EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY CONTRIBUTIONS (LIMITED LIABILITY PARTNERSHIP) (AMENDMENT) REGULATIONS 2015

2015 No. 607

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Social Security Contributions (Limited Liability Partnership) Regulations 2014 (S.I. 2014/3159) by inserting new regulations 2A to 2C.

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

None.

4. Legislative Context

4.1 Regulation 4 of this instrument inserts new regulation 2A into the Social Security Contributions (Limited Liability Partnership) Regulations 2014. It modifies the meaning of "employment" in Parts 1 and 6 of the Social Security Contributions and Benefits Act 1992 (c. 4) ("SSCBA") and Parts 1 and 6 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) as they relate to contributions by providing that "employment" includes membership of a limited liability partnership which carries on a trade, profession or business with a view to profit.

4.2 Regulation 4 of this instrument also inserts new regulation 2B and 2C into the Social Security Contributions (Limited Liability Partnership) Regulations 2014. New regulation 2B. It provides that a person in Great Britain who is a member of a Limited Liability Partnership is to be treated as a self-employed earner for the purposes of the SSCBA unless the Salaried Member Rules in regulation 3 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014 apply to them. New regulation 2C makes equivalent provision for Northern Ireland.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 In April 2013 HMRC announced a change in interpretation of the law (http://webarchive.nationalarchives.gov.uk/20130605091904/http://www.hmrc.gov.uk/news/sps-lps-announce.pdf) so that sleeping partners and inactive Limited Partners were liable to pay Class 2 and 4 NICs. These regulations will ensure that inactive members of LLPs will be liable to pay Class 2 NICs in the same way as sleeping partners and inactive Limited Partners. The regulations also ensure that liability to pay Class 2 NICs is not a determining factor in the decision of whether individuals operate through an LLP or a partnership.

- ***Consolidation***

7.2 There are currently no plans to consolidate the Social Security Contributions (Limited Liability Partnership) Regulations 2014.

8. Consultation outcome

8.1 This instrument has not been published in draft. The scope of the changes contained in this instrument are limited to providing that, for the avoidance of doubt, the Class 2 NICs position of inactive members of LLPs follows that of sleeping partners and inactive Limited Partners.

9. Guidance

9.1 HMRC guidance will be updated for the start of the 2015/16 tax year.

10. Impact

10.1 The provisions in this instrument clarify the law with relation to the Class 2 NICs position of inactive members of LLPs. Consequently, there is not likely to be a significant impact on businesses, charities or the voluntary sector.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering the changes included in this instrument is published here: https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins

11. Regulating small business

11.1 There is likely to be a small positive administrative impact on small businesses operating through LLPs in terms of considering whether they are liable to pay Class 2 NICs. The changes in this instrument are aimed at ensuring that there is no difference in the liability to pay Class 2 NICs whether they operate through an LLP or a partnership.

12. Monitoring & review

HMRC will monitor the practical effects of this legislation to ensure the objectives of it are met.

13. Contact

Raj Nayyar at HMRC, Tel: 03000 586543 or e-mail: raj.nayyar@hmrc.gsi.gov.uk can answer any queries regarding the instrument.