

NATIONAL INSURANCE CONTRIBUTIONS ACT 2008

EXPLANATORY NOTES

BACKGROUND

COMMENTARY ON SECTIONS

Section 1: Amount to be specified as upper earnings limit: Great Britain

21. **Section 1** amends sections 5 and 176(1) of the Social Security Contributions and Benefits Act 1992 (“the SSCBA 1992”).
22. The effect of *subsection (1)* of this section is to remove the current restriction that prevents the upper earnings limit from being set by secondary legislation at an amount greater than seven and half times the primary threshold. This will allow the upper earnings limit to be aligned, by secondary legislation, with the higher rate income tax threshold in the future.
23. *Subsection (2)* inserts new paragraph (zb) in section 176(1). This provides that draft regulations which set the upper earnings limit must be laid before Parliament and approved by resolution of both the House of Commons and the House of Lords before the regulations can be made. The purpose of this is to compensate for the removal of the restriction on the exercise of the power currently provided by section 5(3) of the SSCBA 1992. This approach is similar to that for the change made by section 7(5) of the Pensions Act 2007 in respect of the power to set the lower earnings limit once the level of the basic state pension is linked to earnings (the lower earnings limit is the point at which earnings start to count for benefit purposes).
24. *Subsection (3)* provides that the changes made by subsection (1)(b) and (2) have effect in relation to regulations that specify the level of the upper earnings limit for all tax years from 2009-10 onwards.

Section 2: Amount to be specified as upper earnings limit: Northern Ireland

25. **Section 2** replicates the provisions of section 1 in respect of the equivalent Northern Ireland legislation.

Section 3: Additional pension: upper accrual point to replace upper earnings limit from 2009-10

26. Currently an employee builds up entitlement to the state second pension on earnings up to the upper earnings limit and on which Class 1 National Insurance contributions have been paid or, in the case of a person earning between the lower earnings limit and the primary threshold, have been treated as paid. Such earnings give rise to earnings factors that are used in the calculation of state second pension entitlement.
27. **Section 3** brings forward introduction of the upper accrual point (as to which see paragraphs 16 to 20 above).

*These notes refer to the National Insurance Contributions Act
2008 (c.16) which received Royal Assent on 21 July 2008*

28. *Subsection (2)* amends the definition of the “applicable limit” in section 22(2B) of the SSCBA 1992 replacing “the flat rate introduction year” (as introduced in the Pensions Act 2007 and which was to have been set by order) with the tax year in which the upper accrual point is to be introduced — the 2009-10 tax year. The effect of the amendment is to provide for the upper accrual point, as the cap on earnings factors in the state second pension, to be switched on from 2009-10. Prior to 2009-10 the applicable limit will remain as the upper earnings limit.
29. *Subsection (3)* amends section 44(7)(c) of the SSCBA 1992, as above, replacing “the flat rate introduction year” with “2009-10”.
30. *Subsection (4)(a)* replaces the definition of the “upper accrual point” and sets it at £770, which is the level of the upper earnings limit for 2008-09.
31. This subsection provides for a weekly upper accrual point in contrast to the annual limit as originally defined in section 12 of the Pension Act 2007. This caters for situations where, for example, there are more or less than 52 earnings periods in a tax year. The provision of a weekly upper accrual point also maintains the current alignment between the earnings that count for state second pension and those that count for rebate purposes, and lends itself more easily to the calculation of the relevant upper accrual point figure where an employee is paid other than on a weekly basis.
32. *Subsection (4)(b)* inserts subsection (6A) and (6B) into section 122 of the SSCBA 1992. Subsection (6A) is a regulation making power, to be exercised by the Treasury, which allows for regulations to be made that prescribe equivalents to the upper accrual point in relation to earners paid otherwise than weekly, for example monthly paid employees. Subsection (6B) ensures that the prescribed equivalents once calculated can be rounded to a whole pound figure. As the upper accrual point, once introduced, will be fixed, so too will the prescribed equivalents.
33. *Subsection (4)(c)* repeals subsections (7) and (8), which were inserted by the Pension Act 2007 and which defined the upper accrual point and allowed the Secretary of State to vary by order the rate of the upper accrual point before its introduction.

Schedule 1: Consequential amendments

34. **Schedule 1** contains consequential amendments arising as a result of the introduction of the upper accrual point.
35. **Paragraphs 1 to 6** amend the SSCBA 1992.
36. **Paragraph 2** inserts new section 22(9). This is a minor technical change that provides that when calculating earnings factors derived from an employee’s earnings for an employee paid other than weekly, any reference to earnings not exceeding the upper earnings limit or from 2009-10 the upper accrual point is to be read as a reference to earnings that do not exceed the prescribed equivalent.
37. **Paragraph 3(3)** inserts new section 23(3A), which provides that for the purpose of calculating additional pension from the tax year 2009-10 onwards the upper accrual point replaces the upper earnings limit as the cap on earnings factors.
38. **Paragraphs 4** amends section 44A by replacing the reference to the upper earnings limit, as the ceiling on deemed earnings factors for state second pension purposes, with a reference to the “applicable limit” provided in section 44.
39. **Paragraph 5** amends section 44B(2)(a) by replacing the now superfluous reference to the applicable limit with a reference to the upper accrual point. As the upper accrual point will be introduced from 2009-10 it will be the only ceiling relevant for earnings factors derived under the new deeming provisions for state second pension that take effect from 2010-11 onwards.

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40. [Paragraph 6](#) makes amendments to paragraph 1 of Schedule 1, which deals with the calculation of National Insurance contributions where an earner is employed in more than one employment, to reflect the introduction of the upper accrual point from 2009-10. Where earnings from two or more employments are aggregated, the separate earnings are afforded a priority order. At present any contracted-out rate contributions are assessed on contracted-out earnings up to the upper earnings limit. The amendment, which takes into account earlier amendments made to paragraph 1 by the Pensions Act 2007, ensures that where earnings from two or more employments are aggregated after 6 April 2009, any contracted-out rate contributions are assessed on contracted-out earnings up to the upper accrual point.
41. [Paragraphs 7 to 13](#) amend the Pension Schemes Act 1993 as a result of bringing forward the introduction of the upper accrual point and setting it at the level of the 2008-09 upper earnings limit.
42. [Paragraphs 8, 11 and 12](#) cover changes required to the contracting-out arrangements for defined contribution (money purchase) schemes as a consequence of the changes to the state second pension. The amendments have the effect of mirroring the change to the band of earnings on which state second pension accrues (ie the upper accrual point replacing the upper earnings limit as the maximum amount of earnings on which state second pension accrues) in certain calculations connected with the contracted-out rebate. The amendments ensure that this change is reflected in:
 - the definition of “minimum payments” (paragraph 8);
 - the band of earnings on which reduced rate of Class 1 contributions and rebates are paid in respect of members of money purchase contracted-out schemes (paragraph 11);
 - the band of earnings on which “minimum contributions” are paid to members of appropriate personal pension schemes (paragraph 12).
43. [Paragraphs 9, 10 and 13](#) cover the changes required to the arrangements for defined benefit (salary related) schemes as a consequence of the decision to introduce the upper accrual point from 2009-10. These amendments revise those made in the Pensions Act 2007 when the upper accrual point introduction date was planned for 2012. The amendments ensure that the change is reflected in:
 - the calculation of reference scheme test benefits (paragraph 9);
 - the band of earnings on which reduced rates of Class 1 contributions are paid in respect of members of salary related contracted-out schemes (paragraph 10);
 - the band of earnings on which the rebate is paid in cases of bankruptcy where the employer must make, as a priority, a payment to the scheme of outstanding contributions in relation to the rebate (paragraph 13).