

EXPLANATORY MEMORANDUM TO
THE DRAFT SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No.
2) REGULATIONS 2007

2007 No.

1. This Explanatory Memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
 - 2.1 Payments to employees involving employment-related securities which avoid income tax and National Insurance Contributions (NICs) are treated as employment income for tax purposes by provisions in Finance (No.2) Act 2005 and Finance Act 2006. The provisions in both Finance Acts are retrospective to 2 December 2004.
 - 2.2 These Regulations ensure that the payments to employees are similarly retrospectively treated as earnings and create a National Insurance liability on those payments.
 - 2.3 This instrument requires approval in draft by both Houses of Parliament.
3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**
 - 3.1 This is the first exercise of the powers conferred by section 4B of the Social Security Contributions and Benefits Act 1992 and section 4B of the Social Security Contributions and Benefits (Northern Ireland) Act 1992. These provisions are discussed in greater detail below.
4. **Legislative Background**
 - 4.1 The National Insurance Contributions Act 2006 (NI Act 2006) inserted section 4B of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) and section 4B of the Social Security Contributions and Benefits Act 1992 (Northern Ireland) SSCBA (NI) 1992. These sections authorise the making of regulations for NICs purposes which mirror retrospective tax legislation. The changes in PAYE procedures will be contained in the Income Tax (Pay As You Earn) (Amendment) Regulations 2007. These have not yet been made, but will be made after the approval of Parliament has been given to the draft Social Security (Contributions) (Consequential Provisions) Regulations 2007.

The draft text of the PAYE amendments is exhibited as an Appendix to the Memorandum to the Consequential Provisions Regulations.

- 4.2 These Regulations amend the Social Security (Contributions) Regulations 2001 ("the principal Regulations"). They extend the scope of those Regulations to ensure that amounts treated as employment income retrospectively by Schedule 2 in Finance (No 2) Act 2005 and section 92 of Finance Act 2006 are also retrospectively treated as earnings for national insurance purposes.

5. Extent

- 5.1 These Regulations apply throughout the United Kingdom.

6. European Convention on Human Rights

- 6.1 In the view of the Paymaster General, Dawn Primarolo, the provisions of these draft Regulations are compatible with the Convention rights.

7. Policy Background

- 7.1 The Paymaster General made a statement (House of Commons Hansard Vol. 428 Col 45WS) on 2 December 2004 signalling that the Government would be prepared to act against tax and National Insurance avoidance involving employee remuneration by backdating any anti-avoidance legislation to 2 December 2004 if necessary.
- 7.2 The NI Act 2006 includes the necessary powers to make retrospective contributions regulations which mirror retrospective tax legislation in order to give full effect to the Paymaster General's statement. Finance Acts cannot include National Insurance provisions.
- 7.3 In accordance with the assurance provided by Ministers, these Regulations were published in draft on 16 August 2006 for consultation. Once they come into force, they will have effect from 2 December 2004. No significant comments were received on these Regulations, but a summary of those received, and HMRC's response, are published on the HMRC website.
- 7.4 These Regulations make only minor changes to the principal Regulations, which are extensive. HMRC has no current plans to consolidate these regulations. On the last occasion a full consolidation was undertaken, it was a task involving 18 months' work and contributions from four different Government departments.

8. Impact

- 8.1 HMRC has undertaken a Regulatory Impact Assessment on the measures contained in the Bill which became the National Insurance

Contributions Act 2006. The assessment is published on the HMRC website hmrc.gov.uk/ria/ria-nicbill05.pdf : it concluded that the impact of the Act would be minimal.

9. Contact

Hasmukh Dodia
HMRC
Room G49
100 Parliament Street
SW1A 2BQ
Tel: 0207 147 2839
Email: hasmukh.dodia@hmrc.gsi.gov.uk