EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CREDITING AND TREATMENT OF CONTRIBUTIONS, AND NATIONAL INSURANCE NUMBERS) (AMENDMENT) REGULATIONS 2013

2013 No. 3165

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These Regulations set out how unpaid Class 2 National Insurance contributions (NICs) recovered by Her Majesty's Revenue and Customs (HMRC) through the individual's Pay As You Earn (PAYE) code (referred to informally as coding out) should be treated for social security contributory benefit purposes.

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

None.

4. Legislative Context

4.1 HMRC is extending the use of the PAYE tax code in accordance with section 684 of the Income Tax (Earnings and Pensions) Act 2003 and regulation 14A of The Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) available at www.legislation.gov.uk/uksi/2003/2682/contents/made. This will enable HMRC to collect certain unpaid Class 2 NICs via the PAYE system.

4.2 Regulation 63A of The Social Security (Contributions) Regulations 2001 (S.I 2001/1004) available at www.dwp.gov.uk/docs/a3-1001.pdf sets out how the debt to be recovered should be computed. This will be by reference to the highest weekly rate of such contributions in the period beginning with the contribution week to which the debt relates and ending with the day on which the PAYE code is determined.

4.3 These Regulations are consequential upon the HMRC legislation. They amend regulation 4 of The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulation 2001 (S.I. 2001/769) www.dwp.gov.uk/docs/a3-2201.pdf which describes how late paid contributions are treated for the purposes of entitlement to contributory benefits.

5. Territorial Extent and Application

The Regulations apply to Great Britain. Separate but corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

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

7.1 HMRC is extending the use of the PAYE tax code to recover debts of Class 2 National Insurance contributions (NICs), providing another method of collecting such debts. Class 2 NICs count towards certain contributory benefits including basic State Pension, bereavement benefits; Employment and Support Allowance and Maternity Allowance. Class 2 NICs are paid on time if they are paid by the first Sunday in the calendar year following the end of the tax year in which they were due. Contributions paid after that time but within six years are generally classed as late paid and only count for benefit purposes from the date they are paid, or in certain cases from a future date; they do not count for past periods. Class 2 NICs debts recovered through PAYE will be classed as late paid. These amending regulations set out that such contributions will be treated as paid on the last day of the tax year in which they are recovered. From that date they will be treated in the same way as other late paid contributions.

- **Consolidation**

7.2 Informal consolidation of this instrument will be included in due course in the Department's "The Law relating to Social Security" (the Blue Volumes) which is available at no cost to the public on the internet at: http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 HMRC's proposal to extend coding out was first consulted on in June 2007 as part of the Review of Powers, Deterrents and Safeguards. Further consultation was then undertaken in November 2008 in the document "Modernising Powers, Deterrents and Safeguards: Payments, Repayments and Debt: The Next Stage"[1]. The consultation document formally proposed that HMRC would extend the existing legislation to collect any small debt through adjustment to the employee's notice of coding. HMRC published "Responses to consultations and explanations"[2] in April 2009. The proposal was seen as sensible.

8.2 As these Regulations are consequential on the measure introduced by HMRC, do not alter the policy and are technical in nature, a separate consultation on these regulations is not required. However, in line with good practice, the Regulations have been published in draft on GOV.UK available at https://www.gov.uk/government/publications/treatment-of-class-2-ni-contributions-recovered-through-the-paye-tax-code-draft-amended-regulations and linked to the HMRC website. No comments have been received. The Social Security Advisory Committee has agreed that the Regulations should not be referred to it.

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1 http://webarchive.nationalarchives.gov.uk/20100711235311/http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_029025

2 http://webarchive.nationalarchives.gov.uk/20100711235311/http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_029450

9. Guidance

There is existing guidance in the relevant benefit chapters on the treatment of late paid contributions in the Decision Maker's Guide available at www.gov.uk/government/collections/decision-makers-guide-staff-guide. Regulation 4 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 is cited as a legal reference. No changes are required to the guidance as a result of these Regulations.

10. Impact

10.1 This instrument has no impact on business or civil society organisations.

10.2 This instrument has no impact on the public sector.

10.3 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

The Regulations do not apply to small businesses.

12. Monitoring & review

The effect of these Regulations is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of these Regulations is required.

13. Contact

Gill Simpson at the Department for Work and Pensions Tel: 020 7449 7153 or email: gill.simpson@dwp.gsi.gov.uk can answer any queries regarding the instrument.