These notes refer to the National Insurance Contributions Act 2015 (c.5) which received Royal Assent on 12 February 2015

NATIONAL INSURANCE CONTRIBUTIONS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1: Reform of Class 2 contributions

56. Schedule 1 contains the amendments required to SSCBA 1992 and SSCB(NI)A 1992 to introduce the reform of Class 2 NICs. It also amends the Social Security Administration Act 1992 (SSAA 1992), the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (SSC(TF)A 1999), the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order (S.I. 1999/671) (SSC(TF)(NI)O 1999) and the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (SS(C)R 2001).

57. Paragraph 2 removes the reference to Class 2 contributions being payable weekly from section 1 of SSCBA 1992 (outline of contributory system). This reflects the fact that Class 2 contributions will now be payable annually through the SA system.

58. Paragraph 3 replaces section 11 of SSCBA 1992. It also provides for a new section 11A.

59. The new section 11 of SSCBA 1992 provides as follows:

    a) Subsection (1) applies section 11 to those who are self-employed earners in the relevant tax year.

    b) Subsection (2) provides that a Class 2 contributions liability will only arise where the earner has relevant profits of or exceeding the small profits threshold (SPT). This takes away the need for the earner to apply for a SEE. It also prescribes the weekly rate of Class 2 contributions which will be payable in respect of each week of self-employment in the relevant tax year.

    c) Subsection (3) sets out the meaning of relevant profits and aligns the profits to be used when determining whether a Class 2 contributions liability exists with that already used for Class 4 NICs purposes under section 15 of SSCBA 1992.

    d) Subsection (4) provides the value of the SPT.

    e) Subsection (5) aligns the payment method for those liable for Class 2 contributions to that which applies to Class 4 NICs (subject to provisions made under section 11A). At present Class 2 NICs are payable by either six monthly payment request or monthly/six monthly Direct Debit and Class 4 NICs are payable through the SA process alongside Income Tax. Under this new section 11(5), Class 2 contributions will also be payable through the SA process.

    f) Subsection (6) provides for those who are not liable for Class 2 contributions, because they do not have relevant profits or their profits do not exceed the SPT, to be able to pay Class 2 contributions voluntarily. It also prescribes the weekly rate of voluntary Class 2 NICs which can be paid for each week of self-employment in the relevant tax year. The rate of Class 2 will be the same under both subsection (2) and (6).

g) Those covered under subsection (6) will include those who would otherwise be liable but for their profits falling below the prescribed threshold and those who would never be liable, despite their profit levels, because they are not chargeable to tax under Chapter 2 of Part 2 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) and who are not, therefore required to pay Class 4 NICs under section 15 of SSCBA 1992. This means that it covers those who fall into the category of a self-employed earner for NICs purposes but who are not operating a trade, profession or vocation. It will also include those who, for a variety of reasons are treated as self-employed earners for NICs purposes.

Example of a person with low profits who could pay voluntary Class 2 contributions

The position pre Class 2 reform

John becomes self-employed on 18 August 2014 and immediately registers with HMRC. He anticipates that his earnings will be below the SEE limit of £5,885 for the 2014/15 tax year. He completes the form CF10 to apply for a SEE certificate. HMRC are satisfied with John's application and award the certificate. Depending upon his circumstances, John may need to apply to renew his certificate if his earnings continue to be below the SEE limit in future years. Although he has an exception certificate, John can pay voluntary Class 2 contributions if he wishes to maintain his contribution record for contributory benefit purposes.

The position post Class 2 reform

John becomes self-employed on 18 August 2015 and immediately registers with HMRC. He does not need to take any further action until he is sent a SA notice in April 2016. He chooses to file his SA return online and has until 31 January 2017 to file his return and pay. John files his SA return in December 2016 and declares profits below the SPT and is therefore not liable to pay Class 2 contributions. He is given the option to pay voluntary Class 2 contributions if he wishes to maintain his contribution record for contributory benefit purposes.

Example of a person without relevant profits who could pay voluntary Class 2 contributions

Clare has been self-employed in South Africa since May 2012. She is entitled to pay voluntary Class 2 contributions as she was self-employed in the UK immediately before going to work in South Africa. In July 2015 she applies to pay Class 2 contributions. As she has no relevant profits (her self-employment is carried on wholly outside of the United Kingdom and she does not satisfy the conditions under section 15 of SSCBA 1992 for a Class 4 NICs liability) Clare can pay voluntary Class 2 contributions. As she is not a UK taxpayer, Clare is not required to file a return under the SA system and arrangements are made for her to pay voluntary Class 2 contributions on an annual basis.

h) Subsection (7) provides that, as now, only those who are aged 16 or over and below state pension age will be liable for or eligible to pay Class 2 contributions.

i) Subsection (8) maintains the current position whereby the Treasury may make provision for a higher rate of Class 2 contributions to be payable by those who are employed earners but are treated as self-employed earners under SS(CE)R 1978 and the Northern Ireland equivalent.

j) Subsection (9)(a) provides the Treasury with the power to modify the meaning of "relevant profits" and would allow for certain exceptions to be applied when calculating the profit figure for Class 2 contributions purposes.

k) Subsection (9)(b) provides the Treasury with the power to exclude certain prescribed employments and certain prescribed earners from the scope of Class 2 NICs. The power can also be exercised to exclude payment of voluntary Class 2 contributions in prescribed circumstances. An example of how this power could be used is provided at paragraph 34 of Schedule 1.

l) Subsection (10) provides for section 11 to be amended by regulations made under section 11(9)(a).

m) Subsection (11) provides that any regulations made under subsection (9)(b) are to be made with the concurrence of the Secretary of State in recognition of the fact that there may be an impact upon benefit entitlements if the scope of Class 2 contributions is modified.

60. Section 11A of SSCBA 1992 allows for the application of certain provisions of the Income Tax Acts (see Schedule 1 to the Interpretation Act 1978) in relation to Class 2 contributions under section 11(2) as if those contributions were income tax chargeable under Chapter 2 of Part 2 of ITTOIA 2005 in respect of profits of a trade, profession or vocation carried on in the UK.

a) Subsection (1) provides for the application of certain tax provisions, with the necessary modifications, to those individuals who are liable for Class 2 contributions under section 11(2). This will enable the administration of Class 2 contributions for those within the SA system to be more closely aligned to Class 4 NICs and Income Tax. In particular, the relevant provisions of the Taxes Management Act 1970 (TMA 1970) (as regards the making of returns, assessments and claims, appeals, certain criminal offences and the payment, collection and recovery of tax); the Finance Act 2007 (concerning penalties for errors); the Finance Act 2009 (FA 2009) (concerning late payment interest on sums due to HMRC and repayment interest on sums to be repaid by HMRC; penalties for the failure to make returns or payments) and follower notices, accelerated payments and promoters of tax avoidance, will apply to Class 2 contributors within the SA system.

b) Subsection (2) specifically excludes section 59A of TMA 1970 from applying to Class 2 contributions payable under section 11(2). Under section 59A there is a mandatory requirement for the tax payer to make two payments on account of his liability to income tax for the year of assessment — the first on or before the 31st January in that year, and the second on or before the next following 31st July – when certain prescribed conditions are met. As explained at paragraph 24 of Annex A below, most self-employed people will be able to access a voluntary budget payment plan should they wish to spread the cost of their NICs.

c) Subsection (3), amongst other things, enables provisions to be made in regulations for the collection of Class 2 contributions from those who are liable but who are not within the SA system, for example, those who are self-employed in the EU and who remain UK insured but who are not subject to UK income tax and are therefore not within the SA system.

61. Paragraph 4 amends section 12 (late paid Class 2 contributions) of SSCBA 1992. The effect of the amendments to section 12 is that the current higher rate charges that are applied to late paid Class 2 contributions will now apply only to voluntary Class 2 contributions that are payable under section 11(6). Contributions payable under section 11(2) that are late in being paid will be subject to the same penalties and interest charges that apply to income tax and Class 4 NICs payable under the SA system.

62. Paragraph 5 makes a consequential amendment to section 18 of SSCBA 1992 dealing with recoverable Class 4 NICs under regulations.

63. Paragraph 6 makes consequential amendments to section 35A of SSCBA 1992 to allow women to continue to become eligible for MA post reform. The amendments will allow women to continue to be eligible for the standard rate of MA where they have a record of Class 2 contributions paid through SA or have made voluntary contributions before they have filed their SA return (and so before their liability to pay Class 2 contributions has been established). Women with profits falling below the SPT who choose not to pay Class 2 contributions voluntarily will still be able to receive the lower rate of MA.

64. Paragraph 7 makes consequential amendments to section 35B of SSCBA 1992 to ensure that participating spouses or civil partners can continue to receive the lower rate of MA if their spouse or civil partner has made Class 2 contributions for the requisite length of time within the relevant period. These payments could be voluntary and paid before the SA filing date or dealt with via their SA return.

65. Paragraph 8 replaces the reference in section 176(1)(a) of SSCBA 1992 (parliamentary control) to section 11(3) with section 11(8) and (9). A statutory instrument containing regulations made using this power is subject to the affirmative procedure.

66. Paragraphs 9(1) and (2) make amendments to Schedule 1 to SSCBA 92 (supplementary provisions) in relation to the changes to Class 2 contributions.

67. Paragraph 9(3) provides for regulations to enable those women (or the spouse or civil partner of a participating spouse) who have not had the opportunity to file an SA return and to pay Class 2 contributions to pay them early to enable them to establish their entitlement to MA. It also makes provision for those Class 2 contributions that are paid early to be given their correct classification (either liable contributions or voluntary contributions) when the woman has filed her SA return and her actual Class 2 liability or entitlement position has been established.

68. Paragraph 9(4) omits paragraph (j) and (k) which were powers enabling regulation to be made to deal with the former SEE process.

69. Paragraphs 10 to 18 amend SSCB(NI)A 1992 by making equivalent provisions to paragraphs 1 to 9.

70. Paragraph 19 provides for some consequential amendments to SSAA 1992.

71. Paragraph 20 relates to the annual uprating of NICs. The NIC rates and thresholds are reviewed and, where appropriate, changed each year by secondary legislation by reference to the consumer price index. Consequential amendments to section 141 of SSAA 1992 allow this uprating to continue after the changes brought about by Class 2 reform.

72. Paragraphs 21 and 22 make consequential amendments to sections 143 and 145 of SSAA 1992 to take into account changes to Class 2 NICs. An order under section 141, 143 or 145 of SSAA 1992 (alteration of contributions) may also make corresponding provision for Northern Ireland (see section 129 of the Social Security Administration (Northern Ireland) Act 1992 (SSA(NI)A 1992)).

73. Paragraphs 23 and 24 provide for changes to SSC(TF)A 1999 to reflect the fact that contributions payable under new section 11(2) will be recoverable through the SA system under the provisions of TMA 1970.

74. Paragraph 25 amends section 8 of SSC(TF)A 1999 in connection with decisions on National Insurance and related matters. Broadly speaking, paragraph 25 prevents a decision being made under section 8(1)(c) (liability to pay) or (e) (whether contributions have been paid) of SSC(TF)A 1999 in relation to anyone liable to pay Class 2 NICs until it is clear that there will be no appeal in relation to the same issues under Part 5 of TMA 1970. This will ensure only one appeal can be heard on any matter covered by both provisions.

75. Paragraphs 26 and 27 make further consequential changes to SSC(TF)A 1999.

76. Paragraphs 28 to 31 amend SSC(TF)(NI)O 1999 by making equivalent provisions to paragraphs 25 to 27.

77. Paragraph 33(1) amends regulation 125(c) of SS(C)R 2001 to set the Share Fisherman's rate of Class 2 contributions that will apply for the 2015-16 tax year.

78. Paragraph 33(2) provides that the amendment to regulation 125(c) of SS(C)R 2001 is made without prejudice to any power to make regulations amending or revoking the provision inserted by paragraph 33(1).

79. Paragraph 34(1) amends regulation 127 of SS(C)R 2001 to maintain the current position that a married woman with a valid reduced rate election is neither liable nor entitled to pay Class 2 contributions.

80. The Social Security Act 1975 (or the Social Security (Northern Ireland) Act 1975) gave a married woman the right to elect to pay Class 1 contributions at a reduced rate from a specified tax year and not to pay Class 2 contributions from a specified year if she became self-employed. The election lasted for the whole tax year for which it was made and continued until the woman cancelled it or changed her marital status. Although the Social Security Pensions Act 1975 and associated regulations took away the right of a married woman to elect to pay reduced rate Class 1 contributions and not to pay Class 2 contributions where she married on or after 6 April 1977, there are still a small number of women with valid reduced rate elections. Even with a valid election, the woman is liable for Class 4 NICs.

81. Under the Class 2 contributions reform, women with reduced rate elections would be liable to pay Class 2 contributions by virtue of the fact they have profits on which they are liable to pay Class 4 NICs. Paragraph 34 provides that these women will be excluded from Class 2 NICs to maintain the current position.

82. Paragraph 34(2) provides that the amendment to regulation 127 of SS(C)R 2001 is made without prejudice to any power to make regulations amending or revoking the provision inserted by paragraph 34(1).

83. Paragraphs 35 and 36 relate to the commencement of Schedule 1. More detail on the commencement dates is contained at paragraph 178 of these Explanatory Notes.

84. Paragraph 37 provides for the Treasury to make regulations to do with transitional or transitory provisions or savings in connection with the coming into force of the new Class 2 system.