

## Explanatory Note

# Clause 8: Exemption for income tax for trivial benefits provided by employers

## Summary

1. This clause introduces a statutory exemption from income tax for trivial benefits in kind (BiKs) provided by employers to employees. BiKs that qualify for the exemption will not incur a charge to income tax nor a liability for National Insurance contributions (NICs), and will not need to be reported to HM Revenue & Customs (HMRC). The exemption is capped at £300 a year where the employer is a close company and the BiK is provided to a director or other office holder of that company. The £300 annual cap also applies where BiKs are provided to an employee who is a member of the family or household of the director or other office holder of a close company. The change comes into effect on and after 6 April 2016.

## Details of the clause

2. Subsection (1) provides for the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) to be amended.
3. Subsection (2) inserts new sections 323A to 323C into Chapter 11 of Part 4 of ITEPA 2003 (Miscellaneous Exemptions).

## Section 323A: Trivial benefits provided by employers

4. New Subsection (1) removes the liability to income tax for a BiK provided by, or on behalf of, an employer to an employee or a member of their family or household. It sets out that the income tax liability will only be removed if conditions A to D, set out in subsections (3), (4), (7) and (9), are all met. It also provides that where new subsection (2) applies an additional condition E, as set out in subsection (10), also has to be met.
5. New Subsection (2) sets out the circumstances when condition E also has to be met for the exemption to apply. These are where the BiK is provided by an employer that is a close company to an employee who is:
  - a director or other office holder of that company; or
  - a member of the family or household of the director or office holder.
6. New Subsection (3) defines Condition A which provides that the exemption applies only if the trivial BiK is not cash or a cash-voucher as defined in section 75 ITEPA 2003.
7. New Subsection (4) defines Condition B which provides that the exemption only applies if the

cost of providing the BiK does not exceed £50.

8. New Subsection (5) defines “benefit cost” for the purposes of determining whether Condition B is met. This is either the cost of providing the BiK or the average cost of doing so. It also sets out the circumstances in which average cost may be used.
9. New Subsection (6) sets out how the average cost per person of any BiK provided to more than one person should be calculated for determining whether Condition B is met.
10. New Subsection (7) defines Condition C which provides that the BiK cannot be provided as part of a contractual obligation or relevant salary sacrifice arrangements as defined in new subsection (8).
11. New Subsection (8) defines “relevant salary sacrifice arrangements” for the purposes of determining whether Condition C is met.
12. New Subsection (9) defines Condition D which provides that the exemption only applies if the BiK is given for a non-work reason, for example, a birthday or social event. It cannot be given in recognition of a job well done, or for any other work related reason.
13. New Subsection (10) defines Condition E which provides that in the case of a close company the exemption only applies where:
  - the cost of providing the BiK to an employee; or
  - the cost of providing the BiK to a member of the employee’s family or household who is not employed by the company;

does not exceed the employee's annual cap, known as the "available exempt amount"..

### Section 323B: calculation of available exempt amount

14. Section 323B sets out the details of the annual cap that applies where the employer is a close company and the employee is a director or other office-holder of the employer or a member of the family or household of the director or other office-holder.
15. New Subsection (1) defines the meaning of “available exempt amount” for the purposes of new section 323A as the "annual exempt amount" less:
  - the total cost of any BiKs that have already been treated as trivial in that tax year in accordance with new subsection (3) and have been provided to the employee; and
  - the total costs allocated to the employee in respect of trivial BiKs provided earlier in the tax year to a member of the employee's family or household.
16. New Subsection (2) sets the annual exempt amount for the purposes of new subsection (1) at £300.
17. New Subsection (3) defines “eligible benefits” for the purposes of new subsection (1).
18. New Subsections (4) and (5) set out how to allocate an amount to an employee in respect of a trivial BiK provided to a person who is not an employee but is a member of the employee’s family or household. The allocated amount is calculated as the cost of the benefit divided by

the number of persons who are:

- directors or other office-holders of the employer;
  - employees of the employer and members of the family or household of the directors or office holders; or
  - former employees of the employer who have been directors or other office-holders at any time when the employer was a close company; or
  - former employees of the employer who are members of the family or household of someone who has been a director or other office-holder at any time when the employer was a close company.
19. New Subsection (6) defines the meaning of “benefit cost” for the purposes of new subsection 1 as having the same meaning as in new section 323A.

### Section 323C: Power to amend sections 323A and 323B

20. New Subsections (1) to (3) provide an affirmative power for HM Treasury to amend by regulations the qualifying conditions in new section 323A, and any consequential changes to new section 323B.
21. Subsection (3) adds new sections 323A(4) and 323B(2) to the provisions listed in section 716 ITEPA 2003. Section 716 provides that sums of money specified in those provisions may be increased by an order from HM Treasury. This allows the amounts provided for in sections 323A(4) (cost of providing benefit) and 323B(2) (annual exempt amount) to be amended by Treasury order.
22. Subsection (4) amends Section 717(4) to ensure that any regulations made under the new power in new section 323C(1) must be subject to the affirmative resolution procedure.
23. Subsection (5) provides that the exemption is effective from the start of the 2016/17 tax year.

### Background note

24. This change has been introduced to provide an exemption from income tax for qualifying trivial benefits in kind where the cost of providing the benefit does not exceed £50. There are special provisions for directors or other office holders of close companies and employees of the same, who are members of their family or household. In these circumstances there is an annual exempt amount of £300.
25. The trivial benefits exemption replaces a concessionary practice, whereby an employer is required to agree with HMRC whether a benefit can be treated as trivial and so not reported to HMRC. A corresponding disregard will be introduced to remove any liability for Class 1 NICs for any qualifying non-cash vouchers provided under the exemption.
26. If you have any questions about this change, or comments on the legislation, please contact Lynn Meikle on 03000 521589 (email: [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk)).