EXPLANATORY MEMORANDUM

The Social Security (Contributions) (Amendment No. 5) Regulations 2004 No. 2246

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 extend the ability of employers to agree, in writing with their employees or ex-employees, for the recovery of primary National Insurance Contributions (NICs) due on security based earnings. The recovery is made by withholding securities equal to the National Insurance liability that the employer has paid on the employee's behalf. This recovery method can now be used for all employees, and for ex-employees who receive the earnings in the year after they have left the employment.

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

3.1 None.

4. Legislative Background

4.1 This Instrument is being made to make it easier for employers to recover NICs due on security based earnings that they have paid on behalf of their employees. Most "securities" are paid as shares, and the Government wishes to encourage more employers to reward their employees in this way as it gives the employee a stake in the company that they work for, and has been shown to increase productivity.

This Instrument makes consequential amendments to the Social Security (Contributions) Regulations 2001, arising from sections 1 and 2 of the National Insurance Contributions and Statutory Payments Act 2004 (NICSPA 2004) which received Royal Assent on 13th May. These sections extend the regulation making powers of the Inland Revenue to allow recovery to be made from both ex-employees and employees.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

These Regulations are subject to annulment and do not amend primary legislation. Accordingly no certificate under section 19 of the Human Rights Act 1998 is required.

7. Policy background

7.1 The objectives of the NICSPA 2004 are to bring equivalent tax, NICs and Statutory Payments regimes closer together and to make the administration of NICs less burdensome for employers. This Instrument gives the employer more opportunity to recover the primary NICs that they have paid on behalf of their employee and helps to ensure that they do not have to meet this liability themselves. Only a small number of employers who reward their employees with securities are thought to have problems in recovering the primary NICs liability. There has only been a very small amount of interest in the measure from accountancy bodies and this was broadly favourable.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as an RIA for all the measures in the NICSPA 2004, including the consequential amendments made by Statutory Instrument, was prepared for the passage of the Bill through Parliament, and therefore a further RIA is not considered necessary.

9. Contact

Chris Davis at the Inland Revenue (Tel: 020 7438 7823 or e-mail: Chris.Davis@ir.gsi.gov.uk) can answer any queries regarding the instrument.