EXPLANATORY MEMORANDUM TO THE

SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No.4) REGULATIONS 2005

2005 No. 1086

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) (Amendment No. 3) Regulations 2005 (the No. 3 Regulations) which were laid on 17th March 2005 to align, as far as is practical, 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 There was a technical error in the transitional provision (regulation 10) which would have meant that in some circumstances, over the transitional period as a whole, the number of qualifying weeks used to calculate the exempt amount could have exceeded 26, which would have resulted in a larger amount than intended. The amendment keeps the flexibility for employees to receive vouchers "upfront" in the early months of the new childcare arrangements but subject to an overall limit of £1,300 (26 weeks x £50) on the total amount of exemption an employee can have in the period ending on 5 October 2005.

2.3 There was also an incorrect statutory reference in regulation 9 (3) of the No. 3 Regulations and this has been corrected by regulation 3

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 5th April 2005. There was a technical error in the transitional provision (regulation 10) of the No. 3 Regulations which would have meant that in some circumstances, over the transitional period as a whole, the number of qualifying weeks used to calculate the exempt amount could have exceeded 26, which would have resulted in a larger amount than intended. The amendment keeps the flexibility for employees to receive vouchers "upfront" in the early months of the new childcare arrangements but subject to an overall limit of £1,300 (26

weeks x £50) on the total amount of exemption on employee can have in the period ending on 5 October 2005. To avoid the defective provision having effect , the amendments made by No. 4 Regulations are coming into effect before the No. 3 Regulations and accordingly are in breach of the 21 day rule. The Department apologises for the breach of the Parliamentary convention.

4 Legislative Background

4.1 The No. 3 Regulations laid on 17th March introduced three fundamental changes relating to childcare. These were 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;
- 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; and
- exclude administrative costs and service charges in valuation of non-cash vouchers so that the exemption applies to £50 face value.

5. Extent

5.1 These Regulations apply throughout the United Kingdom.

6. European Convention on Human Rights

6.1 These Regulations are 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 employer supported childcare 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).

7.2 The transitional provision included in the No. 3 Regulations was to allow employees to receive childcare vouchers upfront in the early months of the new regime when they will not have had time to save up childcare vouchers or build up enough qualifying weeks they need to cover, say, the first holiday period or other time when childcare costs arise for them.

8. Impact

8.1 A full regulatory impact assessment was published for the reform of employer supported childcare in April 2004 and is available on the Inland Revenue website at www.inlandrevenue.gov.uk/ria/emp-supp-childcare.pdf .

9. Contact

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