

TERMINATION AWARDS: DRAFT CLAUSES 2016

EXPLANATORY NOTES

Policy background

- 1 The government announced at Budget 2016 that it would be reforming the tax and National Insurance (NICs) treatment of termination payments. Currently, certain forms of termination payments are exempt from employee and employer National Insurance contributions and the first £30,000 is income tax free.
- 2 The changes to the National Insurance treatment of termination payments places a Class 1A NICs liability (which mirrors the tax liability) on the amount of a termination payment that exceeds £30,000. The new class 1A charge does not affect individuals as it is paid by the employer.
- 3 The Act introduces a new Class 1A NICs liability which will be payable on payments made on termination of employment which are in excess of £30,000 and which are not already charged to Class 1 NICs as earnings.
- 4 It amends the existing section 10 within both the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by providing for the new Class 1A charge on termination payments, keeping the existing provisions for Class 1A contributions payable on benefits in kind provided to employees, and defining which section applies to which.

Commentary on the draft clauses

Clause 1: Termination awards: Great Britain

- 5 *Subsection (1)* provides for amendments to section 10 of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992).
- 6 *Subsection (2)* inserts new subsections (1A), (1B) and (1C) after subsection (1) of section 10 of SSCBA 1992.
- 7 New subsection (1A) provides that a Class 1A contribution is payable in respect of an amount of a payment or benefit received by an earner in connection with the termination of the earner's employment (termination payment). The Class 1A contribution will still be payable if the termination payment was made to the earner's spouse, civil partner, blood relative or dependent. It further clarifies that the amount paid as a termination payment, and on which the new Class 1A liability will arise, must both count as employment income under section 403 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) and that the earner is chargeable to tax on the termination payment under section 403 ITEPA 2003.
- 8 New subsection (1B) prevents double charging by providing that Class 1A contribution paid under new subsection (1A) is not payable on an amount of earnings on which Class 1

contributions are payable.

- 9 New subsection (1C) clarifies that the employment from which the termination payment arises must be employed earner's employment.
- 10 *Subsection (3)* amends section 10(2) of SSCBA 1992 so that that section's existing purpose, clarifying who is liable to pay a Class 1A contribution, is restricted to Class 1A contributions other than that paid on a termination payment.
- 11 *Subsection (4)* inserts new subsection (3A) after subsection (3) of section 10 of SSCBA 1992.
- 12 New subsection (3A) clarifies who is liable to pay a Class 1A contribution on termination payments under new subsection (1A). It is the person who would be liable to pay secondary Class 1 contributions if the amount of earnings were subject to Class 1.
- 13 *Subsection (5)* amends section 10(4) of SSCBA 1992 so that that section's existing purpose, explaining how the amount of Class 1A contribution is calculated, is restricted to Class 1A contributions other than that paid on a termination payment.
- 14 *Subsection (6)* inserts a new subsection (4A) after subsection (4) of section 10 of SSCBA 1992.
- 15 New subsection (4A) clarifies how the amount of a Class 1A contribution payable on a termination payment is calculated by using the Class 1A percentage.
- 16 *Subsection (7)* amends subsection 10(5) of SSCBA 1992 so that its meaning, clarifying that the Class 1A percentage is the same as the Class 1 secondary percentage, applies to both existing subsection (4) and new subsection (4A).
- 17 *Subsection (8)* amends the heading of section 10 SSCBA 1992, removing reference to "benefits in kind" and therefore ensuring that the section applies to payments of Class 1A on all payments on which the Class 1A contribution is payable.
- 18 *Subsection (9)* amends section 162(5)(c) of the Social Security Administration Act 1992 (SSAA 1992) to ensure that Class 1A contributions paid on termination payments are included in the calculation of the allocation of payments to the National Health Service.
- 19 *Subsection (10)* makes it clear that the changes brought about by this section come into effect from the start of the 2018-2019 tax year.

Clause 2: Termination awards: Northern Ireland

- 20 *Subsection (1)* provides for amendments to section 10 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992).
- 21 *Subsection (2)* inserts new subsections (1A), (1B) and (1C) after subsection (1) of section 10 of SSCB(NI)A 1992.
- 22 New subsection (1A) provides that a Class 1A contribution is payable in respect of an amount of a payment or benefit received by an earner in connection with the termination of the earner's employment (termination payment). The Class 1A contribution will still be payable if the termination payment was made to the earner's spouse, civil partner, blood relative or dependent. It further clarifies that the amount paid as a termination payment, and on which the new Class 1A liability will arise, must both count as employment income under section 403 of Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) and that the earner is chargeable to tax on the termination payment under section 403 ITEPA 2003.
- 23 New subsection (1B) prevents double charging by providing that Class 1A contribution paid under new subsection (1A) is not payable on an amount of earnings on which Class 1 contributions are payable.

- 24 New subsection (1C) clarifies that the employment from which the termination payment arises must be employed earner's employment.
- 25 *Subsection (3)* amends section 10(2) of SSCB(NI)A 1992 so that that section's existing purpose, clarifying who is liable to pay a Class 1A contribution, is restricted to Class 1A contributions other than that paid on a termination payment.
- 26 *Subsection (4)* inserts new subsection (3A) after subsection (3) of section 10 of SSCB(NI)A 1992.
- 27 New subsection (3A) clarifies who is liable to pay a Class 1A contribution on termination payments under new subsection (1A). It is the person who would be liable to pay secondary Class 1 contributions if the amount of earnings were subject to Class 1.
- 28 *Subsection (5)* amends section 10(4) of SSCB(NI)A 1992 so that that section's existing purpose, explaining how the amount of Class 1A contribution is calculated, is restricted to Class 1A contributions other than that paid on a termination payment.
- 29 *Subsection (6)* inserts a new subsection (4A) after subsection (4) of section 10 of SSCB(NI)A 1992.
- 30 New subsection (4A) clarifies how the amount of a Class 1A contribution payable on a termination payment is calculated by using the Class 1A percentage.
- 31 *Subsection (7)* amends subsection 10(5) of SSCB(NI)A 1992 so that its meaning, clarifying that the Class 1A percentage is the same as the Class 1 secondary percentage, applies to both existing subsection (4) and new subsection (4A).
- 32 *Subsection (8)* amends the heading of section 10 SSCB(NI)A 1992, removing reference to "benefits in kind" and therefore ensuring that the section applies to payments of Class 1A on all payments on which the Class 1A contribution is payable.
- 33 *Subsection (9)* amends section 142(5)(c) of the Social Security Administration (Northern Ireland) Act 1992 (SSA(NI)A 1992) to ensure that Class 1A contributions paid on termination payments are included in the calculation of the allocation of payments to the National Health Service.
- 34 *Subsection (10)* makes it clear that the changes brought about by this section come into effect from the start of the 2018-2019 tax year.