

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. [X])**  
**REGULATIONS 2016**

**2016 No. [XXXX]**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the 2001 Regulations"). Regulation 3 of this instrument adds a new sub-paragraph (da) to paragraph 6 of Part 5 of Schedule 3 to the 2001 Regulations.

**3. Matters of special interest to Parliament**

- 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 The amendment made by regulation 3 of this instrument adds a new sub-paragraph (da) to paragraph 6 of Part 5 of Schedule 3 to the 2001 Regulations, which provides that any payment which is exempted from income tax under section 323A of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) ("ITEPA") will also be disregarded for the purposes of calculating an individual's earnings for NICs. Section 323A was inserted into ITEPA by section xx of the Finance Act 2016 (c.x). The section introduces a new statutory exemption from income tax for trivial benefits-in-kind provided by employers to employees.

**5. Extent and Territorial Application**

- 5.1 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 This instrument provides a disregard from liability for Class 1 NICs for the cost of trivial benefits in kind provided by employers to their employees which would otherwise attract Class 1 NICs such as certain non-cash vouchers. This reflects section

323A of ITEPA which provides that such benefits in kind are exempted from income tax. This exemption includes a £300 annual monetary cap (the annual exempt amount) for office holders or directors of close companies and any members of their families and households who are employees of the same close companies. The cap will therefore also apply for NICs purposes.

### *Consolidation*

- 7.2 There are currently no plans to consolidate the 2001 Regulations.

## **8. Consultation outcome**

- 8.1 This instrument has been published in draft.

## **9. Guidance**

- 9.1 These Regulations do not impose any new obligations.
- 9.2 HMRC will update the guidance it provides to employers, employees and agents as appropriate.

## **10. Impact**

- 10.1 This measure is expected to create negligible ongoing administrative savings for those businesses and civil society organisations that provide such benefits, as it will reduce the burden associated with filing P11D and making PAYE Settlement Agreement applications.
- 10.2 The measure is expected to create an administrative saving for HMRC as a result of a reduced number of benefits in kind recorded on P11D forms and PAYE Settlement Agreements. The administrative savings are anticipated to be negligible.
- 10.3 A Tax Information and Impact Note covering this instrument was published on GOV.UK at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>, alongside the draft Finance Bill 2016 clauses. It remains an accurate summary of the impacts that apply to this instrument.

## **11. Regulating small business**

- 11.1 The provisions in this instrument apply to all employers. There will be a negligible impact on small business.

## **12. Monitoring & review**

- 12.1 HMRC will monitor the practical effects of this legislation to ensure the objectives of it are met.

## **13. Contact**

- 13.1 Raj Nayyar at HMRC. Telephone: 03000 586543 or e-mail: [raj.nayyar@hmrc.gsi.gov.uk](mailto:raj.nayyar@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.