HEALTH AND SOCIAL CARE LEVY ACT 2021

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Health and Social Care Levy Act 2021 which received Royal Assent on 20 October 2021 (c. 28).

- These Explanatory Notes have been prepared by HM Revenue and Customs (HMRC) to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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These Explanatory Notes relate to the Health and Social Care Levy Act 2021 which received Royal Assent on 20 October 2021 (c. 28)

Overview of the Act

1 The Act deals with the introduction of a new Health and Social Care Levy, transitional arrangements to provide for a temporary increase in rates of Class 1, 1A, 1B and Class 4 National Insurance contributions (NICs) and how funds raised will be used.

Policy background

2 The Government has announced an increase to health and social care funding. To pay for this, it will introduce a Levy based on NICs which already part-fund the NHS and have historically been the way in which money is raised for social security provision.

3 This Act introduces a new 1.25% Health and Social Care Levy which is payable where an employee, employer or self-employed individual has a liability in respect of a "qualifying National Insurance contribution" – Class 1, Class 1A, Class 1B and Class 4 NICs. The levy will also apply if an individual would be liable in respect of a "qualifying National Insurance contribution" were it not for the relevant pension age restrictions. The effect of this is that individuals in work who are over State Pension age will be liable to this Levy. Funds raised from the Levy will be used for the purpose of health and social care.

4 This Levy will have effect from April 2023. For the 2022-23 tax year, the Act contains transitional arrangements that provide for a temporary 1.25 percentage point increase to both the main and additional rates of Class 1, Class 1A, Class 1B and Class 4 NICs and a corresponding increase to the NHS allocation. Individuals over State Pension age will not be affected during the 2022-23 tax year.

5 Existing legislative provisions relating to the qualifying National Insurance contributions (thresholds, reliefs, reporting, record keeping requirements etc) will apply to the Levy as they apply to the contribution.

Legal background

6 The Health and Social Care Levy is a new tax; there is therefore no existing legislation relating to it.

7 However, the Act applies legislation relating to the existing system of NICs to the Levy. The main legislation for that system is contained in a combination of primary and subordinate legislation. That legislation includes:

- The Social Security Contributions and Benefits Act 1992 (SSCBA 1992).
- The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992).
- The Social Security Administration Act 1992 (SSAA 1992).
- The Social Security Administration (Northern Ireland) Act 1992 (SAA(NI)A 1992).
- The Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

8 Except for modifications to facilitate the transitional arrangements for the 2022-2023 tax year, the Act does not amend existing NICs and social security benefits legislation.

Territorial extent and application

9 The Act extends to England and Wales, Scotland and Northern Ireland.

10 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without consent of the legislature concerned.

11 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Scotland

12 The Act does not contain any provisions relating to matters which are within the legislative competence of the Scottish Parliament. Under Schedule 5 of the Scotland Act 1998, tax policy, apart from devolved taxes, is a reserved matter, and NICs are also a reserved matter. The Levy is not a devolved tax. Therefore, no Legislative Consent Motion is being sought in relation to any provisions of the Act. If there are amendments relating to the legislative competence of the Scottish Parliament consent will be sought for them.

Wales

13 The Act does not contain any provisions relating to matters within the legislative competence of Senedd Cymru. Under Schedule 7A of the Government of Wales Act 2006, tax policy, apart from devolved taxes, is a reserved matter, and NICs are also a reserved matter. The Levy is not a devolved tax. Therefore, no Legislative Consent Motion is being sought in relation to any provisions of the Act. If there are amendments which relate to such matters, consent will be sought for them.

Northern Ireland

14 The Act does not contain any provisions relating to matters within the legislative competence of the Northern Ireland Assembly. Under the provisions of Schedule 2 to the Northern Ireland Act 1998, taxes applying to the UK as a whole, including the Levy, and NICs are both excepted matters. Northern Ireland has separate but materially identical National Insurance contribution legislation. The Act therefore applies to the relevant Northern Ireland legislation relating to NICs, where stated. If there are amendments which relate to non-excepted matters, consent of the Northern Ireland Assembly will be sought for them.

Fast-track legislation

15 The Government has asked Parliament to expedite the parliamentary progress of this Act. In their report on *Fast-track Legislation: Constitutional Implications and Safeguards*[1], the House of Lords Select Committee on the Constitution recommended that the Government "should provide more information as to why a piece of legislation should be fast-tracked[2]". The justification for fast-tracking the Act is explained below.

[1] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

[2] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

16 The legislation is required to be in place for the 2022-23 tax year, which starts on 6 April 2022. The increase in National Insurance rates for that year will require changes to be made to the systems of employers and HMRC (including those designed to facilitate Pay as You Earn). To help ensure that people are not over or under taxed it is important for both those employers and HMRC to have as much time as possible to implement the changes. This is particularly important given all employers in the UK liable for NICs will be affected.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

17 The Act was introduced as soon as possible after the announcement of the intention to introduce a Health and Social Care Levy. While the Act reflects an important and significant policy, the Act is short (containing only 5 substantive sections). In the House of Commons, the principle of the policy was debated in the context of the ways and means resolution on which it was introduced.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

18 No consultation has taken place in relation to the Act due to the need to legislate for the measure as soon as possible after announcement to give employers and HMRC enough time as possible to implement the changes.

Does the Act include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

19 The Levy is a permanent change to the tax system to ensure the increases to health and social care spending are fully funded. A sunset clause is therefore not appropriate.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

20 As is the case for tax policy, the Health and Social Care Levy will be continuously kept under review using information collected from internal systems, National Insurance, and Levy receipts.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

21 The Health and Social Care Levy is a new tax; there is therefore no existing legislation relating to it. The policy could have in part been achieved by a permanent increase in the rates of National Insurance Contributions. However, that would be less transparent (since none of the proceeds are payable to the National Insurance Fund) and it would not secure that payments are made in respect of earning and profits of persons over State Pension age.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

22 A European Convention on Human Rights analysis is included in these Explanatory Notes for the Joint Committee on Human Rights.

Commentary on provisions of Act

Section 1: Health and Social Care Levy

23 Section 1(1) states that every person who is liable to pay a qualifying National Insurance contribution, or would be liable if the pension age restrictions are ignored, will also be liable to pay a new tax. This tax is to be known as the Health and Social Care Levy (Section 1(2)). This tax will be charged on the same amount of earnings (for employees and employers) or profits (for the self-employed) that the contribution is payable on. It will be equal to 1.25% of the amount of earnings or profits.

24 Section 1(3) defines "qualifying National Insurance contribution" as:

a. Primary Class 1 contributions (employees),

b. Secondary Class 1 contributions (employers),

c. Class 1A contributions (employers),

d. Class 1B contributions (employers),

e. Class 4 contributions (self-employed).

25 Section 1(4) specifies the "pension age restriction provisions" that are to be ignored for the purpose of this Levy are any provisions made by or under any enactment that provides for an exemption from liability to pay a qualifying National Insurance contribution by reference to a person having attained pensionable age.

26 Section 1(5) specifies that when determining the amount of the Levy chargeable in relation to a contribution, where the relevant percentage in respect of secondary Class 1 contributions is 0%, those earnings are to be ignored. This means that where relief is provided from secondary Class 1 contributions by way of a 0% rate (for example, in relation to certain apprentices), that relief will also apply to the Levy.

27 Section 1(6) stipulates that the new Levy will have effect in relation to qualifying National Insurance contributions payable on or after 6 April 2023.

Section 2: Destination of proceeds of Health and Social Care Levy

28 Section 2(2) states that the proceeds (including relevant penalties and interest) from this new levy will be paid by HMRC to the Secretary of State towards the cost of health and social care in England, Wales, Scotland and Northern Ireland. Section 2(2) provides the Treasury with a discretionary power to determine the share of the Levy between health and social care and the share that each nation will receive.

29 Section 2(1) allows HMRC to deduct expenses associated with the collection of the health and social care levy, or recovering any relevant penalties or interest, from the amount paid to the Secretary of State.

30 Section 2(3) clarifies that "relevant penalties or interest" means penalties and interest that arise in connection with the Health and Social Care Levy to the extent that they can be attributed to the Levy.

31 Section 2(4) requires HMRC to pay any amounts deducted under Section 2(1) into the Consolidated Fund.

Section 3: Application of national insurance contributions legislation

32 Section 3(1) states that, for the purpose of operating the Levy, any provisions that apply in relation to a qualifying National Insurance contribution will also apply to the Levy payment corresponding to the contribution.

33 Section 3(2) provides examples of provisions that may apply in relation to the Levy. These include:

a. information, accounting and reporting requirements,

b. assessment, collection and payment requirements,

c. rights of appeal,

d. administration, penalties or interest, and

e. priority of amounts owed to HMRC in cases of insolvency.

34 However, Section 3(3) specifies that provisions relating to a person's entitlement to benefits or limiting the maximum amount of National Insurance contributions that are payable do not apply to the Levy. This means that payment of the new Health and Social Care Levy does not give rise to entitlement to contributory benefits.

35 Section 3(4) makes the application of legislation by subsection (1) subject to other provision made by this Act, or by regulations made under this Act, and to any necessary modifications (including any modifications necessary to secure the payment of the Levy by individuals to whom the pension age restrictions provisions apply).

Section 4: Regulations

36 Section 4(1) provides the Treasury with regulation-making powers to make general provision for the purposes of the Health and Social Care Levy.

37 Section 4(2) provides examples of provisions that may be made under Section 4(1) for the purposes of the Levy, which include provisions:

a. about reliefs or exemptions from the Levy,

b. that disapply any provisions of NICs legislation that would otherwise be applied for the Levy by Section 3(1),

c. that modify the application of any legislation applied by Section 3(1) in relation to the Levy,

d. that apply (including with modification) provisions of the Tax Acts (i.e. legislation concerned with Income Tax or Corporation Tax) in relation to the Levy (so far as they would not already be applied by Section 3(1)).

38 Section 4(3) allows regulations under Section 4(1) to make:

a. different provision for different purposes,

b. supplementary, incidental and consequential provisions, or

c. transitional or transitory provisions and savings.

39 Section 4(4) to (6) specifies the Parliamentary procedure for regulations made under Section 4(1). Regulations that have the effect of limiting the application of (or reducing or removing) any existing relief or exemption are subject to the affirmative procedure in the House of Commons only (subsections (4) and (5)). Under Section 4(6), all other regulations will be subject to the negative procedure in the House of Commons only.

Section 5: Transitional provision: temporary increase in rates of NICs payable to NHS

40 Section 5 sets out the transitional arrangements for this measure. Section 5(1) specifies that these arrangements will only apply for the 2022-2023 tax year.

41 Section 5(2) modifies the percentage rates of National Insurance contributions for the 2022-23 tax year set out in Part 1 of the SSCBA 1992 so that, for the 2022-23 tax year:

a. the main rate of Primary Class 1 will be 13.25% (increased from 12% in 2021-22),

b. the additional rate of Primary Class 1 will be 3.25% (increased from 2% in 2021-22),

c. Secondary Class 1 will be 15.05% (increased from 13.8% in 2021-22),

d. the main rate of Class 4 will be 10.25% (increased from 9% in 2021-22),

e. the additional rate of Class 4 will be 3.25% (increased from 2% in 2021-22).

42 Section 5(3) secures that NICs rates cannot subsequently be raised in tax year 2023-24 by reference to the higher temporary rates in 2022-23.

43 Section 5(4) replicates the modifications made by Section 5(2) in Part 1 of SSCB(NI)A 1992, so that the temporary rate modifications also apply to Northern Ireland.

44 Section 5(5) modifies section 162(5) of SSAA 1992. It stipulates that, for the 2022-23 tax year, the amount of contributions that are allocated to the NHS are increased as set out below. This ensures that all of the proceeds raised from the temporary rate increase set out at Section 5(2) and (4) are directed to the NHS.

a. 69.23% increased from 50% of the proceeds from the additional rate of Class 1 and 4 will be allocated to the NHS

b. 3.30% increased from 2.05% of earnings in respect of the main rate of Primary Class 1 NICs will be allocated to the NHS

c. 3.15% increased from 1.9% of earnings in respect of Secondary Class 1 NICs will be allocated to the NHS

d. 3.15% increased from 1.9% of earnings (and other forms of income) in respect of the Class 1A NICs will be allocated to the NHS

e. 3.15% increased from 1.9% of earnings (and other forms of income) in respect of the Class 1B NICs will be allocated to the NHS

f. 3.4% increased from 2.15% of profits in respective of Class 4 NICs will be allocated to the NHS.

45 Section 5(6) replicates the provisions of Section 5(5) in respect of section 142(5) of SSA(NI)A 1992, so that the further allocation of contributions to the NHS also applies in Northern Ireland.

Section 6: Interpretation

46 This Section defines various terms used in the Act.

Section 7: Short title and Crown application

47 Section 7 gives the short title of the Act as the Health and Social Care Levy Act 2021 and provides for the Act to apply to the Crown.

Commencement

48 This Act will commence on Royal Assent.

Related documents

49 The following documents are relevant to the Act and can be read at the stated locations:

- Build Back Better. Our plan for health and social care. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015736/Build_Back_Better-_Our_Plan_for_Health_and_Social_Care.pdf

- Tax Information and Impact Note. https://www.gov.uk/government/publications/health-and-social-care-levy/health-and-social-care-levy

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1	Yes	Yes	Yes	Yes
Section 2	Yes	Yes	Yes	Yes
Section 3	Yes	Yes	Yes	Yes
Section 4	Yes	Yes	Yes	Yes
Section 5	Yes	Yes	Yes	Yes
Section 6	Yes	Yes	Yes	Yes
Section 7	Yes	Yes	Yes	Yes

Subject matter and legislative competence of devolved legislatures

50 There is no matter in the Act that is within the legislative competence of the devolved legislatures.

Annex B – Hansard References

51 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	08 September 2021	Vol. 700 Col. 323
Second Reading	14 September 2021	Vol. 700 Col. 840
Public Bill Committee	14 September 2021	Vol. 700 Col. 896
Report and Third Reading	14 September 2021	Vol. 700 Col. 941
House of Lords		
Introduction	15 September 2021	Vol. 814 Col. 1392
Second Reading	11 October 2021	Vol. 814 Col. 1657
Order of Commitment discharged	11 October 2021	Vol. 814 Col. 1716
Third Reading	11 October 2021	Vol. 814 Col. 1716
Royal Assent	20 October 2021	House of Commons Vol. 701 Col. 800
		House of Lords Vol. 815 Col. 129

Annex C – Progress of Act Table

52 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7	Clause 7

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