NATIONAL INSURANCE CONTRIBUTIONS (INCREASE OF THRESHOLDS) 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 National Insurance Contributions (Increase of Thresholds) Bill ("the Bill"). The Bill will be introduced in the House of Commons on 24 March 2022. 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. The Government has an ultimate ambition to align the NICs starting thresholds with the income tax personal allowance. For the 2020-21 tax year the PT and LPL were raised by over £800 to £9,500, representing a tax cut for 31 million workers. For 2021-22, the PT and LPL were increased by CPI to £9,568. The current legislated position for 2022-23 is a further increase by CPI to £9,880 from April.

3. At Spring Statement 2022 the government has announced that it will meet this ambition by aligning the starting thresholds from July 2022 and, alongside this, from April 2022, self-employed individuals with profits below the LPL will continue to be able to build up National Insurance credits but will not pay any Class 2 NICs. This Bill provides the Government with regulation making powers to provide for this.

C. DELEGATED POWERS

4. The Bill contains new delegated powers in relation to the operation of the thresholds in Class 1, Class 2 and Class 4 NICs.

<u>Power to make provision for purpose of ensuring that individuals do not pay Class 2 NICs if their profits are less than the Lower Profit Limit</u>

Clause 3 – United Kingdom: power to provide that individuals do not pay Class 2 NICs if their profits are less than the threshold for paying Class 4 NICs

- ***Power conferred on: the Treasury***
- ***Power exercised by: Regulations***
- ***Parliamentary procedure: draft affirmative if it amends primary legislation, otherwise negative***

5. Clause 3 requires the Treasury to make provisions for the purpose of securing that a person does not pay Class 2 contributions where their profits for a tax year are less than the threshold for paying Class 4 NICs. Regulations made under this power may treat individuals whose profit is below the LPL as having made Class 2 contributions, and that the regulations may have effect from 6 April 2022 and amend an Act of Parliament. This power is considered appropriate to ensure the delivery of the government's objective of ensuring those with profits between the LPL and the Small Profits Threshold (SPT) (the current threshold for paying mandatory Class 2 NICs) maintain their National Insurance record, but do not pay Class 2 NICs.

6. Clause 5(2) applies s175(3) and (4) of the Social Security Contributions and Benefits Act 1992 to regulations under this power. Those subsections allow the powers to be exercised to less than their full extent, to make different provision in different cases and to make incidental, supplemental, consequential or transitional provision.

7. Clause 5(3) provides that regulations made under this power are to be subject to the draft affirmative procedure if they amend primary legislation. Otherwise, clause 5(4) provides that negative procedure applies. As Class 2 NICs, including the current threshold, is provided for in primary legislation, regulations will need to amend primary legislation and will therefore invoke the draft affirmative procedure.

8. The Government believes that the draft affirmative procedure is appropriate in respect of this power because it allows an Act of Parliament to be amended.

<u>Power to make consequential amendment to regulations</u>

Clause 4(4) – United Kingdom: power to amend or otherwise modify the Social Security (Contributions) Regulations 2001 (SI 2001/1004) in consequence of provision made under the Act

- ***Power conferred on: the Treasury***
- ***Power exercised by: Regulations***
- ***Parliamentary procedure: negative***

9. Clause 4(4) confers a power on the Treasury to modify or otherwise amend SI 2001/1004 as the Treasury considers appropriate in consequence of provision made by the Act. This power is considered appropriate to ensure the effective operation of the Act by allowing consequential provisions in regulations, in order to avoid the need for separate primary legislation each time a change is needed to be made to SI 2001/1004 that cannot be made under existing powers (for instance because they do not include authority for retrospective provisions). This power may have retrospective effect to 6 April 2022 in order to secure that changes for the complete tax year can be made in year if necessary.

10. Clause 5(2) applies s175(3) and (4) of the Social Security Contributions and Benefits Act 1992 to regulations under this power. Those subsections allow the powers to be exercised to less than their full extent, to make different provision in

different cases and to make incidental, supplemental, consequential or transitional provision.

11. Clause 5(4) provides that regulations made under this power are to be subject to the negative procedure.

12. The Government believes that the negative procedure is appropriate in respect of this power because regulations made under it may only amend secondary legislation and they must be consequential to the Act which provides for setting the PT, LPL and equivalent Class 2 threshold in prescribed circumstances.

HM Treasury
23 March 2022