

NATIONAL INSURANCE CONTRIBUTIONS BILL

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

Introduction

1. The National Insurance Contributions Bill was introduced in the House of Commons on 12 November 2007. It contains 7 clauses and 2 Schedules. This memorandum identifies the provisions for delegated legislation in the Bill. It explains the purpose of the delegated powers amended or taken; describes why the matter is left to delegated legislation and explains the procedure selected for each power and why it has been chosen.

Purpose of the Bill and main provisions

2. In the 2007 Budget Statement, made on the 21 March 2007, the Chancellor of the Exchequer announced a package of reform proposals that will further modernise the tax and benefits systems. This Bill takes forward the National Insurance aspects of that package by enabling the upper earnings limit (UEL) for Class 1 National Insurance contributions (NICs) to be aligned with the level of earnings at which higher rate income tax becomes payable and deals with the State Second Pension (S2P) effects of that decision.
3. Following the 2007 Pre Budget Report Statement, made on the 9th October 2007, the Chancellor of the Exchequer announced that in order to ensure that reforms necessary to simplify the S2P take place as originally intended, following the alignment of the UEL with the higher rate income tax threshold, the start date for flat rating S2P would be brought forward to April 2009.

4. This Bill contains two substantive measures: -
 - The removal of the restriction on HMT's power to set the UEL in order to allow for that limit to be aligned from April 2009 with the level at which higher rate income tax becomes payable.
 - The early introduction of the Upper Accrual Point (UAP) for S2P, that was included in the Pensions Act 2007, also from 6 April 2009.

Parliamentary Scrutiny

5. This Bill makes provision for three delegated powers (two, which amount to a pair – one for England, Scotland & Wales, the other mirroring the first, for Northern Ireland - are amendments to existing delegated powers; one is a new power). These provisions and the regulations to be made under them, ensure that there is appropriate Parliamentary scrutiny for the exercise of such powers. Of the three delegated powers, two (those referred to above as a pair) are proposed under the affirmative procedure.
6. No parliamentary procedure is required to bring the Act into force. The Act is specified to come into force in part at the end of the period of two months beginning with the day on which it is passed. The remainder of the Act will come into force on a day appointed by an order made under section 30 (2) of the Pensions Act 2007.

Territorial Extent

7. National Insurance contributions are a reserved matter (or an excepted matter in Northern Ireland) in each of the devolved administrations; hence the provisions in this Bill relating to NICs will extend to England, Scotland, Wales and Northern Ireland (Clause 1 extends to England Scotland and Wales, Clause 2 mirrors the change made by Clause 1 for Northern Ireland).

8. Pensions are a reserved matter in Scotland and Wales but are transferred to the Northern Ireland Assembly. The provisions in Clause 3 of this Bill relating to Pensions will extend to England, Scotland and Wales only. Any corresponding provision for Northern Ireland will be made by an Act of the Northern Ireland Assembly.

Overview of Delegated Powers

9. The powers are listed in tabular form at Annex A. There are changes to delegated powers as follows:-

Clause 1 – Amount to be specified as upper earnings limit: Great Britain

- **Amendment to powers conferred on: Treasury**
 - **Powers exercised by: Statutory instrument - regulations**
 - **Parliamentary procedure: Affirmative resolution**
10. Section 5 of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) provides the Treasury with a power to set the level of the UEL for each tax year by regulations. However, the UEL cannot be raised sufficiently to allow for alignment with the income tax higher rate threshold because section 5(3) SSCBA 1992 limits the amount by which the UEL can be raised.
 11. Subsection 1 of Clause 1 will remove that restriction. For tax years 2009-10 onwards, the Treasury will by regulations be able to set the UEL at a level that is aligned with the higher rate income tax threshold, as announced in Budget 2007.
 12. The removal of the restriction at subsection 5(3) of SSCBA 1992 means that the Treasury will have unlimited discretion to set the level of the UEL. To compensate for that increased power subsection (2) of Clause 1 makes provision for future regulations to be made by virtue of the amended power to be subject to a greater degree of Parliamentary

control than is the exercise of the existing power by providing that regulations specifying the UEL for the 2009/10 tax year and any subsequent tax year must be laid in draft and approved by both Houses of Parliament. This reflects a similar change made by section 7(5) of the Pensions Act 2007 in respect of the power to set the lower earnings limit once the level of the basic state pension is linked to earnings.

Clause 2 – Amount to be specified as upper earnings limit: Northern Ireland

- **Amendment to powers conferred on: Treasury**
- **Powers exercised by: Statutory instrument - regulations**
- **Parliamentary procedure: Affirmative resolution**

13. This Clause replicates in full the provisions of Clause 1 in respect of the equivalent Northern Ireland legislation the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Clause 3 – Additional pension: upper accrual point

- **Powers conferred on: Treasury**
- **Powers exercised by: Statutory instrument - regulations**
- **Parliamentary procedure: Negative resolution**

14. This Clause amends Sections 22, 44 and 122 of the SSCBA 1992, allowing for the early introduction of the UAP from 6 April 2009. The UAP will be used as the earnings ‘cap’ for calculating accruals of S2P and for calculating contracted-out rebates in respect of those earners who are contracted-out of S2P.
15. Clause 3(2) and (3) replace “the flat rate introduction year”, as introduced in the Pensions Act 2007 and which was to be set by order, with the tax year in which the UAP is to be introduced – the 2009-10 tax year.

16. Clause 3(4) amends the definition of the UAP and sets it at £770. This is intended to be the level of the UEL which will be set by separate regulations for the 2008-09 tax year using existing powers and subject to the usual Parliamentary process.
17. Clause 3(4) also provides a new regulation making power subject to the negative procedure. Under this power the Treasury will be able to prescribe an equivalent to the UAP in relation to earners who are paid otherwise than weekly, for example, monthly paid earners. The power also allows for the prescribed equivalent to be rounded to whole pounds.
18. As the UAP, once introduced, will be fixed, so too will the prescribed equivalents. The Department has followed the precedent in Social Security legislation that the overall legislative framework is set out on the face of an Act - in this case the SSCBA 1992 and the relevant Department (either HM Treasury, HMRC or the Secretary of State for the Department for Work and Pensions) is given the power to amend the detailed rules without having to take up a substantial amount of Parliamentary time amending the primary legislation. In the case of the power to prescribe equivalents to the UAP the equivalents will be included in existing regulations that set out the prescribed equivalents of the lower and upper earnings limit.

Table of Delegated Powers

Measure	Clause Number	What it amends	What the regulation making power provides
Power to specify the Upper Earnings Limit	Clause 1	Clause 1 amends the power at section 5 of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) to set the level of the Upper Earnings Limit (UEL) for Great Britain for the 2009/10 tax year.	<p>The amendment removes the restriction on the maximum level at which the UEL can be set by HMT. Currently it is restricted to a figure that is no greater than 7.5 times the Primary Threshold (PT).</p> <p>The amendment will allow the Treasury to set the level of UEL at the level at which higher rate income tax becomes payable.</p> <p>The removal of the restriction is accompanied by a requirement that the regulations specifying the UEL have to be subject to affirmative resolution (approved by both Houses of Parliament).</p>
Power to specify the Upper Earnings Limit	Clause 2	Clause 1 amends the power at section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 to set the level of the UEL for Northern Ireland for the 2009/10 tax year.	<p>The amendment removes the restriction on the maximum level at which the UEL can be set by HMT. Currently it is restricted to a figure that is no greater than 7.5 times the Primary Threshold (PT).</p> <p>The amendment will allow the Treasury to set the level of UEL at the level at which higher rate income tax becomes payable.</p> <p>The removal of the restriction is accompanied by a requirement that the regulations specifying the UEL have to be subject to affirmative resolution (approved by both Houses of Parliament).</p>
Additional pension: Upper accrual point to replace the upper earnings limit from 2009/10	Clause 3(4)(b)	Introduces a new power at section 122(6A) and (6B) of the SSCBA 1992 to prescribe an equivalent of the upper accrual point (UAP) in relation to earners paid otherwise than weekly.	<p>The UAP is set out in legislation at £770 per week. It will be fixed at that level. This power allows HMT to prescribe an equivalent of the UAP in relation to earners paid otherwise than weekly, for example monthly paid employees. The power also allows for the prescribed equivalent to be rounded to whole pounds. Once set the UAP prescribed equivalents will not change.</p> <p>The power to make regulations is subject to the negative procedure.</p>