EXPLANATORY MEMORANDUM TO

THE DRAFT SOCIAL SECURITY, OCCUPATIONAL PENSION SCHEMES AND STATUTORY PAYMENTS (CONSEQUENTIAL PROVISIONS) REGULATIONS 2007

2007 No.

1. This Explanatory Memorandum has been prepared by HM 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. Description

2.1 These regulations come into force on 6 April 2007. Where payments are retrospectively treated as earnings for National Insurance contributions purposes, this instrument ensures that those payments will also count for Contributory Benefits, Occupational Pensions and Statutory Payments purposes as if they had been earnings at the time the payments were made.

2.2 This instrument requires approval by both Houses of Parliament.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The National Insurance Contributions Act 2006 (NI Act 2006) inserted at section 4B of the SSCBA 1992 and section 4B of the SSCBA (NI) 1992 powers to make regulations for National Insurance contributions purposes that mirror in whole or in part retrospective income tax legislation that can take effect on or after 2 December 2004. The NI Act 2006 also inserted powers at section 4C(1) to (6) of the SSCBA 1992 and section 4C(1) to (6) of SSCBA (NI) 1992 to allow those payments which are treated as earnings for National Insurance contribution purposes to count for Contributory Benefits, Occupational Pensions and Statutory Payments purposes.

4.2 These regulations amend the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001. The amendments ensure that retrospective earnings will be treated in the same manner as any other earnings for the purposes of entitlement to all contributory benefits, provided they are paid by the due date.

4.3 The regulations also amend the Occupational Pension Schemes (Contracting-out) Regulations 1996 and the Occupational Pension

Schemes (Contracting-out) Regulations (Northern Ireland) 1996, so that retrospectively treated earnings are treated as earnings for occupational pension purposes.

4.4 They also amend Social Security (Maternity Allowance) (Earnings) Regulations 2000 and Social Security (Maternity Allowance) (Earnings) Regulations (Northern Ireland) 2000, so that retrospectively treated earnings count as earnings for Maternity Allowance.

4.5 They also amend the Statutory Sick Pay (General) Regulations 1982 and Statutory Sick Pay (General) Regulations (Northern Ireland) 1982; Statutory Maternity Pay (General) Regulations 1986 and Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987; Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 and Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002, so that any amount retrospectively treated as earnings is included in the calculation of these statutory payments.

4.6 Regulation 14 is a freestanding provision the purpose of which is to put beyond doubt that in the event of an amount being retrospectively treated as earnings any earlier determination or determinations in relation to benefit, pension or statutory payment entitlement are revised where the effect of an amount being retrospectively treated as earnings is to increase the amount payable or to create an entitlement where one did not previously exist.

5 Extent

5.1 These Regulations apply throughout the United Kingdom.

6 European Convention on Human Rights

6.1 In the view of the Paymaster General, Dawn Primarolo, the provisions of these draft regulations are compatible with the Convention rights.

7. Policy Background

7.1 The Paymaster General made a statement (House of Commons Hansard Vol. 428 Col 45WS) on 2 December 2004 signalling that the Government would be prepared to act against income tax and National Insurance contribution avoidance involving employee remuneration by backdating any anti-avoidance legislation to 2 December 2004 if necessary.

7.2 The NI Act 2006 includes the necessary powers to mirror in whole or in part retrospective income tax legislation. These regulations ensure that whenever these powers are used the payments are also treated as earnings for the purposes of Contributory Benefits, Maternity Allowance, Occupational Pensions and Statutory Payments in order to

maintain the coherence of Social Security and Statutory Payments systems.

7.3 In accordance with assurance provided by Ministers these regulations were published in draft on 16 August 2006 for consultation. Once they come into force they will have effect from 2 December 2004. No significant comments were received and HMRC's response will be published on the HMRC website.

7.4 As these amendments make only minor amendments to a number of statutory instruments a consolidation of the various regulations would not be appropriate at this stage.

8. Impact

8.1 HMRC has undertaken a Regulatory Impact Assessment on the measures contained in the National Insurance Bill which became the NI Act 2006. The assessment is published on the HMRC website hmrc.gov.uk/ria/ria-nicbill05.pdf and concluded that the impact of the Act would be minimal.

9. Contact

9.1 Hasan Mustafa
HMRC
1E/09
100 Parliament Street
SW1A 2BQ

Tel: 0207 147 2508
Email: hasan.mustafa@hmrc.gsi.gov.uk