[This is an updated version of the Explanatory Notes containing an additional section relating to fast-track legislation (published 13 September 2021)]

HEALTH AND SOCIAL CARE LEVY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Health and Social Care Levy Bill as introduced in the House of Commons on 8 September 2021 (Bill 160).

- These Explanatory Notes have been prepared by HM Revenue and Customers (HMRC) to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The Bill deals with the introduction of a new Health and Social Care Levy, transitional arrangements to provide for a temporary increase in rates of Class 1, 1A, 1B and Class 4 National Insurance contributions (NICs) and how funds raised will be used.

Policy background

2 The Government has announced an increase to health and social care funding. To pay for this, it will introduce a Levy based on National Insurance contributions (NICs) which already part-fund the NHS and have historically been the way in which money is raised for social security provision.

3 This Bill introduces a new 1.25% Health and Social Care Levy which is payable where an employee, employer or self-employed individual has a liability in respect of a "qualifying National Insurance contribution" – Class 1, Class 1A, Class 1B and Class 4 NICs. The levy will also apply if an individual would be liable in respect of a "qualifying National Insurance contribution" were it not for the relevant pension age restrictions. The effect of this is that individuals in work who are over State Pension age will be liable to this Levy. Funds raised from the Levy will be used for the purpose of health and social care.

4 This Levy will have effect from April 2023. For the 2022-23 tax year, the Bill contains transitional arrangements that provide for a temporary 1.25 percentage point increase to both the main and additional rates of Class 1, Class 1A, Class 1B and Class 4 NICs and a corresponding increase to the NHS allocation. Individuals over State Pension age will not be affected during the 2022-23 tax year.

5 Existing legislative provisions relating to the qualifying National Insurance contributions (thresholds, reliefs, reporting, record keeping requirements etc) will apply to the Levy as they apply to the contribution.

6 Basing the Levy on NICs has several advantages. As a progressive tax it means that every working individual and business will contribute, and the NICs system includes existing protections for small businesses (which will also apply to the Levy). Using NICs as a model also provides a UK-wide approach.

Legal background

7 The Health and Social Care Levy is a new tax; there is therefore no existing legislation relating to it.

8 However, the Bill applies legislation relating to the existing system of NICs to the Levy. The main legislation for that system is contained in a combination of primary and subordinate legislation. That legislation includes:

- The Social Security Contributions and Benefits Act 1992 (SSCBA 1992).
- The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992).
- The Social Security Administration Act 1992 (SSAA 1992).
- The Social Security Administration (Northern Ireland) Act 1992 (SAA(NI)A 1992).
- The Social Security (Contributions) Regulations 2001 (SI 2001/1004).

9 Except for modifications to facilitate the transitional arrangements for the 2022-2023 tax year, the Bill does not amend existing NICs and social security benefits legislation.

Territorial extent and application

10 The Bill extends to England and Wales, Scotland and Northern Ireland.

11 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without consent of the legislature concerned.

12 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Scotland

13 The Bill does not contain any provisions relating to matters which are within the legislative competence of the Scottish Parliament. Under Schedule 5 of the Scotland Act 1998, tax policy, apart from devolved taxes, is a reserved matter, and NICs are also a reserved matter. The Levy is not a devolved tax. Therefore, no Legislative Consent Motion is being sought in relation to any provisions of the Bill. If there are amendments relating to the legislative competence of the Scottish Parliament consent will be sought for them.

Wales

14 The Bill does not contain any provisions relating to matters within the legislative competence of the National Assembly for Wales. Under Schedule 7A of the Government of Wales Act 2006, tax policy, apart from devolved taxes, is a reserved matter, and NICs are also a reserved matter. The Levy is not a devolved tax. Therefore, no Legislative Consent Motion is being sought in relation to any provisions of the Bill. If there are amendments which relate to such matters, consent will be sought for them.

Northern Ireland

15 The Bill does not contain any provisions relating to matters within the legislative competence of the Northern Ireland Executive. Under the provisions of Schedule 2 to the Northern Ireland Act 1998, taxes applying to the UK as a whole, including the Levy, and NICs are both excepted matters. Northern Ireland has separate, but materially identical National Insurance contribution legislation The Bill therefore applies to the relevant Northern Ireland legislation relating to NICs, where stated. If there are amendments which relate to non-excepted matters, consent of the Northern Ireland Assembly will be sought for them.

Fast-track legislation

1 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards[1], the House of Lords Select Committee on the Constitution recommended that the Government "should provide more information as to why a piece of legislation should be fast-tracked[2]". The justification for fast-tracking the Bill is explained below.

2 The legislation is required to be in place for the 2022-23 tax year, which starts on 6 April 2022. The increase in National Insurance rates for that year will require changes to be made to the systems of employers and HMRC (including those designed to facilitate Pay as You Earn). To help ensure that people are not over or under taxed it is important for both those employers and HMRC to have as much time as possible to implement the changes. This is particularly important given all employers in the UK liable for NICs will be affected.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

3 The Bill was introduced as soon as possible after the announcement of the intention to introduce a Health and Social Care Levy. While the Bill reflects an important and significant policy, the Bill is short (containing only 5 substantive clauses). The principle of the policy was debated in the context of the ways and means resolution on which was introduced.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

4 No consultation has taken place in relation to the Bill. This is not unusual for measures having the effect of increasing rates of taxation.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

5 The Levy is a permanent change to the tax system to ensure the increases to health and social care spending are fully funded. A separate sunset clause is therefore not appropriate.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

6 As is the case for tax policy, the Health and Social Care Levy will be continuously kept under review using information collected from internal systems, National Insurance, and Levy receipts.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

7 The Health and Social Care Levy is a new tax; there is therefore no existing legislation relating to it. The policy could have in part been achieved by a permanent increase in the rates of National

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[1] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I

[2] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I, para. 186

Insurance Contributions. However, that would be less transparent (since none of the proceeds are payable to the National Insurance Fund) and it would not secure that payments are made in respect of earning and profits of persons over State Pension age.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

8 A European Convention on Human Rights analysis is included in these Explanatory Notes for the Joint Committee on Human Rights.

Commentary on provisions of Bill

Clause 1: Health and Social Care Levy

9 Clause 1(1) states that every person who is liable to pay a qualifying National Insurance contribution, or would be liable if the pension age restrictions are ignored, will also be liable to pay a new tax. This tax is to be known as the Health and Social Care Levy (Clause 1(2)). This tax will be charged on the same amount of earnings (for employees and employers) or profits (for the self-employed) that the contribution is payable on. It will be equal to 1.25% of the amount of earnings or profits.

10 Clause 1(3) defines 'qualifying National Insurance contribution' as:

a. Primary Class 1 contributions (employees),

b. Secondary Class 1 contributions (employers),

c. Class 1A contributions (employers),

d. Class 1B contributions (employers),

e. Class 4 contributions (self-employed).

11 Clause 1(4) specifies the "pension age restriction provisions" that are to be ignored for the purpose of this Levy are any provisions made by or under any enactment that provides for an exemption from liability to pay a qualifying National Insurance contribution by reference to a person having attained pensionable age.

12 Clause 1(5) specifies that when determining the amount of the Levy chargeable in relation to a contribution, where the relevant percentage in respect of secondary Class 1 contributions is 0%, those earnings are to be ignored. This means that where relief is provided from secondary Class 1 contributions by way of a 0% rate (for example, in relation to certain apprentices), that relief will also apply to the Levy.

13 Clause 1(6) stipulates that the new Levy will have effect in relation to qualifying National Insurance contributions payable on or after 6 April 2023.

Clause 2: Destination of proceeds of Health and Social Care Levy

14 Clause 2(2) states that the proceeds (including relevant penalties and interest) from this new levy will be paid by HMRC to the Secretary of State towards the cost of health and social care in England, Wales, Scotland and Northern Ireland. Clause 2(2) provides the Treasury with a discretionary power to determine the share of the Levy between health and social care and that each nation will receive.

15 Clause 2(1) allows HMRC to deduct expenses associated with the collection of the health and social care levy, or recovering any relevant penalties or interest, from the amount paid to the Secretary of State.

16 Clause 2(3) clarifies that 'relevant penalties or interest' means penalties and interest that arise in

connection with the Health and Social Care Levy to the extent that they can be attributed to the Levy.

17 Clause 2(4) requires HMRC to pay any amounts deducted under Clause 2(1) into the Consolidated Fund.

Clause 3: Application of national insurance contributions legislation

18 Clause 3(1) states that, for the purpose of operating the Levy, any provisions, that apply in relation to a qualifying National Insurance contribution will also apply to the Levy payment corresponding to the contribution.

19 Clause 3(2) provides examples of provisions that may apply in relation to the Levy, these include:

a. Information, accounting and reporting requirements,

b. assessment, collection and payment requirements,

c. rights of appeal,

d. administration, penalties or interest, and

e. priority of amounts owed to HMRC in cases of insolvency.

20 However, Clause 3(3) specifies that provisions relating to a person's entitlement to benefits or limiting the maximum amount of National Insurance contributions that are payable do not apply to the Levy. This means that payment of the new Health and Social Care Levy does not give rise to entitlement to contributory benefits.

21 Clause 3(4) makes the application of legislation by subsection (1) subject to other provision made by this Act, or by regulations made under this Act, and to any necessary modifications (including any modifications necessary to secure the payment of the Levy by individuals to whom the pension age restrictions provisions apply) .

Clause 4: Regulations

22 Clause 4(1) provides the Treasury with regulation-making powers to make general provision for the purposes of the Health and Social Care Levy.

23 Clause 4(2) provides examples of provisions that may be made under Clause 4(1) for the purposes of the Levy, which include provisions:

a. about reliefs or exemptions from the Levy,

b. that disapply the application of any provisions of NICs legislation that would otherwise be applied for the Levy by Clause 3(1),

c. that modify the application of any legislation applied by Clause 3(1)) in relation to the Levy,

d. that apply (including with modification) provisions of the Tax Acts (i.e. legislation concerned with Income Tax or Corporation Tax) in relation to the Levy (so fare as they would not already be applied by Clause 3(1)).

24 Clause 4(3) allows regulations under Clause 4(1) to make:

a. different provision for different purposes,

b. supplementary, incidental and consequential provisions, or

c. transitional or transitory provisions and savings.

25 Clause 4(4) to (6) specifies the Parliamentary procedure for regulations made under Clause 4(1). Regulations that have the effect of limiting the application of (or reducing or removing) any existing

relief or exemption, are subject to the affirmative procedure in the House of Commons only (subsection (4) and (5)). Under Clause 4(6), all other regulations will be subject to the negative procedure in the House of Commons only.

Clause 5: Transitional provision: temporary increase in rates of NICs payable to NHS

26 Clause 5 sets out the transitional arrangements for this measure. Clause 5(1) specifies that these arrangements will only apply for the 2022-2023 tax year.

27 Clause 5(2) modifies the percentage rates of National Insurance contributions for the 2022-23 tax year set out in Part 1 of the SSCBA 1992 so that, for the 2022-23 tax year:

a. the main rate of Primary Class 1 will be 13.25% (increased from 12% in 2021-22),

b. the additional rate of Primary Class 1 will be 3.25% (increased from 2% in 2021-22) ,

c. Secondary Class 1 will be 15.05% (increased from 13.8% in 2021-22),

d. the main rate of Class 4 will be 10.25% (increased from 9% in 2021-22),

e. the additional rate of Class 4 will be 3.25% (increased from 2% in 2021-22).

28 Clause 5(3) secures that NICs rates cannot subsequently be raised in tax year 2023-24 by reference to the higher temporary rates in 2022-23.

29 Clause 5(4) replicates the modifications made by of Clause 5(2) in Part 1 of SSCB(NI)A 1992, so that the temporary rate modifications also apply to Northern Ireland.

30 Clause 5(5) modifies section 162(5) of SSAA 1992. It stipulates that, for the 2022-23 tax year, the amount of contributions that are allocated to the NHS are increased as follows. This ensures that all of the proceeds raised from the temporary rate increase set out at Clause 5(2) and 5(4) are directed to the NHS.

a. 69.23% increased from 50% of the proceeds from the additional rate of Class 1 and 4 will be allocated to the NHS,

b. 3.30% increased from 2.05% of earnings in respect of the main rate of Primary Class 1 NICs will be allocated to the NHS

c. 3.15% increased from 1.9% of earnings in respect of Secondary Class 1 NICs will be allocated to the NHS

d. 3.15% increased from 1.9% of earnings (and other forms of income) in respect of the Class 1A NICs will be allocated to the NHS

e. 3.15% increased from 1.9% of earnings (and other forms of income) in respect of the Class 1B NICs will be allocated to the NHS

f. 3.4% increased from 2.15% of profits in respective of Class 4 NICs will be allocated to the NHS.

31 Clause 5(6) replicates the provisions of Clause 5(5) in respect of section 142(5) of SSA(NI)A 1992, so that the further allocation of contributions to the NHS also applies in Northern Ireland.

Clause 6: Interpretation

32 This Clause defines various terms used in the Bill.

Clause 7: Short title and Crown application

33 Clause 7 gives the short title of the Act as the Health and Social Care Levy Act 2021 and provides for

the Act to apply to the Crown.

Commencement

34 This Bill will commence on Royal Assent.

Financial implications of the Bill

35 The fiscal impact of the measures will be subject to scrutiny by the Office for Budget Responsibility and will be set out at the Budget.

36 The introduction of the Levy from April 2023, and the transitional arrangements for the 2022 to 2023 tax year, will require changes to HM Revenue and Custom's IT systems. There will also be extra staff costs supporting customers and ensuring compliance with the new system. Those costs are currently being quantified.

Parliamentary approval for financial costs or for charges imposed

37 The Bill requires a ways and means resolution to cover the imposition of the Health and Social Care levy where the proceeds of the Levy will go towards the cost of health and social care. A resolution is also needed to cover the temporary increase in the rates of National Insurance contributions with the consequential temporary increase in the National Health Service allocation.

Compatibility with the European Convention on Human Rights

38 The Chancellor of the Exchequer, has made the following statement regarding Human Rights:

"In my view the provisions of the Health and Social Care Levy Bill are compatible with the Convention Rights".

39 The provisions of this Bill engage and potentially interfere with the rights provided for in Article 1, Protocol 1 to the European Convention of Human Rights (protection of property). The provisions of the Bill also potentially engage and interfere with Article 14 (discrimination) and engage Article 6 (right to a fair trial). However the Bill is considered to be compatible with the Convention. Article 1 Protocol 1 expressly does not impair the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions (which would, in this case, relevantly include National Insurance contributions). Furthermore, HMRC is of the view that any interference would be proportionate because it is well within the broad margin of appreciation afforded to the state in fiscal matters. Interference with Article 14 is justified by reference to other factors. The Bill does not interfere with Article 6 as the imposition of any civil or criminal penalties carry a right of appeal to an independent tribunal.

Related documents

40 The following documents are relevant to the Bill and can be read at the stated locations:

- Link to announcement
- Link to TIIN
- Link to legislation

Annex - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 2	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 3	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 4	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 5	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 6	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 7	Yes	Yes	N/A	Yes	N/A	Yes	N/A

Subject matter and legislative competence of devolved legislatures

41 There is no matter in the Bill that is within the legislative competence of the devolved legislatures.

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