EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 4) REGULATIONS 2011

2011 No. 1000

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) 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

2.1 This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the 2001 Regulations"). It provides for the NICs disregard in relation to qualifying childcare vouchers, to which Class 1 NICs would otherwise apply, to be amended.

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

3.1 It is regretted that this Statutory Instrument is in breach of the rule requiring laying of an instrument at least 21 days before its provisions take effect. This is due to the draft legislation period, details of which are set out below in paragraph 4.

3.2 The regulations closely mirror the policy and wording for the related tax relief for childcare vouchers in section 270A of the Income Tax (Earnings and Pensions) Act 2003. That section is being amended in the Finance Bill 2011 in two clauses. One of the relevant draft clauses was amended following comments received following the consultation on the draft Finance Bill legislation and the wording has only recently been finalised. The second tax clause has retrospective effect, to the tax year 2005-06. The related amendment for national insurance contributions (i.e. the qualification to Condition C described in paragraph 4.4) in these Regulations applies prospectively from 6th April 2011 only. This ensures that at least going forward the tax exemption and the NICs disregard operate on a similar basis.

3.3 The timing of this meant that it was not possible to make and lay the amending Statutory Instrument 21 days before it comes into force.

3.4 The amendments come into force on 6th April 2011, which is the same day that the related tax amendments for the tax exemption for childcare vouchers are due to have effect from. Employers need to be in such a position that they can apply the correct level of the disregard from 6 April 2011 in order to deliver the full policy objective of the tax exemption and NICs disregard operating from the same day.

4. Legislative Context

4.1. These Regulations amend the 2001 Regulations to allow the provision of certain non-cash vouchers to be aligned with the tax treatment of such vouchers. The relevant tax changes are due to be introduced in the Finance Bill 2011 having

been proposed by the previous government. They were consulted on in the period following the publication of HMRC's Technical Note in February 2010 and again when draft Finance Bill provisions were published in December 2010. The disregard is in respect of childcare vouchers made available through an employer-supported childcare scheme and these Regulations provide for changes to existing Condition C relating to the availability of such schemes, and for a new Condition D which relates to restricting the NICs disregard for higher earners.

4.2 Regulation 1 provides that Regulation 4 shall have effect for employees who joined an employer-supported childcare scheme before 6th April 2011, and that Regulation 5 shall have effect for employees who join an employer-supported scheme on or after 6th April 2011.

4.3 Regulation 3 introduces a new paragraph 6B which contains definitions used in both paragraphs 7 and 7A (inserted by these regulations).

4.4 Regulation 4 substitutes new wording for sub-paragraphs (1) and (6). It also inserts Conditions A to C into the 2001 Regulations which previously applied by reference to ITEPA 2003. A qualification is introduced in Condition C so that it is not prevented from being met if childcare vouchers are provided through either salary sacrifice or flexible benefit arrangements, and, as a result, the employer-supported childcare scheme is not open to relevant low-paid employees with earnings at or near the National Minimum Wage so that earnings cannot be taken below the National Minimum Wage. New paragraph 6B defines the meaning of "relevant salary sacrifice arrangements", "relevant flexible remuneration arrangements"; and "relevant low-paid employees".

4.5 Regulation 5 provides for changes for which a mirror restriction of tax relief will also apply for higher earners who join employer-supported childcare schemes on or after 6th April 2011. New paragraph 7A provides for the computation of the value of the disregard following the employer's estimate of the employee's relevant earnings in new Condition D. It also provides for changes to qualifying Condition C as described above. As a result of these changes the values of the disregard for those joining a scheme on or after 6th April 2011 will depend on whether they are an additional rate, higher rate or basic rate taxpayer. The level of the disregard will be up to £22, £28 and £55 accordingly.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These changes reflect proposed changes to the tax relief for childcare vouchers and are being made to support the Government's policies on providing support for childcare costs in order to encourage parents to work.

7.2 Under the current rules, if the employer-supported scheme is not open generally to all employees, the conditions for the disregard to apply are not met. These Regulations introduce an amendment to the relevant condition where an employer provides a scheme through either salary sacrifice or flexible remuneration arrangements to allow employees at or near the National Minimum Wage to be excluded so that employees' remuneration cannot be taken below the National Minimum Wage by entering into such arrangements as this would be contrary to the National Minimum Wage legislation. An employee in this position will normally have recourse to alternative support through the childcare element of working tax credit.

7.3. These Regulations also introduce a new Condition D to align the NICs disregard to the tax treatment of employees who join employer-supported childcare schemes on or after 6th April 2011.

8. Consultation outcome

8.1 No consultation was carried out specifically in relation to these Regulations as it was not appropriate because these changes closely follow the tax legislation, and the related tax changes were consulted on as part of the Finance Bill process. In addition guidance already published states the Government's intention to align the NICs disregard.

8.2 The new Regulations relating to the qualification of Condition C legislates an existing practice and mirror proposed changes to tax treatment.

9 Guidance

9.1 HMRC will update the guidance prepared for use by employers and parents, to include reference to the effect of this legislation.

9.2 The relevant HMRC guidance will be amended in line with the new regulations.

10. Impact

10.1 The impact of this instrument on business, charities or voluntary bodies is negligible.

10.2 No impact on the public sector is foreseen.

10.3 Two Tax Information and Impact Notes relating to this instrument were published in December 2010 alongside draft Finance Bill 2011 provisions and are available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. They remain an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1. The new regulations apply to small business.

11.2. A Small Firms Impact Test has not been undertaken. Firms with fewer than 20 employees will be included in the employers affected if they offer employer-supported childcare schemes. The impact on them will be mitigated by HMRC guidance. Some of the stakeholders involved in the consultation process for the proposed tax provisions who responded to the Technical Note issued by HMRC

in February 2010 represent both large and small employers and no distinction was drawn on the ability of smaller employers to implement the changes.

12. Monitoring & review

12.1 HMRC will monitor the impact of the Regulations in relation to childcare provisions and will review after 24 months.

13. Contact

Mrs Su McLean-Tooke Tel: 020 7147 2665 or email: susan.mclean-tooke@hmrc.gsi.gov.uk can answer any queries regarding the effect of this instrument.