HEALTH AND SOCIAL CARE LEVY (REPEAL) BILL

Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Health and Social Care Levy (Repeal) Bill ("the Bill"). The Bill was introduced in the House of Commons on 22 September. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Bill repeals the Health and Social Care Levy introduced by the Health and Social Care Levy Act 2021. The levy would have been payable by any person who pays, or who is liable to pay, Class 1, 1A, 1B or Class 4 National Insurance contributions (NICs). The levy would have been equivalent to 1.25% of the amount of earnings (or, in the case of Class 4, profits) in respect of which the NICs are paid or payable. Amounts of the levy collected from the tax year 2023-24 onwards were to be paid by His Majesty's Revenue and Customs (HMRC) towards the cost of health and social care across the UK in accordance with directions given by the Treasury.

3. In addition to introducing the levy, the Health and Social Care Levy Act 2021 also provided for a transitional increase in the rates of Class 1, 1A, 1B and Class 4 NICs by 1.25%, effective for the tax year 2022-23 only, the proceeds of which are payable towards the costs of health care in the UK. Thereafter the rates of Class 1, 1A, 1B and Class 4 NICs were to revert to those for the tax year 2021-22. With effect from 6 November 2022, the Bill brings forward the reduction in NICs rates.

C. DELEGATED POWERS

4. The Bill contains a new delegated power in relation to the repeal of the Health and Social Care Levy Act 2021.

<u>Power to make consequential provision</u>

Schedule, Paragraph 9 – Repeal of the Health and Social Care Levy: United Kingdom: power to make consequential provision

- ***Power conferred on: the Treasury***
- ***Power exercised by: Regulations***
- ***Parliamentary procedure: negative resolution, Commons only***

5. Paragraph 9 of the Schedule to the Bill confers a power on the Treasury to make by regulations provisions they consider appropriate in consequence of the Bill. This power may be exercised to amend primary legislation.

6. Paragraph 9 provides that regulations may: -

- make different provision for different purposes;
- amend, repeal or revoke provision made by or under any enactment; and
- make provision having retrospective effect from no earlier than 6 April 2022.

7. This power is considered appropriate to ensure the effective repeal of the Health and Social Care Levy Act 2021 to avoid the need for separate primary legislation each time a consequential change is needed to be made. There are precedents for consequential powers applying to NICs and the Apprenticeship Levy, for example in sections 175(3) to (5) of the Social Security Contributions and Benefits Act 1992, section 5(2) of the National Insurance Act 2014, section 5(2) of the National Insurance Contributions (Increase of Thresholds) Act 2022 and section 121 of the Finance Act 2016.

8. Paragraph 9(2)(a) is considered appropriate because NICs liability can apply differently for different groups. For example, directors are subject to a different assessment period than employees for the purpose of calculating Class 1 NICs.

9. Paragraph 9(2)(b) provides that regulations may amend primary legislation. This is considered appropriate as certain rules of liability and assessment for some classes of NICs are contained in primary legislation. For example, provisions relating to liability and assessment of Class 4 NICs are mainly set out in sections 15, 16 and Schedule 2 of the Social Security Contributions and Benefits Act 1992.

10. Paragraph 9(2)(c) provides that regulations made under this paragraph may have retrospective effect but no earlier than 6 April 2022. This is considered appropriate in case consequential provision is needed to be made in case of Class 1A, 1B and 4 NICs. These classes of NICs are annual levies and any changes would need to take effect from 6 April 2022 to avoid introducing complex rules and guidance to allow for split tax years.

11. Paragraph 9(3) provides that a statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons. This is considered appropriate as regulations can only be made in consequence of the repeal of the Health and Social Care Levy Act 2021, so will be relieving.

HM Treasury

22 September 2022