EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT) REGULATIONS 2024

2024 No. 187

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 and Student Finance, at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ativie Edebiri at HMRC Telephone: 0300 584748 or email: ativie.edebiri@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 disregards from earnings three compensation schemes in order to exempt them from Class 1 National Insurance Contributions (NICs). The relevant payments are Suspension Remuneration Review (SRR) compensation payments, Post Office Process Review (PPR) compensation payments and Group Litigation Order (GLO) compensation payments paid to nominated individuals. It also disregards relevant onward payments from earnings in order to exempt them from Class 1 NICs.

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?

PPR, SRR, SRR top-up and GLO nominated individuals

5.1 Post Office Limited (POL), a wholly owned government company, have set up two compensation schemes: PPR and SRR.

5.2 PPR provides redress to postmasters who were financially impacted by previous processes or policies in relation to balance discrepancies and is not related to the Horizon system.

5.3 SRR provides redress to postmasters affected by POL previous suspension remuneration policy. Before March 2019, postmasters were not remunerated during their period of suspension.

5.4 Funding for PPR and SRR is provided fully by central government and payments are made by POL. Payments of PPR have not yet commenced.

5.5 Prior to 1 January 2024 approximately 150 claimants received SRR payments. These payments are liable to Class 1 NICs and will not be affected by this instrument. SRR top-up payments will be made to these claimants to compensate them for any Class 1 NICs liability they may have incurred.

5.6 A GLO Class 1 NICs disregard was introduced by Statutory Instrument (S.I.) 2023/186. GLO compensates postmasters whose litigation settlements were reduced by legal fees.

5.7 Funding for GLO is provided fully by central government and payments are made by the Department for Business and Trade.

5.8 GLO paid to nominated individuals relates to entities that would have been eligible to receive compensation under the GLO scheme but have been dissolved. In these cases, the nominated individual (a person who was a shareholder or director of a company or partner in a partnership) will receive the GLO compensation.

5.9 Without this instrument parts of the PPR, SRR, SRR top-up and GLO paid to nominated individuals would be liable to NICs.

5.10 The government wishes to disregard these payments from any NICs liability, so that individuals know they do not need to report their receipt to HMRC.

Relevant Onward Payments of Post Office Compensation Payments

5.11 Alongside individuals there are corporate entities who will receive compensation under the GLO, Horizon Shortfall Scheme (HSS), SRR and PPR compensation schemes.

5.12 In order to remedy the discrepancy between corporate and individual recipients of these compensation payments the government is introducing legislation via the Finance Act 2024 amending Part 2 of Schedule 15 to the Finance Act 2020 (the legislation).

5.13 The legislation provides an exemption from corporation tax from the GLO, HSS, SRR and PPR compensation payments. It further ensures that any relevant onward payments of compensation will be exempt from income tax and capital gains tax.

5.14 The specified relevant onward payments for the purposes of the legislation that are relevant to NICs are payments made by a company who is a recipient of a relevant compensation payment to a director or employee of that company for the purpose of passing all or part of that compensation to that individual.

5.15 This instrument mirrors the legislation and provides an exemption from Class 1 NICs for relevant onward payments:

- For GLO recipients of a relevant onward payment this instrument ensures that they are treated consistently with the individual recipients, whose payments were exempt from Class 1 NICs by S.I. 2023/186.

- For HSS recipients of a relevant onward payment this instrument ensures that they are treated consistently with individual recipients, whose payments are subject to NICs, but are in receipt of a further top-up payment which is exempt from Class 1 NICs by S.I. 2023/773.
- For SRR recipients of a relevant onward payment after 1 January 2024 this instrument exempts the payment from Class 1 NICs.
- For SRR recipients who received a relevant onward payment before 1 January 2024 that payment is liable to Class 1 NICs. This instrument exempts the top-up payment made to these recipients from Class 1 NICs.
- For PPR recipients of a relevant onward payment this instrument exempts the payment from Class 1 NICs.

What was the previous policy, how is this different?

5.16 While compensation payments for loss of earnings are liable to NICs, HMRC have not collected NICs on previous POL compensation schemes (the Overturned Historic Convictions and GLO). The government committed to exempting these schemes, and the Commissioners for HMRC have agreed to use their Collection and Management Powers not to collect Class 1 NICs in the PPR, SRR and on relevant onward payments, until the legislation comes into effect.

5.17 The government has agreed to compensate the victims of the Post Office Horizon scandal and has introduced legislation to exempt compensation schemes from NICs. This measure will align the Class 1 NICs treatment of PPR, SRR, GLO paid to nominated individuals and relevant onward payments, with the previous schemes.

6. Legislative and Legal Context

How has the law changed?

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. This instrument is made under these powers and 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 This instrument amends Part 10 of Schedule 3 of the Social Security (Contributions) Regulations 2001 by the insertion of a new paragraph after paragraph 27 – Group Litigation Order nominated individual compensation payments, onward payments of Post Office compensation payments, Post Office Process Review Scheme compensation payments and Suspension Remuneration compensation payments.

6.4 Similar provision for tax purposes is being made by the Post Office Compensation Schemes and Victims of Overseas Terrorism Compensation Scheme (Tax Exemptions and Relief) Regulations 2024. That instrument exempts SRR, PPR and GLO nominated individual payments from income tax and capital gains tax and relieves GLO nominated individual payments from inheritance tax.

Why was this approach taken to change the law?

6.5 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 are minor changes which are wholly relieving to the taxpayer.

8. Applicable Guidance

8.1 Guidance will be provided via the bodies administering the schemes.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because these compensation payments are made to a small number of individuals.

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 relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

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").