National Insurance Contributions (Employer pensions Contributions) BILL

Memorandum from the 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 National Insurance Contributions (Employer pensions Contributions) Bill ("the Bill"). The Bill was introduced in the House of Lords on 22 January 2025. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case 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. On 6 April 2017 significant changes to salary sacrifice arrangements took effect. This change meant income tax and National Insurance contributions (NICs) advantages associated with benefits in kind provided through salary sacrifice were largely withdrawn. A limited number of exemptions remained, including those relating to employer pension contributions.

3. This Bill creates a power for the Treasury to apply a primary and secondary Class 1 NICs charge on the salary or bonus sacrificed in exchange for employer pension contributions, above £2,000 for a tax year. No NICs will be due on amounts below the £2,000 limit and existing NICs reliefs will apply. The legislation will take effect from 6 April 2029.

C. DELEGATED POWERS

4. The Bill contains the following new delegated powers.

Clause 1(1): Employer pensions contributions pursuant to optional remuneration arrangements: Great Britain
Clause 2(2): Employer pensions contributions pursuant to optional remuneration arrangements: Northern Ireland

<u>New subsections (6A to (6D)) to be inserted into section 4 Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992</u>

In any case where—

a) a benefit of a kind mentioned in section 308 or 308A of ITEPA 2003 (contributions to pensions schemes) is provided for an employed earner pursuant to optional remuneration arrangements, and
b) the employed earner would be chargeable to income tax in respect of the benefit if section 228A(5) of that Act had effect with the omission of paragraphs (f) and (g) (which refer to sections 308 and 308A),

regulations may make provision for treating the amount foregone in relation to the benefit as remuneration derived from the earner's employment.

***Power conferred on*: HMT with concurrence of the Secretary of State**

***Power exercised by*: Regulations**

***Parliamentary Procedure*: affirmative resolution in the case of regulations making a reduction in the amount of the contributions limit, negative resolution in other cases.**

Context and Purpose

5. New subsection (6A) gives Treasury the power to make regulations to treat the amount foregone in relation to the benefit as an amount on which the earner is chargeable to income tax under the employment income Parts of ITEPA 2003 as remuneration derived from the earner's employment. Specifically, it allows amounts covered by section 308 (exempt contributions to a registered pension scheme) and section 308A (exempt contributions to an overseas pension scheme) to be treated as earnings if the individual would have been liable for income tax had the exemptions in sections 228A(5)(f) and 228A(5)(g) not applied.

6. Subsection (6B) ensures that regulations made under subsection (6A) include a provision for a contributions limit, so that no Class 1 NICs charge applies below that threshold.

7. Subsection (6C) provides for the ability to set out in regulations the application of the contributions limit to allow for a limit to apply to different pay periods and arithmetical equivalents.

8. Subsection (6D) allows regulations made under new subsection (6A) to make provision for any amount treated as remuneration to be treated as paid at such time as may be specified in regulations and to be calculated on a different amount other than the amount foregone in relation to pension contributions.

Clauses 1(4) and 2(4) provide that for the first set of regulations, which will take effect from 6 April 2029, the contributions limit must be set at £2,000 for the tax year.

Justification for taking the power

9. This power is considered appropriate to ensure the effective operation of the contributions limit (known more commonly as 'the cap'). A power to set out further detail in relation to the cap will avoid the need for primary legislation each time a change is needed to be made. Clause 1(1) (6B) to (6D) specify the parameters of the regulation which limits its scope to mainly deal with the application of the contributions limit (cap).

10. The Bill sets out the most important aspects of the policy, namely-

a. That salary sacrificed for employer contributions may be treated as earnings and attract Class 1 NICs, the detail of which will be set by secondary legislation.

b. There must be a contribution limit, under which Class 1 NICs relief will continue to apply.
c. That the contribution limit may be varied by secondary legislation.
d. The first regulations made under the Bill must set the contribution limit at £2000.00 in a tax year.

11. Secondary legislation, made under the Bill, will implement the policy framework the Bill establishes. This legislation will set out the administrative arrangements and address elements likely to change over time, namely the applicable contribution limit, which is expected to change more often than Parliament can be expected to legislate for by primary legislation.

Justification for the procedure

12. Clause 1(2) provides that regulations made under new subsection (6A) which reduce the contribution limit, thereby increasing the earnings on which Class 1 NICs are payable by employers and employees, must be subject to the affirmative procedure. This requires a draft of the instrument to be laid before Parliament and approved by a resolution of each House, ensuring enhanced Parliamentary scrutiny. Conversely, where regulations made under this power simply implement the policy and set out administrative arrangements or increase the contribution limit resulting in less NICs being payable, the Government considers the negative procedure to be appropriate. This latter follows the precedence for regulations made under the existing section 4(6) and 4A SSCBA 1992 and SSCB(NI)A 1992.

Department Name HMT
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