may have arisen due to accounting faults in the Horizon IT system and potentially suffered consequential losses as a result.

7.2 HSS was the first Horizon IT Scandal compensation scheme to be established, as a result of the successful litigation against POL. Funding for HSS is provided by POL and central government, payments are made by POL.

7.3 HSS payments are calculated on a gross basis (i.e. calculated without deduction of tax or NICs), and the compensation paid was then taxable and liable to NICs. HSS compensation may cover an extended period of losses but is paid in a lump sum in a single year, meaning some payments or part-payments may have been charged at a higher tax rate than they would have been had postmasters earned the equivalent amounts over several years.

7.4 Payments in other Post Office Horizon compensation schemes - the Group Litigation Order (GLO) and Overturned Historical Conviction (OHC) – have been calculated and paid on a net basis with no further tax or NICs liabilities. Interest on the GLO and OHC schemes is not taxable, but was calculated on the net amount of compensation, whereas in HSS the interest is calculated on the gross amount of compensation and is taxable and liable to NICs.

7.5 In order to better equalise the HSS tax position with other schemes, the government announced on 19 June 2023 through a written ministerial statement its intention to fund top-up payments to compensate HSS claimants for amounts taxed at a higher rate.

7.6 As NICs may be due on elements of the top-up payment the government wishes to disregard them from any NICs liability.

7.7 This instrument delivers the policy intent by amending the Social Security (Contributions) Regulations 2001 by inserting a new paragraph at the end of Part 10 of Schedule 3 (which lists payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions).

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 As this instrument does not change the substance of the regulations, there is no plan to consolidate.

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 Guidance will be provided via the bodies administering the scheme.

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 because it contains no substantive changes to NICs 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 Ativie Edebiri at the HMRC Telephone: 0300 584748 or email: ativie.edebiri@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Edmund Hair, Deputy Director for National Insurance Policy, International and Student Finance, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.