

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 5)
REGULATIONS 2008**

2008 No. 2624

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

These Regulations amend the Social Security (Contributions) Regulations 2001 to provide, in the United Kingdom, a disregard, in the computation of an earner's liability to Class 1 National Insurance contributions in respect of any amount of benefit payable by virtue of the Government scheme known as the Better off in Work Credit; it disregards all payments made on or after 27th October 2008.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The explanatory note to this Instrument explains that:

“A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.”

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department's Better Regulation and Policy team has confirmed that
 - there are no disproportionate impacts on any business or sector; and
 - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes.

3.2 Section 3 of the Social Security Contributions and Benefits Act 1992 (providing the power to make regulations for disregarding particular payments in the calculation of earnings) does not apply to Northern Ireland – see section 177(5) and (6) of the Act. Section 3 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 provides a similar power as regards national insurance in Northern Ireland. That power has not been invoked in relation to the Better off in Work Credit as that is running as a pilot scheme only in part of Great Britain; and accordingly these amending Regulations do not rely on that power. However, regulation 156(1) of the Social Security (Contributions) Regulations 2001 provides that except where otherwise provided, provisions of those Regulations apply to Northern Ireland. Regulation 156(1) will apply to the amendment made by these amending Regulations. Consequently, to reflect the fact that section 3 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 has not been invoked, the disregard for Better off in Work Credit payments specifically states that it does not apply to Northern Ireland.

4. Legislative Background

4.1 Section 3(2) of the Social Security Contributions and Benefits Act 1992 (“the Act”) provides that the amount of a person’s earnings is to be calculated or estimated in such manner and on such basis as may be prescribed by regulations. Section 3(3) of the Act provides that regulations made for the purposes of Section 3(2) may prescribe that payments of a particular class or description are to be disregarded in the calculation of earnings. Section 175(5) of the Social Security Contributions and Benefits Act 1991 provides that regulations under (inter alia) section 3 may provide for the exercise of a discretion. HM Treasury relies on this power here because the payments to be disregarded themselves rely on arrangements put into place at the discretion of the Secretary of State (pursuant to section 2 of the Employment and Training Act 1973).

4.2 These regulations use the powers at Section 3(2) and 3(3) of the Act to provide a disregard from Class 1 National Insurance contributions liability in respect of any Better off in Work Credit payment made under section 2 of the Employment and Training Act 1973.

5. Territorial Extent and Application

These regulations amend the Social Security (Contributions) Regulations 2001 and only apply to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Some individuals, particularly those who face the greatest challenges to finding work, are concerned that when taking up employment it may mean that income from work will be less than their out of work benefits. In the majority of cases, the design of the benefit and tax system ensures that an individual is better off in work. However, there are some cases where differences in the structure of support for individuals out of work could mean that for some people income from benefits can be higher than their income from employment.
- 7.2 From 27 October 2008, the Department for Work and Pensions (DWP) will launch the Better off in Work Credit scheme as a pilot, running in the Yorkshire and Humber Jobcentre Plus Districts. The scheme is being introduced to help encourage customers at most disadvantage in the labour market to move into and remain in work. The Better off in Work Credit aims to ensure that eligible people returning to work will receive a greater income from employment than from the benefits they are entitled to whilst out of work.
- 7.3 To be eligible for Better off in Work Credit, an individual must have been entitled to Employment Support Allowance (which is being introduced on 27 October 2008), Incapacity Benefit, Income Support, Jobseeker's Allowance or Severe Disablement Allowance for 26 weeks or more. The individual must take up employment of at least 16 hours a week, or in the case of Income Support, Employment and Support Allowance and Jobseeker's Allowance recipients, at least 24 hours a week if it is the recipient's partner who moves into work. If on returning to work the income a person receives is not greater than £25 a week more than the benefits they are entitled to whilst out of work they can apply for a top-up payment that will take them up to this level. The payment will be calculated on a weekly basis. The level of payment will depend on the difference in the amount an individual is entitled to from out of work benefits and the income he receives in work. Payments will be made for up to 26 weeks directly to the recipient's bank account or Post Office card account.
- 7.4 Disregarding payments made under the Better off in Work Credit pilot scheme from National Insurance contributions liability will enable DWP to provide a clear assurance that eligible people will receive a greater income when moving into employment than they do from benefits whilst out of work.

8. Impact

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

9. Contact

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