EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (LIMITS AND THRESHOLDS) (AMENDMENT) REGULATIONS 2012

2012 No. [XXXX]

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

2. Purpose of the instrument

This instrument gives effect to the annual re-rating of various National Insurance contributions (NICs) limits and thresholds. The purpose of this Statutory Instrument is to specify the levels of the Lower Earnings Limit (LEL), the Upper Earnings Limits (UEL), the Primary Threshold (PT) and the Secondary Threshold (ST) for Class 1 NICs for the tax year beginning 6 April 2012. The instrument also sets the monthly and annual prescribed equivalents of the PT and ST.

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

None.

4. Legislative Context

4.1 This affirmative instrument is being made to give effect to the annual re-rating of the weekly limits and thresholds for NICs. It increases the level of the LEL, keeps the UEL at the same level as in 2011-12 tax year and increases both the level of the PT and ST for the purposes of calculating the amount of Class 1 NICs due for the tax year 2012-13.

4.2 It specifies the prescribed equivalents of the Class 1 NICs limits and thresholds for those earners who are paid otherwise than weekly.

4.3 This instrument is being made at the same time as the Social Security (Contributions) (Re-rating) Order 2012, which is an affirmative instrument that brings into force the annual re-rating of National Insurance rates and thresholds for Class 2, Class 3 and Class 4 NICs.

4.4 In 2011 the annual re-rating regulations were entitled the Social Security (Contributions) (Amendment No. 2) Regulations 2011. The reference in the title this year to "(Limits and Thresholds)" is to ensure the consistency of numbering where there are sets of both affirmative and negative resolution social security amendment contributions regulations being made.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, David Gauke has made the following statement regarding Human Rights:

"In my view the provisions of the Social Security (Contributions) (Limits and Thresholds) (Amendment) Regulations 2012 are compatible with the Convention rights."

7. Policy background

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

7.1 In the Budget on 23 March 2011 it was announced that the basis for indexation of the rates, limits and thresholds for NICs would be by reference to the Consumer Price Index (CPI). The exceptions are as follows: the Secondary Threshold (the point at which employers start to pay NICs) which will continue to follow the Retail Price Index (RPI) and; the UEL will continue to be aligned with the point at which higher rate tax is paid. For September 2011, the rates of CPI and RPI were 5.2% and 5.6% respectively.

7.2 The figure for the NICs rates, limits and thresholds for the tax year 2012-13 were announced on 29 November 2011 in the Autumn Statement. This instrument gives effect to the changes to the LEL, PT and ST for Class 1 NICs and the prescribed equivalents.

7.3 Section 5 of the Social Security Contributions and Benefits Act 1992, as amended by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 requires that the earnings limits and thresholds for Class 1 NICs are specified for Great Britain for each tax year. 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 requires that the earnings limits and thresholds for Class 1 NICs are specified for Northern Ireland.

7.4 The LEL is the level of earnings at which entitlement to contributory benefits begins to accrue and was previously linked by statute to the amount of basic State Pension. This statutory link was broken from April 2011 to allow the basic State Pension to rise in line with earnings, prices or a 2.5 per cent increase – whichever is the greater. Following the removal of the statutory link between the LEL and the basic State Pension in April 2011 it was announced in Budget 2011 that in 2012-13 the LEL would be calculated by reference to the increase in the CPI and will increase to £107 per week.

7.5 Primary Class 1 contributions (known as "Employees' contributions") are payable at the main primary percentage (currently 12%) on earnings between the PT and the UEL. Class 1 Employee NICs are also due at the additional primary percentage (currently 2%) on all earnings above the UEL. Employers pay secondary Class 1 NICs (known as Employers' contributions) on their employees' earnings above the ST at a single percentage rate (currently 13.8%). There is no upper limit for payment of employers' NICs.

7.6 Since April 2009 the UEL has been aligned with the level at which the higher rate of 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.

7.7 In the 2011 Budget it was announced that the personal allowance would increase to £8,105 and the basic rate limit would reduce from £35,000 to £34,370 for the 2012-13 tax year. At the same time it was confirmed that the UEL would continue to be aligned with the income tax higher rate threshold of £42,475 (the sum of the personal allowance and basic rate limit). The overall effect is that the weekly UEL for 2012-13 will remain at £817 per week.

7.8 The PT is increased by reference to the CPI to £146 per week for the tax year 2012-13. The ST is increased by reference to the RPI to £144 for the tax year 2012-13.

7.9 These regulations include prescribed equivalents of the PT and ST where the earnings period is a month or a year. The monthly and annual prescribed equivalents of the PT are £634 and £7,605 respectively. The monthly and annual prescribed equivalents of the ST are £624 and £7,488 respectively. The monthly and annual equivalents of the UEL stay at £3,540 and £42,475 respectively. The prescribed equivalents of the LEL are calculated by formula already provided for in the Social Security (Contributions) Regulations 2001 (S.I. 2001 No. 1004).

- ***Consolidation***

7.10 These amendments will make only small amendments to the Social Security (Contributions) Regulations 2001 which are very large and complex (the printed text ran to around 150 pages in 2001). H.M. 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. This instrument relates to routine changes to rates, limits and thresholds as part of the annual NICs re-rating exercise.

9. Guidance

9.1 These Regulations do not impose any new obligation.

9.2 The NICs rates limits and thresholds for the tax year 2012-13 were announced on 29 November 2011 in the Autumn Statement and can be found on HMRC's website.

10. Impact

A Tax Information and Impact Note covering this instrument was published on the 23 March 2011 alongside Budget 2011. This has been updated as a result of changes to

the impacts as a result of this instrument and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To help minimise the impact of the requirements on firms employing up to and including 9 employees, the approach taken is as follows. HMRC provides the Basic PAYE Tools which includes a P11 Calculator that will work out and record an employee's tax, NICs and Student Loan deductions every payday. This will contain the new NICs rates, limits and thresholds. This free computer software package is available to download from www.hmrc.gov.uk/paye/tools/basic-paye-tools.htm. This is provided free of charge and will minimise the burden on employers if they choose to take advantage of it. For those businesses which do not have access to computers or payroll software HMRC provides manual tables.

11.3 Small businesses will need to acquaint themselves with the new limits and thresholds in order to calculate their National Insurance liabilities for the tax year 2012-13.

12. Monitoring & review

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

13. Contact

Hasan Mustafa at HM Revenue & Customs, Tel: 0207 147 2508 or e-mail: hasan.mustafa@hmrc.gsi.gov.uk can answer any queries regarding the instrument.