EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 2) REGULATIONS 2009

2009 No.

1. This explanatory memorandum has been prepared by H.M.Revenue and Customs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

The purpose of this Statutory Instrument is to specify the levels of the Lower and Upper earnings limits (LEL and UEL) and the Primary and Secondary Thresholds (PT and ST) for Class 1 National Insurance Contributions (NICs) for 2009-10.

3. Matters of special interest to the Joint Committee on Statutory Instruments

This is the first use of the affirmative procedure under section 176(1)(zb) of the Social Security Contributions and Benefits Act 1992 and the Northern Ireland equivalent.

4. Legislative Context

4.1 This affirmative instrument is being made to effect an annual uprating of limits and thresholds for NICs. It increases the LEL, the UEL and the PT and ST for the payment of Class 1 NICs for 2009-10.

4.2 The instrument is made at the same time as The Social Security Contributions (Re-rating) Order 2009, which is an affirmative instrument that brings into force the annual up-rating of National Insurance rates and thresholds of Class 2, 3 and Class 4 NICs and the Social Security (Contributions) (Amendment) Regulations 2009 No. 111 which specifies the prescribed equivalents of the Class 1 NICs limits and thresholds for earners who are paid otherwise that weekly.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury, Stephen Timms has made the following statement regarding Human Rights:

In my view the provisions of the Social Security (Contributions) (Amendment No.2) Regulations 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The NICs rates, limits and thresholds for 2009-10 were announced on 24 November 2008 in the Pre-Budget Report. This instrument gives effect to the changes to the LEL, UEL, PT and ST for Class 1 NICs.

7.2 Class 1 NICs are payable on earnings and are made up of two elements, primary contributions payable by the employee and secondary contributions payable by the employer. Section 5 of the Social Security Contributions and Benefit Act 1992, as amended by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 allow the earnings limits and thresholds for Class 1 NICs to be changed for Great Britain. Similarly Section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as amended by paragraph 1 of Schedule 10 to the Welfare Reform and Pensions Act 1999 allows the earnings limits and thresholds for Class 1 NICs to be changed for Northern Ireland.

7.2 Employees contributions are payable at the main primary percentage (currently 11%) on earnings between the PT and the UEL. From April 2003 Class 1 employee NICs have also been due at the additional primary percentage (currently 1%) on all earnings exceeding the UEL.

7.3 Employers pay Class 1 NICs on their employees' earnings above the ST at a single percentage rate. There is no upper limit for payment of employers' NICs.

7.4 The LEL is linked by statute to the amount of basic state retirement pension, rounded down to the nearest pound and is increased to £95. This instrument increases the LEL to the new level of basic state pension announced by Department for Work and Pensions on 11 December 2008.

7.5 Following the increase in the income tax personal allowance by £600 announced by the Chancellor of the Exchequer on 13 May 2008, the PT and ST are no longer aligned with the income tax personal allowance. As a result both the PT and ST thresholds will be increased to £110 for 2009-10.

7.6 In Budget 2007 it was announced that from April 2009 the UEL would be aligned, as far as possible, with the level at which higher rate income tax is payable. Changes were made to Section 5 of the Social Security Contributions and Benefit Act 1992 and Section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by sections 1 and 2 of the National Insurance Contributions Act 2008 respectively to achieve this alignment. The National Insurance Contributions Act 2008 includes a requirement that the setting of the UEL is now subject to affirmative resolution.

7.7 The equivalents of the primary and secondary thresholds where the earnings period is a month or a year are included in the Social Security (Amendment) Regulations 2009 No. 111 which contain various amendments to regulation 11 of the Social Security (Contributions) Regulations 2001.

- ***Consolidation***

7.8 These amendments will make only a small amendment to the Social Security (Contributions) Regulations 2001 which are very large and complex (the printed text ran to around 150 pages in 2001). HM Revenue and Customs has no current plans to consolidate these Regulations. On the last occasion it was a task involving 18 months work and contributions from four different Government departments.

8. Consultation outcome

No consultation has been undertaken.

9. Guidance

9.1 These Regulations do not impose a new obligation.

9.2 The NICs Rates and Thresholds for 2009-10 were announced on 24 November 2008 in an H.M.Treasury Press Release PBR08/02 and can be found on HMRC's website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is as follows. There is a P11 calculator on HMRC's CD-ROM (which is provided free of charge by HMRC) which will contain the new up-rated limits and thresholds and which will minimise the burden on employers if they choose to take advantage of it. Small businesses will need to acquaint themselves with the new limits and thresholds in order to calculate their National Insurance liabilities for the 2009/20210 tax year.

12. Monitoring & review

These Regulations make changes to existing rates and thresholds and are usually reviewed annually.

13. Contact

Kevin Rice at HM Revenue & Customs, Tel: 0207 147 2514 or e-mail: kevin.rice@hmrc.gsi.gov.uk can answer any queries regarding the instrument.