EXPLANATORY MEMORANDUM TO THE

SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO 3) REGULATIONS 2005

2005 No.778

1. This explanatory memorandum has been prepared by the Inland Revenue 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 amend the Social Security (Contributions) Regulations 2001 (the Regulations) so as to align the National Insurance Contributions (NICs) treatment of employer provided childcare and childcare vouchers with the income tax exemptions for employer provided childcare being introduced, from 6th April 2005 by section 78 and Schedule 13 to 2004 Finance Act.

2.2 They also amend the 2001 Regulations in relation to payment of Class 3 NICs as a consequence of the Gender Recognition Act 2004.

2.3 They amend the 2001 Regulations to exempt from Class 1 NICs liability, payments to a pension scheme, made on behalf of workers seconded to the UK by US employers**.**

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

3.1 These Regulations breach the 21 day rule. It is essential that the amendments in respect of the treatment of childcare vouchers should come into force on 6th April 2005. Unfortunately, a last minute decision to extend the length of the transitional period in regulation 10 delayed the making of this instrument, and it was not possible to obtain all of the necessary signatures until 17th March, which inevitably involved a breach of that rule. Although some of the other provisions could have been brought into force later, the fact that the delay was going to occur could not reasonably have been foreseen when the Regulations were being redrafted. Obtaining further Ministerial signatures to an instrument providing for split commencement would have delayed the instrument even more. The Department apologises for the breach of the Parliamentary convention.

4 Legislative Background

4.1 This instrument introduces two fundamental changes relating to childcare. The first is to limit the exemption of childcare to that which is registered or approved only and to limit childcare vouchers to those used to obtain registered or approved childcare only. The second is to limit the amount of the exemptions to £50 (whether expended on

vouchers or childcare or both) for each qualifying week as defined by sections 270A (7) and 318A(7) of Income Tax (Earnings and Pensions) Act 2003.

4.2 It also make provision to exclude administrative costs in valuation of non-cash vouchers so that the exemption applies to £50 face value.

4.3 Transsexuals over the age of 60, whose acquired gender is male, will be allowed by virtue of these Regulations to pay voluntary Class 3 NICs for periods between the date they reached age 60 and the date of the issue of the Gender Recognition certificate. The instrument also allows these payments to be made at the rate that would have applied if they had been paid in the correct year, provided that the contributions are paid either in the year in which the certificate was issued or the following year.

4.4 It also makes changes to the 2001 Regulations in respect of directors to account for the fact that they have an annual earnings period which will need to take account of the change of liability when a person changes gender aged between 60 and 64.

4.5 These Regulations also amend the 2001 Regulations to exempt pension payments made by a UK employer to a US pension scheme.

5. Extent

5.1 These Regulations apply throughout the United Kingdom.

6. European Convention on Human Rights

6.1 This instrument is subject to the negative resolution procedure and does not amend primary legislation. Accordingly, no statement of compliance with the European Convention on Human Rights is required.

7. Policy background

Childcare

7.1 The purpose of the new exemptions is to provide a better incentive, and to make it easier, for employers to offer support to employees with childcare costs. The new exemptions will widen the range of good quality childcare that qualifies for tax and NICs relief in order to best suit the needs of employees and employers. Specifically, the exemptions aim to:

- advance the Government's strategy on childcare to promote safe, good and quality childcare;

- provide incentives and wider options to encourage more employers to support such childcare provisions for staff; and

- put the tax and NICs treatment of employer-supported childcare on the same footing (so far as the two systems will permit).

Gender Recognition Act 2004

7.2 The Gender Recognition Act 2004 allows for recognition of the acquired gender. This has implications for the payment of NICs because it is linked to state pension age, which is currently different for men and women. The objective of the Gender Recognition Act is not to rewrite history for those people who undergo gender reassignment but to treat them the same as anyone else of the acquired gender.

7.3 This instrument ensures that Class 3 NICs can be paid by male transsexuals who would otherwise be time barred from making payments. This will allow a person who changed gender, who may not have paid contributions because they were over the pension age of their birth gender the opportunity to pay voluntary contributions.. It will therefore be possible to make these periods qualifying years for state pension and bereavement benefit purposes.

7.4 This instrument also makes changes to the regulations in respect of directors who change gender. This is because directors have an annual earnings period and we need to take account of the change of liability when they change gender between age 60 and 64. This amendment will deal with the case where an individual changes gender during the tax year, by ensuring that only earnings in that part of the year after the change occurs are counted for NICs purposes.

US/UK Tax Treaty

7.5 When an individual is seconded by their US employer to work in the UK, they may, in some circumstances be liable for UK income tax and NICs. Any pension payments made by their UK employer to a US pension scheme would also be liable for UK NICs, but not tax. Under the US/UK Tax Treaty dated 24 July 2001, such payments are tax free in the UK.

7.5 Current policy is to exclude from NICs liability pension scheme payments, which are exempt from UK tax under a double taxation agreement. Legislation currently excludes such payments under agreements with France, the Republic of Ireland and Denmark. This amendment aligns the NICs treatment with the tax treatment.

8. Impact

8.1 A regulatory impact assessment was published for the childcare provisions in these Regulations in April 2004. A regulatory impact assessment has not been prepared for the other provisions in these Regulations, as these do not impose any new costs on business.

9. Contact

Childcare

Ekundayo Salami

Inland Revenue

Tel: 020 7147 2482

Ekundayo.salami@ir.gsi.gov.uk

Gender Recognition & US/UK Treaty

Julia Vinall

Inland Revenue

Tel: 020 7147 2514

julia.vinall@ir.gsi.gov.uk