

**Simplifying National Insurance  
Contributions for Employers - A  
technical discussion paper**

**Summary of comments and IR response**

**JULY 2001**

<b>CONTENTS</b>	<b>Page</b>
Introduction	3
Next Steps	3
Other Issues	4
Employer Compliance Powers	5
Helping employers get it right - earnings period flexibility	12
Helping employers get it right - allocation of arrears	14
" PAY"	17
Employees seconded abroad: Additional collection mechanism for NICs	19
Earnings of employees seconded abroad	20
Benefits provided by third parties	22
List of respondents	23

## **INTRODUCTION**

The Chancellor announced in the November 1999 Pre Budget Report that the Inland Revenue would work with employers' representatives and others on reducing technical differences between tax and NICs.

To meet this commitment we issued "Simplifying National Insurance for Employers- A technical discussion paper" in June 2000. The paper focused on areas that create complexity for employers and their payroll administrators and covered:-

- employer compliance officers' powers;
- procedures for handling arrears of NICs discovered during reviews;
- providing more time to deal with irregular payments of earnings;
- a common basis of "pay" for tax and NICs;
- a simpler system for calculating NICs on payments to employees seconded abroad;
- extending the scope of PAYE settlement agreements to cover third parties.

Ministers are grateful for the feedback received to the proposals in this document including the wider issues raised regarding radical simplification and alignment of tax and NICs.

This summary sets out the main views received on the points for consideration in the discussion paper. A total of 22 responses were received. The majority of the replies were from high profile organisations involved in tax and NICs reflecting the technical focus of the proposals in the paper.

This summary is being sent to everyone who responded to the discussion paper and is also available on the Inland Revenue Website. A list of the organisations that responded is included at the end of this summary. Copies of individual submissions may be obtained from the address shown at the end of this summary.

### **Next Steps**

In view of the positive feedback received on the proposals, the Inland Revenue are now pressing ahead to introduce them as soon as possible. Business representatives and employers will receive detailed guidance and information on each option as they come on line. The Inland Revenue has already consulted further on how best to solve the problems associated with awards from third parties (see Chapter 8 of the discussion paper).

**Other Issues**

There were several common areas raised by respondents on other matters of concern that were outside the scope of the paper. These will help inform any future initiatives in the area of tax/NICs simplification.

July 2001

**Summary of Responses - to the chapters of the discussion paper**

**Chapter 3: Employer Compliance Powers**

*The powers used by the former CA to check employers' records for NICs were different (and generally wider) in scope and application from the powers used by the Inland Revenue for tax. We sought comment on the conclusion that it is unsatisfactory to have divergent powers for effectively the same purpose. We recommended extending the existing regime for tax to all classes on NICS and SSP/SMP and repeal of the powers contained in S110ZA of the Social Security Administration Act. We set out what we believe to be the appropriate attributes of our powers to check employer records for comment.*

	<b>Comment</b>	<b>Inland Revenue response</b>
1	<p><u>General</u>                      Respondents generally supported the proposals. A client survey carried out by one respondent indicated that 93% of clients either agreed or strongly agreed that the proposed changes were broadly sensible. There was some reluctance to fully endorse the proposals without seeing the guidelines on how employer compliance powers would be used.</p> <p>Respondents generally agreed with the key principles of Employer Compliance powers put forward in the discussion paper. Additional attributes suggested were “fair”, “equitable” and a due regard for employer’s costs. One respondent suggested that the attributes should be enshrined in law so that the courts could ensure that they were effective in practice.</p> <p>Respondents were generally content that the S20 powers were a suitable replacement for S110ZA. The S20 powers were seen as robust yet balanced whereas S110ZA was viewed as disproportionate with few safeguards.</p>	<p>We welcome the positive response to the proposed changes and agree that any new internal guidance should be made public. Our internal guidance on Employer Compliance and on the use of our information powers is already published. We will make sure that any new guidance will also be published and there will be an opportunity for consultation on any changes made to the appropriate codes of practice as a result of this review.</p> <p>We agree that fairness is an important principle. It is one which underlies our compliance policy. Fairness not only in the way in which we conduct compliance activity but also in our attempts to enable all employers to comply with their obligations. We are concerned that employer’s costs should be kept to a minimum and it is already part of our policy that Employer Compliance officers should make every effort to bring this about.</p>
2	<p><u>Legislation and regulations</u>                      Respondents generally supported our proposals to make minor changes to tidy up Regulation 32 of the Social Security (Contributions) Regulations 1979.</p>	

	Comment	Inland Revenue response
	<p>Although respondents agreed that there should not be divergent powers for essentially the same purpose (between NICs and tax) a number suggested that the Revenue's inspection powers should be consolidated into a single set of rules.</p>	<p>There are currently separate Statutory Regulations or legislation containing powers of inspection for PAYE, NIC's, WFTC, CSL and NMW. This is because each derives from separate primary legislation. It is not currently possible to amend Social Security legislation as part of a Finance Bill. Because of this we cannot bring about a situation in which all of the Revenue's powers of inspection etc. are contained within one set of regulations. However, apart from NMW, we have modelled the powers of inspection in each set of regulations on the Income Tax (Employments) Regulations 1993 so that broadly the same powers apply in each circumstance. We expect to be able to introduce similar regulations for inspection powers for Statutory Sick Pay and Statutory Maternity Pay. We hope that, by having similar regulations for each situation. It will be easy to understand what regulations apply and in what circumstances.</p>
3	<p><u>Computer records</u>  Respondents were concerned that our power to inspect records held on computer should be better defined. The employer should know exactly what is required from the computer to avoid unnecessary programming etc. Similarly officers should not have the right to access employers computer systems themselves nor should they have a free hand in interrogating computer systems as this may prejudice sensitive commercial information.</p> <p>Respondents suggested that the IR should accept data in whatever format the employer can most cheaply and most easily produce so long as the employer also provides the means to read the data.</p>	<p>Where we ask for information from computer systems our officers should help the employer understand exactly what is required. They should reach agreement with the employer as to the best way of achieving this. There should be no situation where our intentions or requirements are unclear and employers are entitled not to provide information until they are satisfied that they understand what is required. There are no circumstances in which we will expect an employer to allow an Inland Revenue officer to operate or have direct access to computer systems or hardware. Similarly we will not expect that any piece of our own equipment should be attached to the employer's systems in any way whatsoever.<sup>1</sup></p> <p>We agree with this and we will include this point in guidance to our staff.</p>

<sup>1</sup> Different rules apply in the wholly exceptional circumstances in which we are conducting a search under a warrant granted under the provisions S20C TMA.

	Comment	Inland Revenue response
4	<p><u>Employer compliance reviews</u></p> <p>One respondent argued that there should be a de minimis limit to reduce the number of uneconomic compliance reviews.</p> <p>Some respondents suggested that a time frame should be applied to employer compliance reviews to prevent cases languishing, in some cases, for years.</p>	<p>We do not conduct employer compliance reviews solely to recover unpaid tax. The review is there to help us to test whether all employers are fulfilling their obligations. Although some reviews are conducted on the basis of the duty likely to be a risk we also conduct some reviews at random. We would expect that a number of those reviews would not lead to a recovery of tax.</p> <p>We agree with this. There is no benefit to anybody in having unresolved cases hanging around. Clearly in some cases technical points will need to be resolved and this may take time. We will try to find ways in which this issue can be addressed and would welcome suggestions.</p>
5	<p><u>Dealing with employer records</u></p> <p>Respondents were concerned at the scope of records examined during a review. Suggestions were made that the records to be examined should be listed in the regulations, that they should be limited to those that are reasonably required and that we should specify the records that we need to see at the start of the review.</p> <p>There is an apparent discrepancy between the retention period for PAYE records and the period covered by an Employer Compliance review.</p> <p>Respondents suggested that the place of production should be where the records are normally kept or such other place as may be agreed. And that the employer should be able to specify where computer records should be produced.</p>	<p>We will certainly want to see all of the records that the law requires should be kept. But we also need to see any records that may contain details of payments made to and benefits provided for employees. We cannot specify what we do not know to exist so that the phrase in Regulation 55 “records to do with the calculation and payment of emoluments” covers every record that does or may contain details of emoluments.</p> <p>We agree that there is an apparent anomaly here. We will try to correct it.</p> <p>We agree that this approach is reasonable. We would usually agree a mutually convenient place at which the records can be made available and we expect that ‘reasonable’ should apply equally to both sides. The regulations say that the place of production should be an agreed place or the place where the records are kept or the principle place of business. This provides us with some recourse where an employer is obstructive.</p>

	Comment	Inland Revenue response
	<p>One respondent suggested that the time limit to provide copies of uplifted records should be reduced to two days for records that the employer needs quickly. Another suggested that there should be recourse for the employer if the Revenue fails to return records within the specified period.</p> <p>One respondent suggested that there should be redress if the Revenue get manual files out of order during an inspection visit.</p> <p>There should be a statutory defence to errors committed because and whilst records are in the Revenue's hands.</p>	<p>We think that it is impractical to impose a two day time limit on this process. Where a very few records have been uplifted clearly these can be copied and returned quickly but in some cases a large volume of records may need to be copied. The Revenue have finite resources like anybody else and may not be able to devote the staff or the photocopiers to meet a two day limit. The current regulations provide that the records may be removed at a reasonable time and retained for a reasonable period. The courts can of course test these criteria. We are looking at whether a more immediate remedy can be provided.</p> <p>We expect Employer Compliance Officers to leave things as they find them and certainly not to leave employers records in a mess. If this does not happen then the employer may have justifiable grounds for complaint. In some circumstances compensation may be appropriate if we have failed.</p> <p>We will make every effort to retain records for as short a time as possible. Where delay is unavoidable we will work with the employer to ensure that he has sufficient information to maintain accurate processes and payments.</p>
6	<p><u>Estimating Earnings for NICs purposes</u></p> <p>Respondents generally agreed that it was sensible to have a system to issue a decision on NICs liability based on estimated earnings where records are not available provided that the safeguards in the paper are adhered to and the contributory principle is protected.</p>	<p>Section 8 of the Transfer of Functions Act 1999 already provides that an officer of the Board may decide whether a person was liable to pay contributions and the amount that he is liable to pay. Section 3 (2)(a) of the Social Security Contributions &amp; Benefits Act 1992 provides that "<i>the amount of a person's earnings for any period shall be calculated or estimated in such manner ... as may be prescribed.</i>" So that a decision about NICs liability may be made on the basis of estimated earnings. We are considering ways in which this process can be operated alongside the process for making determinations under Regulation 49 of the Income Tax (Employments) Regulations 1993. We want to make this process simple in practice, and easy to understand for employers</p>

	<b>Comment</b>	<b>Inland Revenue response</b>
	<p>One respondent had major reservations over the interaction of the existing power to make a ‘best judgement’ determination of PAYE tax due (regulation 49 determination) with the power to direct that underpayments of PAYE should be recovered from employees (regulation 42(2) directions for ‘good faith error’).</p>	<p>This is outside of the scope of this discussion paper. However the point is noted and we will consider what steps can be taken here.</p>
7	<p><u>Interviewing employees</u></p> <p>Respondents argued that some controls were needed on an officer’s right to interview employees. They pointed out that an incorrect impression can be given where interviews are arranged with support staff who are not aware of the legal implications of things that they might say. Some were concerned that the powers in S110ZA carried a right to silence that was not explicit in S20 TMA for example.</p> <p>One respondent was concerned at the interaction between S110ZA and S20 and the ‘whistleblowing’ legislation. How can an employee be protected from detriment if he has provided evidence of his employer’s wrongdoing?</p>	<p>Any officer has the right to ask anybody anything but without S110ZA, which we plan to repeal, that person cannot be compelled to give an answer. We do not feel that anybody should be compelled to provide information without third party scrutiny hence our proposal to rely on the information powers in S20 in place of S110ZA. These will allow us to ask for documents and particulars (information) and do not carry a right to interview either first or third parties. There is no explicit right to silence in S110ZA, in fact the reverse is true. In criminal investigations (outside the scope of this paper) there is a right not to incriminate oneself.</p> <p>A worker would generally be protected if he provided information subject to a legal compulsion (such as a S20 notice) to do so. However the Public Interest Disclosure Act 1998 (the whistleblowing legislation) also provides protection where a qualifying disclosure is made. A worker who reasonably believes that a criminal offence or a failure to comply with a legal obligation has occurred would also be protected if he makes a disclosure to the authorities. Further information can be found on the Cabinet Office website  <a href="http://www.cabinet-office.gov.uk/guidance/two/19.htm">www.cabinet-office.gov.uk/guidance/two/19.htm</a> .</p>

	Comment	Inland Revenue response
8	<p data-bbox="331 300 528 329"><u>Other concerns</u></p> <p data-bbox="331 374 855 734">One respondent felt that removing S110ZA would handicap officers investigating serious non compliance as they would no longer have the power to call for documents and information from anyone on the premises that they suspected. They expressed the view that a genuine employer would perceive that this restriction would possibly encourage non compliance.</p> <p data-bbox="331 779 855 992">One respondent asked whether a letter asking for the names and NINOs of all persons engaged on an employed or self employed basis in the last six years would be a precursor letter for S20 purposes.</p> <p data-bbox="331 1106 855 1209">One respondent wanted to be sure what is meant about level of use and safeguards in relation to S20C.</p> <p data-bbox="331 1361 855 1648">One respondent suggested that a form of certificate should be supplied at the end of each Employer Compliance Review. The certificate would conclude all tax, NICs, tax credit and other payroll matters for those years. A subsequent review could not be commenced other than in the instance of fraud.</p> <p data-bbox="331 1693 855 1870">Respondents generally agreed that the proposals would not tend to increase employer's compliance however a proper Regulatory Impact Assessment (RIA) was urged.</p>	<p data-bbox="884 374 1501 660">This seems to be based on a misunderstanding of the proposals. We do not want to weaken our powers but to make all of them subject to proper controls and safeguards and proportionate to the task in hand. This protects our officers and the employer. Officers would have the right to ask for documents and information using the S20 information powers.</p> <p data-bbox="884 779 1501 1066">A precursor letter for S20 purposes will always say what it is. It is possible that we might seek information as wide ranging as that suggested by the respondent but we would only expect to be doing so where that information was not already in the Revenue's hands. We can already do this, we are not proposing any change in policy or practice here.</p> <p data-bbox="884 1106 1501 1321">S20C of TMA is the Inland Revenue's search power. It is used only by Special Compliance Office in cases of serious fraud and that sparingly. We do not propose to make any change to the way in which this power is used or the frequency with which it is used.</p> <p data-bbox="884 1361 1501 1538">Where we give verbal advice or instructions to an employer during a review we usually follow that up with a letter setting out what we have said. We will consider whether we can develop this further.</p> <p data-bbox="884 1693 1406 1760">A RIA is certainly necessary and will be provided.</p>

	<b>Comment</b>	<b>Inland Revenue response</b>
	<p>One respondent suggested that limiting the number of temporary NINOs issued would help preserve the integrity of the NINO system.</p>	<p>We do not issue temporary NINOs. The National Insurance Contributions Office have been carrying out a wide ranging review of NINO integrity issues over the past year and as a result of this revised procedures for allocating NINOs will be in place by April 2001.</p>

**Chapter 4: Helping employers get it right - earnings period flexibility**

*This chapter explored ways of making it easier for employers to get the calculation of an individual's Class 1 NICs right in relation to marginal items of pay e.g. expenses - by giving them more time to process payments.*

	<b>Comment</b>	<b>Inland Revenue response</b>
1	<p><u>General</u></p> <p>There was strong support for giving employers more time to calculate Class 1 NICs on marginal items of pay. Respondents indicated that this was already custom and practice amongst some employers.</p>	<p>The Inland Revenue welcomes the positive support for this proposal and will amend guidance so that all employers are aware that they have more time to process marginal items of pay.</p>
2	<p><u>Extending flexibility across tax years</u></p> <p>We were also asked to look at whether this flexibility could be extended across tax years for these types of payments that arise at the end of the tax year.</p>	<p>We accept that in some cases it will not be possible for employers to ensure that marginal payments are put through the payroll before the end of the tax year. The changes to the guidance will reflect this and provide the flexibility requested.</p>
3	<p><u>Impact on individual's benefit entitlement</u></p> <p>Concerns were raised about the need to ensure that employers were genuinely not able to comply with current rules and not using this easement for convenience which could affect an individual's benefit entitlement.</p>	<p>We are satisfied that employers will be helped by this flexibility whilst employees will not be disadvantaged because it only covers marginal items of pay that are outside an employer's normal payroll arrangements.</p> <p>Nevertheless, we must ensure that employees' benefit eligibility is not at risk. Where there is an attempt to avoid or reduce NICs by using this flexibility; where benefit entitlement may be affected; or, where the employer is delaying payment of NICs without good reason, the Inland Revenue compliance officers will be able to ask employers to recalculate Class 1 NICs and allocate the payments properly.</p>
4	<p><u>Clarification of draft guidance</u></p> <p>Several employers wanted to know what we meant by "material" in our draft guidance.</p>	<p>For the purposes of earnings period flexibility we define "material" in the context of benefit entitlement – In the majority of cases this will not be a factor because the type and amount of such payments in question should not affect entitlement to a benefit. As confirmed in 3 above we will build in safeguards to ensure that an employee does not lose eligibility to a benefit that he would otherwise have been entitled to, had the payment gone through the payroll at the proper time. Any underpaid NICs</p>

	<b>Comment</b>	<b>Inland Revenue response</b>
		will be collected from employers and the employees contribution record will be adjusted accordingly. We will ensure that a definition of what is meant by 'material' is given in the guidance.

## Chapter 4 Helping employers get it right - allocation of arrears

*This chapter also looked at simpler procedures for dealing with arrears and errors involving Class 1 NICs identified during an employer compliance review; while still taking reasonable steps to protect individuals' contributory benefit entitlement.*

*We proposed the use of global estimation of the arrears due where normal earnings fall between the LEL and the UEL but the amount of under recorded pay is below a set amount. The safeguard for those on lower wages requires identification of those earning between the LEL and the primary threshold (current year) - or a sample if the numbers are large.*

	<b>Comment</b>	<b>Inland Revenue response</b>
1	<p><u>General</u></p> <p>Of the 22 respondents to the document 19 commented on this proposal. Around half of the respondents felt concerned that the issue the chapter addressed – putting right mistakes discovered during an employer compliance review- demonstrated that the system was too complex – for example earnings periods and differences between LEL and threshold.</p> <p>Some queried where the administration costs of protecting the contributory principle should lie – government or employers; and that allocation of NIC arrears to individual accounts was a low priority in the Revenue anyway.</p>	<p>Whilst root and branch reform is outside the scope of this paper respondents will be aware that the Revenue recognises that the PAYE / NICs system is less well suited to modern remuneration packages. Suggestions put forward will inform any future work undertaken in this area.</p> <p>The Revenue has re-organised the Employer Compliance (EC) teams following the transfer of the Contributions Agency to make the review process more effective and efficient for both the employer and the Revenue. A recent pilot exercise demonstrated that extra clerical resources in EC teams could speed up processes and ensure that – where it is essential to an employee's future benefit entitlement – adjustments to their NI record are made straight away, without extra resources required from the employer.</p>
2	<p><u>Criteria for non-allocation of arrears</u></p> <p>Several respondents suggested that the existing criteria for items to be included in a PAYE Settlement Agreement (PSA) should be used to decide whether global estimate arrears due is appropriate.</p>	<p>The Revenue welcomes and agrees with constructive suggestion. The new guidance for Employer Compliance officers (ECO) to replace the Good Administrative Practices guide will include this criteria, with the proviso that it should not be used as a means of obtaining retrospective approval for a PSA and that calculation of the amount of arrears due must be based on Class 1 liability (i.e. primary</p>

	<b>Comment</b>	<b>Inland Revenue response</b>
		and secondary NICs).

	<b>Comment</b>	<b>Inland Revenue response</b>
3	<p><u>Proposal for de minimis of £5 weekly and £100 one off extra earnings not to require allocation.</u></p> <p>All respondents were in favour of some sensible guidelines to allow for global estimation of arrears and non-allocation to individual accounts in certain circumstances.</p> <p>There was less consensus on the amounts. The majority of employer representatives felt that the de minima suggested were too low and would have little real impact – as many as 80% of cases would fall outside according to one respondent.</p> <p>Others were puzzled that the suggested figures were not pro rata – eg. SERPs loss on £5 of earnings per week would be double that of a one off sum of £100.</p>	<p>The Revenue welcomes the general agreement that a de minimis threshold would be useful. It agrees that, as respondents indicated that the proportion of arrears cases which might be within the scope of the proposed de minima was low, more work should be done with the DSS to try and reach agreement on a higher figure. It has started this process by commissioning work on a benefit impact model in the light of the new pensions structure. Because it may take some time to produce robust results it will introduce the new guidance based on the “safe” de minima proposed but with a commitment to raise the thresholds as soon as possible. We also propose to keep the de minima under review and update where appropriate.</p> <p>The reason for the pro rata difference between regular payment and lump sum de minima is that a lump sum payment could happen more than once a year. But we will re-consider along with review of amounts as above.</p>
4	<p><u>Process for arriving at decision not to allocate.</u></p> <p>When deciding what method should be employed to calculate arrears respondents were divided as to whether the employer should be involved in the decision making. Ranging from one advocating no employer involvement whatsoever to insistence that the employer must have equal say.</p>	<p>The proposal in Chapter 4 paragraph 24 was that the employer and Inland Revenue’s officer would discuss the application of the criteria. But implicit in this is the assumption that the final decision as to whether the criteria were met would be for the ECO. We believe this is the right approach. If the decision is taken that the full computation is required and the employer is required to provide additional information he will have access to the guidance used by the ECO and the ECO will need to explain his decision against the criteria. We believe this will balance the employer’s need for a consistent approach to be adopted and the Revenue’s duty to collect the national</p>

	<b>Comment</b>	<b>Inland Revenue response</b>
		insurance properly due, and to protect the contributor's benefit entitlement.

	<b>Comment</b>	<b>Inland Revenue response</b>
5	<p><u>Low earners</u> Only one respondent (the TUC) commented on the proposal that safeguards should be provided for the low waged through a records check on those earning between the lower earnings limit and the primary threshold for paying NICs. They supported the proposal and stressed that they would object to any relaxation of rules that undermined people's potential benefit entitlement.</p> <p>One respondent asked the following question "What benefits are available to those below LEL?"</p>	<p>The Inland Revenue recognises the concern that individual benefit entitlement should not be put at risk. We will introduce guidance for employer compliance officers to ensure the low waged checks are carried out, and have amended our recording systems from January 2001 so that details can be recorded of failures to maintain the correct records – although no tax or NICs would be due.</p> <p>In answer to question regarding the LEL "no contributory benefits, but maternity allowance now available to women earning above £30pw. Low waged may be entitled to non – contributory and/or income related benefits such as child benefit, Working Families Tax Credit and Income Support."</p>
6	<p><u>Guidance</u> A number thought the rules set out in the proposal to decide on the criteria were themselves complicated.</p>	<p>The Inland Revenue accepts that complex rules would defeat the simplification objective. It will produce guidance in the form of a revised Good Administrative Practice note which aims to be clear and easy to follow for staff, contributors and employers alike. The revised guidance will be distributed to employers' representatives in draft for comments on the clarity.</p>
7	<p><u>Overpayments</u> One respondent said that problems with overpayments were just as prevalent as underpayments.</p>	<p>We have looked at the guidance currently offered to employers on how to deal with refunds of NICs due to contributors and agree that there is need for clarification. This will be undertaken when the guidance is next updated.</p>

## Chapter 5: "PAY"

The definition of "pay" for tax and NICs purposes are different. Schedule E uses the term "emoluments" and NICs uses "earnings". However, we think there is sufficient similarity between "pay" for tax and NICs purposes to develop an agreed understanding of "pay", so that employers can assume common treatment (unless the payment falls into a small group of listed payments where differences exist). We set out a draft statement on a common understanding of "pay" which could be included in the CWG2.

We also proposed moving the NICs charge from Class 1 to Class 1A on employer payments into funded unapproved retirement benefit schemes (FURBS).

	<b>Comment</b>	<b>Inland Revenue response</b>
1	<p><u>General</u></p> <p>Some replies called for alignment in practice rather than a statement which still leaves existing misalignments between tax and NICs in place.</p>	<p>These comments have been noted. Where possible the treatment of earnings for tax and NICs purposes has now been aligned. IR will continue to work with employers and their representatives towards removing misalignments that remain wherever practical. One key area of misalignment is in relation to employees' occupational pension contributions where changes would have major distributional effects.</p>
2	<p><u>The Statement</u></p> <p>The main concerns were that the statement was confusing and of little practical help to employers for deciding the tax and NICs liability of certain payments. If we were going to have a statement then it needed to be clear, concise, and in plain English.</p> <p>The statement does not make any attempt to say what the differences are or to give guidance as to where definitions etc may be found.</p>	<p>We agree that the current form of words used are confusing to employers. To ensure that employer needs are met we will provide a more user friendly form of words as we take this proposal forward.</p> <p>The statement is illustrative and we will look at improving it by including cross references, where appropriate, to other guidance which may be of help employers.</p>
3	<p><u>The Table</u></p> <p>Most respondents felt that a table would be helpful to help employers identify different treatments for tax and NICs purposes. It was suggested that the table should be prefaced by a brief statement</p>	<p>The replies indicate that both a statement and a table of differences would best meet the needs of employers. The Inland Revenue will take this proposal forward on this basis. We will also look at including the underlying statutory references as well.</p>

	<b>Comment</b>	<b>Inland Revenue response</b>
	<p>to the effect that if something is not in the table – then the NIC treatment follows the tax treatment.</p> <p>Others suggested that a table listing all items of pay and their treatment for tax and NICs purposes is provided which included statutory references.</p>	
4	<p><u>FURBS</u></p> <p>There was general agreement with the proposal to transfer NICs liability in respect of Funded Unapproved Retirement Benefit Schemes from Class 1 to 1A.</p>	<p>The replies received were in favour of the simplification proposed and it will be introduced as soon as possible by changes to the primary legislation.</p>

**Chapter 6: Employees seconded abroad: An additional collection mechanism for national insurance contributions**

*Proposals to deliver an extended date for payment of the NICs due and return of a separate P35 End of Year Return, in respect of earnings paid to seconded workers by the overseas company.*

	<b>Comment</b>	<b>Inland Revenue response</b>
1.	<p><u>General</u></p> <p>The proposal was generally welcomed. Several of the replies called for a full scale overhaul and urgent need for alignment of tax and NICs for seconded workers. Some respondents wanted alignment of residency rules for tax and NICs to be a long-term commitment from the Inland Revenue.</p>	<p>We welcome the support this proposal received from those that responded. On the wider issue of aligning the tax and NICs rules on residence there are a number of difficulties to consider. The interaction of EU regulations, domestic legislation and international agreements for NICs and different DTA networks. All these factor preclude early alignment being achieved but the comments have been noted.</p> <p>We are confident that the proposal can provide a practical solution to problem of accounting and paying over NICs due in respect of seconded workers which can be delivered quicker than the more radical changes.</p>
2	<p><u>Interaction with self assessment</u></p>	<p>This proposal is designed to give employers more time to obtain information and remit Class 1 secondary NICs. As a consequence there is no read across to self assessment.</p>
3	<p><u>Time Limits</u></p> <p>Some of those that replied queried the proposed filing date of 31 January for the separate P35 and have asked for a later date.</p>	<p>There is no consensus on a date for accounting for NICs due and submitting a separate P35. However, extending the deadline to 31 January should give employers sufficient time to gather the relevant information.</p>
4	<p><u>Modified PAYE</u></p> <p>Some responses suggested whether using the modified PAYE scheme instead could solve the problem.</p>	<p>We have considered this matter further. The modified PAYE system is for workers seconded to the UK and does not involve any relaxation as to when Class 1 NICs is accountable or 'final' P35's should be filed. We feel a separate system for workers seconded from the UK is preferable, as we are addressing a different problem to which the Modified PAYE scheme applies.</p>

## Chapter 7: Earnings of employees seconded abroad

*Proposal to provide better guidance on the tax/ NICs liability of secondment packages that seconded employees may receive. To make a minor amendment to NICs regulations to exclude from NICs travel expenses that are allowable for tax.*

	<b>Comment</b>	<b>Inland Revenue response</b>
1	<p><u>General</u></p> <p>Respondents were content with the small amendment to NICs legislation so that seconded workers who were no longer liable to UK tax would still benefit from two NICs free trips home a year.</p>	<p>Pleased to confirm that the changes to correct this minor anomaly in the legislation came into force on 6 April 2001.</p>
2	<p><u>Content of guidance material</u></p> <p>Some respondents thought that more detailed guidance would be helpful with specific guidance booklets one for employees and one for employers to deal with overseas situations. The responses suggested that the guidance should include advice on the treatment of the following items:-</p> <ul style="list-style-type: none"> <li>• Mortgage Assistance (relating to previous UK location)</li> <li>• Hardship Allowance (paid where secondee is sent to a country where the standard of living/ personal safety is an issue)</li> <li>• Banking Supplement (an allowance paid to cover conversion of sterling salary to local currency)</li> <li>• Compensation for loss of company car</li> <li>• Regional allowance e.g. Paris weighting</li> <li>• Medical expenses/ insurance</li> <li>• Home Leave</li> <li>• Daily Travel and Subsistence</li> <li>• Shares and Share options</li> </ul>	<p>We will look positively at the practicality of providing improved guidance in relation to secondment packages at the earliest opportunity. In the meantime, for completeness, we would welcome a comprehensive list of all items that should be included in guidance to be produced.</p>

	<b>Comment</b>	<b>Inland Revenue response</b>
3	<p><u>Residence</u></p> <p>One respondent said that the table needs to cover residence for tax/NICs. Consideration should be given to extending the table to cover the tax /NICs treatment of the different residence categories (resident/ ordinarily resident; not resident/ ordinarily resident; not resident/ not ordinarily resident)</p>	<p>We have noted the comments and will widen the scope of the guidance to cover these areas as well.</p>
4	<p><u>Summarising Tax/ NICs rules for seconded workers is too difficult</u></p> <p>Some respondents felt that attempting to summarise the rules on the tax and NICs treatment of employees seconded abroad in the form of a table would not be productive because of the complexity of the underlying rules.</p>	<p>Employees remuneration and expenses packages when seconded abroad are often complex and detailed and this impacts on any guidance we produce. Better customer support in this area may need to be considered if we find that it is not possible to produce guidance which is clear and concise.</p>

## **Chapter 8: Benefits provided by third parties**

*Extending the scope of PAYE settlement agreements to cover third parties. In order to enable third parties to account for and pay tax and NICs due on payments made by third parties to employees*

	<b>Comment</b>	<b>Inland Revenue response</b>
1	<p><u>General</u></p> <p>In general the respondents welcomed the proposal to solve the practical problems with accounting for NICs due on payments by third parties by extending the scope of PAYE Settlement Agreements to third parties. They could then account for and pay tax and NICs due on these payments directly.</p>	<p>Inland Revenue have looked at the practicality of the proposal in more detail in the light of the additional features that were requested. We are consulting further on alternative ways of solving the practical problems of accounting for NICs and tax due on payments by third parties.</p>
2	<p><u>Additional Features of third party PSA</u></p> <p>The respondents wanted to ensure that the third party PSA's were:-</p> <ul style="list-style-type: none"><li>• simple to use;</li><li>• covered a wider range of items;</li><li>• ensured protection of benefit entitlement;</li><li>• resolved the employer liability position if the third party does not settle NICs liability.</li></ul>	<p>Some of these characteristics may not be deliverable by a third party PSA. Ministers have therefore agreed to further detailed consultation on the way forward. Alternative options will be explored. All options will try to identify how best to deliver the simplicity and certainty respondents have said they want.</p>

## LIST OF RESPONDENTS

Organisation
British Chamber of Commerce
British Computer Society
British Gas Group
Chartered Institute of Taxation
Confederation of British Industry
Country Landowners Association
Deloitte & Touche
Federation of Small Businesses
Institute of Chartered Accountants - Tax Faculty
Institute of Directors
Institute of Payroll and Pensions Management
International Association of Book-keepers
London Chamber of Commerce
Marks and Spencer Plc
National Association of Pension Funds
PAY Train
PriceWaterhouseCoopers
Society of Pension Consultants
Trade Union Congress
Union of Construction, Allied Trades & Technicians

Copies of responses from:

Shaista Razaq  
Personal Tax  
Room 70, New Wing  
Somerset House  
London WC2R 1LB

Tel Number: 0207 438 7457or 7681  
Fax 0207 438 6400  
E Mail: Tax.NICs@ir.gsi.gov.uk