EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY CONTRIBUTIONS (DISREGARDED PAYMENTS) (CORONAVIRUS) REGULATIONS 2021

2021 No. 242

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument extends two temporary Class 1 National Insurance contributions (NICs) disregards which were introduced for the 2020-21 tax year, so that they also apply for the 2021-22 tax year. Regulation 3(1) of this instrument ensures that, where an employer reimburses an employee for the cost of home office equipment to enable them to work from home as a result of Covid-19 outbreak, there is no Class 1 NICs liability for either the employer, or the employee, during the 2021-22 tax year. Regulation 3(2) of this instrument ensures that, where an employer pays or reimburses an employee for the cost of a relevant coronavirus antigen test, there is no Class 1 NICs liability for either the employer or the employee during the 2021-22 tax year.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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

6. Legislative Context

Home office equipment

6.1 To provide effective support for employees over the duration of the coronavirus lockdown period, a temporary income tax exemption was introduced for the tax year

2020-21 under section 210 of the Income Tax Earnings and Pensions Act 2003 (ITEPA 2003) (power to exempt minor benefits) to ensure that employer-reimbursed coronavirus related home office equipment expenses are exempt from tax. The income tax exemption was provided for in the Income Tax (Exemption for Coronavirus Related Home Office Expenses) Regulations 2020 (S.I. 2020/524) and was time-limited to the 2020-21 tax year.

6.2 For the expenditure to be eligible for relief it must meet the following two conditions:

(i). that equipment was obtained for the sole purpose of enabling the employee to work from home as a result of the coronavirus outbreak, and

(ii). the provision of the equipment would have been exempt from income tax under section 316 of ITEPA 2003 if it had been provided directly to the employee by or on behalf of the employer.

6.3 A corresponding Class 1 NICs disregard was provided for in the Social Security Contributions (Disregarded Payments) (Coronavirus) Regulations 2020 (S.I. 2020/525) and was time-limited to the 2020-21 tax year.

6.4 This instrument provides for the 2020-21 NICs disregard for reimbursement of coronavirus related home office expenses to also apply in the 2021-22 tax year. The income tax exemption will also be extended to the 2021-22 tax year in the Income Tax (Exemption for Coronavirus Related Home Office Expenses) (Amendment) Regulations 2021 (S.I. 2021/225).

6.5 The extension of the disregard is temporary and will only have effect for reimbursements made between 6 April 2021 and 5 April 2022.

Coronavirus antigen tests

6.6 The Social Security Contributions (Disregarded Payments) (Coronavirus) (No. 2) Regulations 2020 (S.I. 2020/1523) introduced a temporary Class 1 NICs disregard for employer-reimbursed coronavirus antigen tests.

6.7 The disregard ensured that where the employer pays or reimburses their employee for the cost of a relevant coronavirus antigen test, there is no NICs liability for either the employee or the employer. This disregard was time-limited to the 2020-21 tax year.

6.8 This instrument provides for the 2020-21 NICs disregard for employer-reimbursed coronavirus antigen tests to also apply in the 2021-22 tax year. The extension of the disregard is temporary and will only have effect for payments made between 6 April 2021 and 5 April 2022.

6.9 Finance Bill 2021 will introduce a retrospective income tax exemption for employer-provided and employer-reimbursed coronavirus tests for the 2020-21 tax year and will also introduce an income tax exemption for the 2021-22 tax year.

6.10 The Secretary of State for Work and Pensions and the Northern Ireland Department for Communities have concurred to the making of the final text of this instrument.

7. Policy background

What is being done and why?

Home office equipment

7.1 The coronavirus outbreak means a very high number of employees are working from home and for many employers and employees, the most efficient way in the current situation of ensuring employees have equipment at home is for the employee to buy it and be reimbursed by the employer. Prior to the introduction of this disregard payments would be subject to income tax and NICs.

7.2 Where an employee incurs an expense wholly, exclusively and necessarily in the performance of the duties of their employment, income tax relief is usually available. However, an employee putting themselves into a position to be able to carry out their duties, such as buying furniture or computer equipment, does not normally qualify.

7.3 Given the pressing nature of the coronavirus outbreak, and to minimise risk and burdens on employers during this period, Regulation 3(1) of this instrument extends the current temporary Class 1 NICs disregard for 2020-21 so that it also applies for the 2021-22 tax year.

7.4 Extending this disregard ensures that, where an employer reimburses an employee for the cost of home office equipment to enable them to work from home as a result of Covid-19 outbreak, there is no Class 1 NICs liability for either the employer, or the employee, during the 2021-22 tax year. This will ensure that employees receive the reimbursement free from tax and make it easier for them to gain access to equipment and remain productive as they work from home.

7.5 An income tax exemption on the same payments introduced for the 2020-21 tax year will also be extended to the 2021-22 tax year. This will be provided for in the Income Tax (Exemption for Coronavirus Related Home Office Expenses) Regulations 2021.

Coronavirus antigen tests

7.6 If an individual is eligible for a coronavirus test through the government testing programme, the tests are provided free of charge and no NICs or income tax liability will arise.

7.7 To minimise the financial and reporting burdens on employers and employees, various changes were made to the income tax and NICs treatment of employer-provided and employer-reimbursed coronavirus tests in the 2020-21 tax year.

7.8 The Income Tax (Exemption of Minor Benefits) (Coronavirus) Regulations 2020 (S.I. 2020/1293) provided for an income tax exemption (and automatic corresponding Class 1A NICs disregard) where an employer directly provides a relevant coronavirus antigen test to an employee.

7.9 A Class 1 NICs disregard for employer-reimbursed coronavirus tests was provided for in the Social Security Contributions (Disregarded Payments) (Coronavirus) (No. 2) Regulations 2020. This disregard was time-limited to the 2020-21 tax and year and the disregard will cease to apply on 6 April 2021.

7.10 In order to further minimise the financial and reporting burdens on employers Regulation 3(2) of this instrument extends the temporary Class 1 NICs disregard so that it also applies in the 2021-22 tax year.

7.11 Extending this disregard will ensure that, where an employer pays or reimburses an employee for the cost of a relevant coronavirus antigen test, there is no Class 1 NICs liability for either the employer or the employee during the 2021-22 tax year.

7.12 Finance Bill 2021 will introduce a retrospective income tax exemption for employer-reimbursed coronavirus tests for the 2020-21 tax year and will also introduce an income tax exemption for the 2021-22 tax year.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 There are no plans to consolidate, as this is a stand-alone instrument.

10. Consultation outcome

10.1 No consultation has been held as these are minor changes, which are wholly relieving to the taxpayer.

11. Guidance

11.1 Guidance will be updated on the gov.uk website: https://www.gov.uk/hmrc-internal-manuals/national-insurance-manual.

12. Impact

12.1 The impact on business, charities or voluntary bodies is expected to be positive, as:

- employees who purchase home office equipment and are reimbursed by the employer, will not have to pay NICs on the reimbursed expense for the 2021-22 tax year, and no employer Class 1 NICs liability will arise, and
- employees continue to no longer need to pay NICs when they are reimbursed for the cost of a coronavirus antigen tests for the 2021-22 tax year, and no employer Class 1 NICs liability will arise.

12.2 The administrative burden on these businesses and civil society organisations is expected to be negligible. There will be a one-off cost in the form of familiarisation with the continuing easement. There are not expected to be any continuing costs. There will be one-off savings from not having to report information on reimbursed expenses for this year. Customer experience is expected to stay broadly the same as there is no significant change to business processes.

12.3 There is no, or no significant, impact on the public sector.

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

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the legislation does not impose new requirements on small businesses. It was therefore considered that no mitigating action was required, as it is a wholly relieving measure.

14. Monitoring & review

14.1 This instrument will be monitored and reviewed as appropriate through communication with affected taxpayer groups.

14.2 The regulation does not include a statutory review clause because of an exemption for taxes and other charges in section 28(3) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Lowri Barber at HMRC Telephone: 03000 563 479 or email: lowri.barber@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Nixon, Deputy Director for National Insurance Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

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