

# **NATIONAL INSURANCE CONTRIBUTIONS BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the National Insurance Contributions Bill as brought from the House of Commons on 11th December 2013. They have been prepared by HM Revenue & Customs (HMRC) in order to assist the reader of the Bill and to help inform debate on it. These explanatory notes do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### *Structure of these notes*

3. These notes begin with a brief overview of National Insurance contributions (NICs) and the measures contained within the Bill. This is followed by an outline of the structure of the Bill, its territorial extent and application and commentary on the Bill's clauses. The final part contains information about the Bill's financial effects, compatibility with the European Convention on Human Rights and when the provisions in the Bill come into force. Annex A contains a glossary of terms used in these notes.

### **SUMMARY AND BACKGROUND**

#### *Overview of NICs*

4. The National Insurance Scheme was first established in 1911 and expanded in the late 1940s to provide funds for a more comprehensive and inclusive range of contributory benefits and to provide assistance with the funding for a new National Health Service.
5. Briefly, the scheme consists of a number of benefits financed by NICs payable by earners, employers and others. Employees pay NICs on their earnings, employers pay NICs on the earnings they pay to their employees and the self-employed pay NICs on their profits and gains.

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6. An earner can be either an employed earner or a self-employed earner. An employed earner is a person who is gainfully employed in Great Britain or Northern Ireland either under a contract of service, or in an office (including elective office) with general earnings. A self-employed earner is a person who is gainfully employed in Great Britain or Northern Ireland otherwise than as an employed earner. Provision is made within the scheme to allow those who are not compulsorily covered to protect their entitlement to the state retirement pension and bereavement benefits by means of voluntary NICs payments.
7. NICs are divided into six classes.
  - Class 1 contributions, which are paid by both employees and employers on the employee's earnings – the employee's share is known as the primary contribution, the employer's as the secondary contribution. Class 1 contributions are payable on all gross earnings including commissions, overtime and bonuses, on readily convertible assets given to employees and on employees' liabilities paid by employers. Primary contributions are payable at 12% of earnings above £149 up to £797 per week and 2% of all earnings above this limit. Secondary contributions are payable at 13.8% of all earnings above £148 per week. There are arrangements for reducing the rates of both primary and secondary contributions where the employee has contracted out of the State Second Pension. Class 1 contributions are normally collected monthly by HMRC along with income tax deducted under Pay As You Earn (PAYE).
  - Class 1A contributions are payable annually, by employers only, on most taxable benefits in kind. Class 1A contributions are payable at a rate of 13.8%.
  - Class 1B contributions are payable annually by employers on items which are dealt with under a PAYE Settlement Agreement (PSA) for income tax. Class 1B contributions are payable at a rate of 13.8% on the value of the items included in the PSA and on the total tax payable by the employer under the PSA.
  - Class 2 contributions are paid by the self-employed at a flat rate of £2.70 per week. A self-employed person can apply to be exempted from liability where earnings are below £5,725 per year. Class 2 contributions are paid either monthly or six monthly.
  - Class 3 contributions are paid on a voluntary basis, at a flat rate of £13.55 per week, by people who fall outside the scope of Class 1 and Class 2 contributions.
  - Class 4 contributions are paid annually by the self-employed on profits that are immediately derived from a trade, profession or vocation and which are chargeable to income tax under Chapter 2 of Part 2 of the Income Tax (Trading and Other Income) Act 2005. Class 4 NICs are payable at a rate of 9% on profits between £7,755 and £41,450 and 2% on profits above £41,450.

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### ***Employment Allowance***

8. At Budget 2013 the Government announced that it would introduce an “employment allowance” of up to £2,000 a year for all businesses, charities and Community Amateur Sports Clubs to offset against their liability for secondary Class 1 NICs. The Bill introduces the allowance and sets out how a person qualifies for it.
9. The employment allowance will be delivered through standard payroll software and HMRC’s Real Time Information system. Employers will self-declare their eligibility through their regular payroll processes and this confirmation will ensure that up to £2,000 in any one tax year will be deducted from their secondary Class 1 NICs liability over the course of the year’s payments under PAYE.

### ***The age-related secondary percentage***

10. In his Autumn Statement on 5th December 2013, the Chancellor of the Exchequer announced that the Government would bring forward legislation that will effectively remove the requirement for employers to pay secondary Class 1 NICs in respect of the earnings of any employee under the age of 21. The measure will apply both to new and existing employees aged under 21 with effect from 6th April 2015 and will be restricted to earnings below an amount equal to the Upper Earnings Limit (UEL) which is forecast to be £813 per week (annual equivalent £42,285) in 2015-16.
11. The Bill also provides for a regulation making power, exercisable by the Treasury, to add an age group to those in respect of whom a reduced rate of secondary Class 1 NICs applies (“the age-related secondary percentage”) and to specify what that reduced rate is and to reduce (or further reduce) the age-related secondary percentage for a previously specified group.

### ***Application of General Anti-Abuse Rule (GAAR) to National Insurance***

12. The Government announced at Budget 2012 that it had accepted the recommendations of the Aaronson Report to introduce a GAAR targeted at abusive tax avoidance schemes. The Tax GAAR was introduced by Part 5 of the Finance Act 2013.
13. The GAAR, as this Bill would apply it with modifications, is designed specifically to target only those NICs arrangements which are regarded as abusive. The rules will consider whether an arrangement is abusive, by considering whether the arrangement can reasonably be regarded as a reasonable course of action. This is known as the “double reasonableness” test - and if it cannot, then any resulting

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NICs advantage would be counteracted by making adjustments to charge the right amount of NICs.

***Oil and gas workers on the Continental Shelf***

14. At Budget 2013 the Chancellor announced that the Government would strengthen legislation in respect of offshore employment intermediaries. The measure, in this Bill, is intended to address avoidance schemes in the oil and gas industry involving the placement of the employer of oil and gas workers (who are working on the UK Continental Shelf) outside the UK. This will be addressed largely by means of using existing powers (mainly contained in section 120 of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) and the Bill supplements those powers so as to include new certification provisions.
15. The Bill amends section 120 of the SSCBA 1992 to provide a regulation making power in connection with a system of certification where the National Insurance obligations are fulfilled by someone on behalf of the secondary contributor.
16. Equivalent legislation to introduce a similar certification scheme for PAYE obligations will be made in Finance Bill 2014.

***Partnerships: Class 4 contributions and limited liability partnerships***

17. As announced at Budget 2013, HMRC carried out a formal consultation between May and August on changing partnership tax rules as part of a partnerships review. There are two strands of the consultation proposals: (i) preventing the disguising of employment using Limited Liability Partnerships (LLPs) by removing the presumption of self employment for some LLP members; and (ii) countering tax-motivated allocations of profits and losses by certain partnerships, not just LLPs. A strand was added during the consultation to enable a new statutory mechanism to be set up for Alternative Investment Fund Managers (AIFMs) in light of the regulatory requirements of an EU Directive on AIFMs' remuneration.
18. With regard to (i) Clause 14 of the Bill provides a regulation making power to allow the Treasury to reclassify certain LLP members as employed earners for NICs purposes (and employees for the purpose of the legislation governing statutory payments) when certain conditions are satisfied. The conditions will follow those set out in income tax legislation to be included in Finance Bill 2014 and will broadly be that the individual member of the LLP has no or little real economic interest or risk in the LLP and instead is rewarded by a fixed salary.
19. The powers will additionally allow the Treasury to counter-act the use of companies or other intermediary structures to avoid the impact of the measure.

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20. Clause 13 of the Bill provides a regulation making power to address a specific issue relating to deferred profits earned by partners in AIFM firms which operate as partnerships as a result of the regulatory requirements of the EU Directive. Related tax legislation is to be introduced in Finance Bill 2014. The exact definition of firms to which that legislation applies is subject to Parliamentary approval as part of the Finance Bill process. The income tax legislation is also expected to include a regulation making power under which the same tax treatment can be extended to other regulated partnerships in the future. The regulation making power in relation to NICs covers all fund management partnerships affected by the tax provisions, including where the scope of the tax provisions is amended in the future.

***Other Provisions***

21. The Bill also:
- changes the definition of “employed earner” in the SSCBA 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992). The change makes it clear that in order to be regarded as an employed earner, an office holder has to be in receipt of “earnings” as defined for NICs purposes (as opposed to “general earnings”) and gainfully employed in Great Britain;
  - retrospectively disregards Armed Forces early departure payments from liability for NICs for the tax years 2005-2006 to 2012-2013 inclusive;
  - repeals two redundant Class 4 NICs reliefs; and
  - corrects minor omissions and errors in the SSCB(NI)A 1992, relating to the procedure for making certain instruments; and makes clear that instruments made by the Secretary of State under the Social Security Administration (Northern Ireland) Act 1992 should be by statutory rule.

**OVERVIEW OF THE STRUCTURE OF THE BILL**

22. Clauses 1 to 8 and Schedule 1 make provision for a £2,000 employment allowance for NICs.
23. Clause 9 makes provision for an age-related reduction in secondary Class 1 NICs.
24. Clauses 10 and 11 apply the GAAR to NICs and give the Treasury a power to make regulations for the purposes (in broad terms) of ensuring that the GAAR as it applies to NICs and the GAAR as it applies to tax are kept in line in the future.

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25. Clause 12 amends the power in section 120 SSCBA 1992 to allow the Treasury to make provision for, and in connection with, the issuing of certificates where payment had been made on behalf of the secondary contributor in respect of oil and gas workers on the continental shelf.
26. Clause 13 provides a power to modify the way in which liabilities for Class 4 NICs of partners in firms are determined, where a provision of the Income Tax Acts relating to such partners is passed or made.
27. Clause 14 will enable the reclassification of certain LLP members as employed earners for NICs purposes when certain conditions are satisfied. The conditions will follow those set out in income tax legislation to be included in Finance Bill 2014 and will broadly be that the individual member of the LLP has no or little real economic interest or risk in the LLP and instead is rewarded by a fixed salary.
28. Clauses 15 to 18 and Schedule 2 contain the four changes mentioned in paragraph 21 above.
29. Clause 19 makes provision for the HMRC's administrative expenses in relation to the provisions in this Bill.
30. Clause 20 defines abbreviations used in the Bill.
31. Clause 21 names the Act and makes provision about territorial extent.

## **TERRITORIAL EXTENT AND APPLICATION**

32. The National Insurance Contributions Bill extends to England and Wales, Scotland and Northern Ireland. An amendment or repeal in the Act has the same extent as the provision amended or repealed.

### ***Scotland***

33. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

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### **Wales**

34. The Bill does not contain any provisions relating to devolved matters. If there are amendments which relate to such matters, the consent of the National Assembly of Wales will be sought for them.

### **Northern Ireland**

35. The Bill does not contain any provisions relating to devolution matters. If there are amendments which relate to such matters, the consent of the Northern Ireland Assembly will be sought for them.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Employment allowance for national insurance contributions**

36. *Subsection (1)* provides that a person qualifies for an employment allowance in a tax year if they are a secondary contributor in relation to payments of earnings to, or for the benefit of, one or more employed persons and as a result the person incurs liability to pay secondary Class 1 contributions under the SSCBA 1992 or SSCB(NI)A 1992 (or both).
37. *Subsection (2)* provides that a person's employment allowance for a tax year is £2,000, or if less, an amount equal to the total amount of liabilities incurred by that person which are not excluded liabilities in a tax year.
38. *Subsection (3)* provides that subsection (1) is subject to sections 2 and 3 and Schedule 1.
39. *Subsections (4), (5) and (6)* introduce sections 2, 3 and 4 and Schedule 1 of the Bill.
40. *Subsection (7)* provides that references in this Bill to the “employment allowance provisions” are to sections 2 to 4 and Schedule 1.
41. *Subsection (8)* provides that terms used which are also used in Part 1 of the SSCBA 1992 or SSCB(NI)A 1992 have the same meaning as they have in that Part.

### **Clause 2: Exceptions**

42. *Clause 2* sets out when a person cannot qualify for the employment allowance and the liabilities to pay secondary Class 1 contributions that are to be excluded for the purposes of the allowance.

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43. *Subsection (1)* provides that public sector employers (e.g. Government departments, local authorities and the National Health Service) cannot claim the employment allowance unless that employer has charitable status.
44. *Subsection (2)* defines “charity” as having the same meaning as given by section 18(1) of the Small Charitable Donations Act 2012; and defines “public authority” as including any person whose activities wholly or mainly involve the performance of functions (whether or not in the UK) which are of a public nature.
45. *Subsection (3)* excludes secondary Class 1 contributions liabilities incurred in connection with personal, family or household affairs from the employment allowance – that is a person who employs personal or domestic staff at home such as nannies, cooks, gardeners and care support workers.
46. Under certain circumstances, the NICs anti-avoidance legislation concerning personal service companies (commonly known as “IR35”) and managed service companies imposes a NICs liability on deemed payments of employment income. *Subsection (4)* provides that the employment allowance is not available against the secondary Class 1 NICs arising on those deemed payments.
47. *Subsection (5)* provides that subsection (6) applies if a business, or part of a business, is transferred to a person (“P”) in a tax year.
48. *Subsection (6)* provides that liabilities are excluded liabilities if they are incurred by “P” in the tax year, in respect of an employed earner who is employed (wholly or partly) for purposes connected to the transferred business.
49. *Subsection (7)* provides that a business, or part of a business, is transferred to “P” for the purposes of subsection (5) if in the tax year another person “Q” is carrying on the business or part of the business and in consequence of arrangements involving “P” and “Q”, “P” begins to carry on the business or part of it on, or following, “Q” ceasing to do so.
50. *Subsection (8)* then defines the term “arrangements” in a non-exhaustive manner to include “any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).”
51. *Subsection (9)* defines “business” for the purposes of subsections (5) to (7) to include a trade, profession or vocation; a property business; any charitable or not for profit undertaking or any similar undertaking or functions of a public nature.



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52. *Subsection (10)* provides that the employment allowance will not be available if a person qualifies for an employment allowance as a result of avoidance arrangements.
53. *Subsection (11)* counters any attempt to forestall an employee's earnings in order to maximise the employer's employment allowance, either by deferring payment of those earnings from an earlier tax year to a later tax year or by bringing them forward from a later tax year to an earlier tax year.
54. *Subsection (12)* defines the term "avoidance arrangements" in subsections (10) and (11) by reference to the purpose for which the arrangements were made, namely where the main purpose, or one of the main purposes, was to secure entitlement to the employment allowance.
55. *Subsection (13)* then defines the term "arrangements" in a non-exhaustive manner to include "any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable)."

**Clause 3: Connected persons**

56. *Subsection (1) and (3)* provides that where, at the beginning of the tax year, there are two or more connected companies, which are not charities, which would each qualify for the employment allowance only one company is eligible for the employment allowance for the tax year.
57. *Subsection (2) and (3)* provides that where at the beginning of the tax year there are two or more connected charities which would each qualify for the employment allowance only one charity is eligible for the employment allowance for the tax year.
58. *Subsection (4)* provides that it is up to the companies or charities to decide which one of them will qualify for the employment allowance.
59. *Subsection (5)* introduces Part 1 of Schedule 1 which sets out the rules for determining if two or more companies are "connected" with one another.
60. *Subsection (6)* introduces Part 2 of Schedule 1 which sets out the rules for determining if two or more charities are "connected" with one another.
61. *Subsection (7)* defines "charity and company" for the purpose of section 3 and Schedule 1. It defines "charity" as having the same meaning as in the Small Charitable Donations Act 2012 and "company" as having the same meaning as in section 1121(1) of the Corporation Tax Act 2010 and as including a limited liability partnership.

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**Clause 4: How does a person who qualifies for an employment allowance receive it?**

62. *Subsection (1)* provides that HMRC must make arrangements to ensure that persons who qualify for the allowance receive it by making deductions from qualifying payments.
63. *Subsection (2)* defines “qualifying payment” as a payment in respect of any of the person’s secondary Class 1 liabilities which are not excluded liabilities under section 2.
64. *Subsection (3)* provides that where subsection (1) applies the person must deduct the employment allowance before any other deduction which they are permitted to make from the payment under any other legislation (e.g. deductions for statutory payments such as Statutory Maternity Pay).
65. *Subsection (4)* provides examples of what HMRC’s administrative arrangements may cover. In particular they may require the deduction to be made at the earliest opportunity in a tax year, provide that deductions may not be made in specified cases, place limits on the amount of deductions and provide that deductions may not be made unless the person has given notice to HMRC.
66. *Subsection (5)* introduces subsections (6) to (8) which, together, make provision for repayments by HMRC where, in a tax year, a person has not deducted the full amount of the employment allowance to which they are entitled, by the end of April in which the tax year ends. For example, this may occur if an employer forgets to make a claim for an employment allowance or is unaware of the availability of the employment allowance until after the relevant tax year.
67. *Subsection (6)* provides that in such cases, a person may apply to HMRC for a repayment, up to the outstanding amount of employment allowance, and HMRC must make the repayment.
68. *Subsection (7)* provides that the person’s application for a repayment must be made in accordance with HMRC’s requirements.
69. *Subsection (8)* provides that the application must be made before the end of the 4th tax year after the tax year in which the employment allowance was due.
70. *Subsection (9)* provides that the start date for repayment interest is the date on which HMRC receives the application for a repayment.
71. *Subsection (10)* provides for payments made under this section to be made out of the National Insurance Fund or the Northern Ireland Insurance Fund.

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72. *Subsection (11)* makes clear that a person may not receive the employment allowance for a tax year other than through a deduction or a repayment under this section.

**Clause 5: Power to amend the employment allowance provisions**

73. *Subsection (1)* provides that the Treasury may make regulations to increase or decrease the employment allowance for a tax year; and to add to, reduce or modify the cases in which a person cannot qualify for the employment allowance or the liabilities that are excluded liabilities.
74. *Subsection (2)* applies section 175(3) to (5) of the SSCBA 1992 to the power to make regulations under this section.
75. *Subsection (3)* provides that the power in section 175(4) of the SSCBA 1992 to make incidental, supplementary, consequential or transitional provisions, as applied by subsection (2), includes the power to make such amendments to the employment allowance provisions.
76. *Subsection (4)* provides that regulations made under this section must be made by statutory instrument.
77. *Subsection (5)* provides that a statutory instrument containing, with or without other provision, regulations under subsection (1), with the exception of the power to increase the employment allowance, may not be made unless a draft has been laid before, and approved by each House of Parliament.
78. *Subsection (6)* provides that a statutory instrument containing regulations to increase a person's employment allowance for a tax year and which does not have to be approved in draft under subsection (5) must be laid before Parliament after being made.
79. *Subsection (7)* provides that the regulations contained in a statutory instrument which is required to be laid before Parliament under subsection (6) will cease to have effect at the end of a period of 40 days after the day the statutory instrument is made, unless before the end of that period the instrument is approved by resolution of each House of Parliament.
80. *Subsection (8)* provides that if as a result of subsection (7) the regulations cease to have effect it does not affect anything done under the regulations, or prevent the making of new regulations to the same or similar effect.
81. *Subsection (9)* provides that when calculating the period of 40 days for the purposes of subsection (7), no account is to be taken of any time during which

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Parliament is dissolved or prorogued or during which either House is adjourned for more than 4 days.

**Clause 6: Decisions and appeals about entitlements to make deductions etc**

82. *Subsection (1)* amends section 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999, inserting two new paragraphs (ea) and (eb) into subsection (1) of that section. It specifies the decisions of an officer of HMRC which can be appealed. They are decisions about entitlement to, and the amount of, a deduction of the employment allowance and entitlement to, and the amount of, a repayment from HMRC.
83. *Subsection (2)* makes an equivalent provision for Northern Ireland inserting two new paragraphs (ea) and (eb) into Article 7(1) of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671).

**Clause 7: Retention of records etc**

84. *Subsection (1)* amends paragraph 8(1) of Schedule 1 to the SSCBA 1992 inserting new paragraph (aa). It enables regulations to be made relating to the retention of records to include purposes connected with the employment allowance.
85. *Subsection (2)* makes an equivalent provision of Northern Ireland inserting new paragraph (aa) into paragraph 8(1) of Schedule 1 to the SSCB(NI)A 1992.
86. *Subsection (3)* amends paragraph 26 of Schedule 4 of the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) inserting two new subparagraphs (4A) and (4B). It provides for the retention of records to include any documents or records relating to the employer's qualification for the employment allowance, or the calculation of any amount that has been, or could be deducted, or paid on account of the employment allowance.
87. *Subsection (4)* provides that the amendment made by subsection (3) is to be treated as being made by the Treasury using the powers conferred by paragraphs 8(1)(aa) of Schedule 1 to the SSCBA 1992 (as inserted by subsection (1)) and paragraph 8(1)(aa) of Schedule 1 to the SSCB(NI)A 1992 (as inserted by subsection (2)).
88. *Subsection (5)* amends section 110ZA of the Social Security Administration Act 1992 so the information and inspection powers in Schedule 36 of the Finance Act 2008 apply for the purposes of checking the employment allowance.
89. *Subsection (6)* makes an equivalent amendment for Northern Ireland amending section 104ZA of the Social Security Administration (Northern Ireland) Act 1992.

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**Clause 8: Commencement of the employment allowance provisions etc**

90. *Clause 8* provides that the provisions and Schedule 1 relating to the employment allowance will come into force on 6th April 2014.

**Schedule 1: Employment Allowance: rules for determining if persons are connected**

91. Part 1 of Schedule 1 contains rules for determining if companies are connected for the purposes of section 3(1).
92. Paragraph 2 provides the basic rule for the definition of “connected” companies. Two companies are connected with one another if (a) one of the two has control of the other, or (b) both are under the control of the same person or persons. Control has the same meaning as in Part 10 of the Corporation Tax Act 2010 (CTA 2010) (see sections 450 and 451 of CTA 2010). A LLP is to be treated as a company for the purposes of Part 10 of the CTA 2010. For the purposes of an LLP the test in section 450 of the CTA is modified so that control is where the other company possesses, or is entitled to acquire, rights to a share of more than half the assets, or more than half the income, of the LLP.
93. Paragraph 3 applies to determine if two companies are connected to one another if the relationship between the companies is not one of “substantial commercial interdependence”. The paragraph goes on to explain the factors to be taken into account when determining whether two companies have a relationship of “substantial commercial interdependence”. These are the degree to which the companies are “financially interdependent”, “economically interdependent” and “organisationally interdependent”.
94. Paragraph 4 provides that for the purposes of determining if a company is under the control of another, fixed-rate preference shares held by a company are ignored if the company holding them is not a close company, takes no part in the management or conduct of the company and subscribed for the shares in the ordinary course of business which included the provision of finance.
95. Paragraph 5 provides that some loan creditors are to be ignored in determining whether one company controls another company.
96. Paragraph 6 provides that where two companies (“A” and “B”) are under the control of the same person by virtue of rights or powers (or both) held in trust by that person and there is no other connection between A and B those rights and powers are to be ignored when determining whether A and B are connected.
97. Paragraph 7 provides that if company (“A”) is connected with another company (“B”) and B is connected with another company (“C”) then A and C are also connected with one another (if that would not otherwise be the case).

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98. Part 2 of Schedule 1 contains rules for determining if charities are connected for the purposes of section 3(2).
99. Paragraph 8 sets out that two charities are connected to one another if they are connected in accordance with section 993 of the Income Tax Act 2007 (meaning of connected persons) and their purposes and activities are the same or substantially similar.
100. It also sets out that a charity which is a trust is to be treated as if it were a company for the purposes of section 993 of ITA 2007. Sub-paragraph (2) provides a definition of control that is to be applied to a charity that is a trust. The definition caters for situations where a trust is controlled by a person, for example where the person has the power to appoint trustees or power to control the way in which the trustees carry out their functions. A charity which is also a trust is also connected to a charity if at least half of the trustees are trustees of the other charity, persons who are connected with persons who are trustees of the other charity, or a combination of both and the charities' purposes and activities are the same or substantially similar – see sub-paragraph (3).
101. Sub-paragraph (5) applies if a charity controls a company which is not a charity. The company is treated as if it were a charity for the purposes of section 3 and Part 2 of Schedule 1 of the Act, and the charity and the company are connected with each other for the purposes of section 3(2). Control has the same meaning as in Part 10 of the CTA 2010 and where the charity is a trust the trustees have control of the company.
102. Paragraph 9 provides if charity (“A”) is connected with another charity (“B”) and B is connected with another charity (“C”) then A and C are also connected with one another (if that would not otherwise be the case).

**Clause 9: The age-related secondary percentage**

103. *Subsection (1)* provides for amendments to the SSCBA 1992.
104. *Subsection (2)* amends section 9 (calculation of secondary Class 1 contributions) by introducing the concepts of a “relevant percentage” and the “age-related secondary percentage” alongside the secondary percentage.
105. *Subsection (3)* inserts a new section 9A (the age-related secondary percentage) into the SSCBA 1992.
106. Subsection (1) of new section 9A provides that where a secondary Class 1 contribution is payable, this section will apply to earnings paid in the tax week if

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- the employed earner falls within an age group specified in column 1 of the table in subsection (3).
107. Subsection (2) of new section 9A provides that the age-related secondary percentage for the employed earner's age group is specified in column 2 of the table in subsection (3).
  108. Subsection (3) of new section 9A contains the table referred to above and provides that for employed earners under the age of 21, the age-related secondary percentage shall be 0%.
  109. Subsection (4)(a) of new section 9A provides that the Treasury may make regulations to add an age group to column 1 of the table and to specify the age-related secondary percentage for that group in column 2 of the table. Under subsection (4)(b), the regulations may also reduce (or further reduce) the percentage for an age group already specified in column 1, whether for the whole age group or part of it.
  110. Subsection (5) of new section 9A further provides that the percentage specified in regulations under subsection (4)(a) must be lower than the secondary percentage which is currently 13.8%.
  111. Subsection (6) of new section 9A provides that a person is still to be regarded as liable for secondary Class 1 NICs even though the amount of the contribution is nil because the age-related secondary percentage is 0%.
  112. Subsection (7) of new section 9A provides that the Treasury may make regulations to provide that, in relation to an age group specified in the table, there will be set for every tax year an "upper secondary threshold" for secondary Class 1 NICs and to specify the amount of that threshold for that year.
  113. Subsection (8) of new section 9A applies the regulation-making power in section 5(4) to (6) of the SSCBA 1992 for the purposes of prescribing equivalents to the upper secondary threshold for earners paid otherwise than weekly, in the same way as they apply for the purposes of prescribing equivalents to the secondary threshold.
  114. Subsection (9) of new section 9A provides that where a secondary Class 1 contribution is payable, the earner falls within an age group to whom an upper secondary threshold has been applied, and the earnings paid in the tax week exceed that upper secondary threshold (or the prescribed equivalent), the age-related secondary percentage will not apply to those earnings in so far as they

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exceed that threshold (or the prescribed equivalent). In that case, the secondary percentage rate will apply to that part of the earnings.

115. Subsection (10) of the new section 9A provides that references in new subsections 9A(7) to (9) to an age group are to be construed as including a part of an age group.
116. *Subsection (4)* inserts a reference to the “age-related secondary percentage” in section 122 (1) (interpretation of Parts 1 to 6) of the SSCBA 1992.
117. *Subsection (5)* amends section 176(1)(a) of the SSCBA 1992 to provide that regulations made under new section 9A(7) are subject to the affirmative procedure.
118. *Subsections (6) to (10)* amend the SSCB(NI)A 1992 to make equivalent provision to *subsections (1) to (5)* in relation to Northern Ireland.
119. *Subsection (11)* provides that the powers conferred on the Treasury under new section 9A and the amendments in new subsections (5) and (10) will come into force two months from the day the Act is passed.
120. *Subsection (12)* provides that, other than the provisions specified in subsection (11), the amendments made by the new section 9A will come into force on 6 April 2015.

**Clause 10: GAAR to apply to national insurance contributions**

121. *Subsection (1)* applies the Tax GAAR in Part 5 of the Finance Act 2013 to NICs.
122. *Subsection (1)(a)* provides that where the Tax GAAR refers to tax, such references include NICs.
123. *Subsection (1)(b)* provides that where the Tax GAAR refers to a charge to tax it also includes a liability to pay NICs.
124. *Subsection (2)* modifies the list (at section 206(3) of the Finance Act 2013) of taxes to which the GAAR applies so that it includes NICs.
125. *Subsection (3)* includes “earnings” as defined for SSCBA 1992 and SSCB(NI)A 1992 within the examples of tax arrangements that may be abusive in section 207(4)(a) of the Finance Act 2013.
126. *Subsection (4)* provides that the adjustments to counteract a NICs advantage under section 209 of the Finance Act 2013 may be made by a notice given under paragraph 12 of Schedule 43 to the Finance Act 2013.



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127. *Subsection (5)* sets out the process by which consequential relieving adjustments may be claimed for Class 4 NICs and the other classes of contributions. Such relieving adjustments may be necessary, for instance, to avoid contributors being double charged NICs because contributions have already been paid on earnings, for example if Class 4 contributions have been paid but the counteraction requires Class 1 contributions to be paid.
128. *Subsection (6)* provides for consequential relieving adjustments to be made in a notice given under section 210(7) of the Finance Act 2013.
129. *Subsection (7)* provides that the GAAR applies to arrangements entered into on or after Royal Assent.
130. *Subsections (8) and (9)* specify that where the arrangements under consideration form part of other arrangements entered into before Royal Assent, the other arrangements should be ignored in determining whether the tax arrangements are abusive. However, *Subsection (10)* allows for other arrangements before Royal Assent to be taken into account as evidence that the arrangements under consideration are not abusive.
131. *Subsection (11)* defines “abusive”, “arrangements”, “HMRC” and “national insurance contributions”.

**Clause 11: Power to modify application of the GAAR to national insurance contributions**

132. *Subsection (1)* provides that, where there has been a change to the Tax GAAR that does not apply in relation to NICs (“the tax only modification”), the Treasury may make regulations to:
  - a) apply the tax only changes to NICs with or without modification;
  - b) make provision for NICs that corresponds to the tax only modification;
  - c) make consequential changes to the GAAR in relation to its effect on NICs or changes that are supplementary or incidental to the tax only modification.
133. *Subsection (2)* makes further provision as to the regulations that may be made under this power. The regulations can amend other legislation, make consequential, incidental, supplementary, transitional, transitory or saving provision and make different provision for different cases, purposes or classes of NICs.
134. *Subsection (3)* requires the regulations to be made by statutory instrument.

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135. *Subsection (4)* provides that a statutory instrument, containing with or without other provision, regulations that amend or repeal a provision of an Act must be laid in draft before, and approved by, each House of Parliament (“affirmative resolution”). Any other statutory instrument made under this section does not have to be approved in draft and is subject to annulment by resolution of either House (“negative resolution”) – see subsection (5).
136. *Subsection (6)* defines “general anti-abuse rule” and “national insurance contributions”.

**Clause 12: Oil and gas workers on the continental shelf: secondary contributors etc**

137. *Subsection (1)* provides for the amendment of section 120 SSCBA 1992 (employment at sea: continental shelf operations).
138. *Subsection (4)* inserts subsection (4) and (5) into section 120. New subsection (4) provides the Treasury with the power to make regulations providing for certificates to be issued by HMRC to persons who are treated as the secondary contributor in relation to the payment of earnings for continental shelf workers that:
- a) confirm that the person's liabilities in connection to a continental shelf worker are being met by another person; and
  - b) whilst the certificate is in force relieving the secondary contributor from any liability where the payments are not met by the other person in full.
139. New *subsection (5)* allows the Treasury to prescribe under the regulations how people can apply for a certificate, when a certificate may, or must, be issued or cancelled, the form and content of a certificate, the effect of the certificate and the effect of cancelling a certificate.

**Clause 13: Class 4 Contributions: partnerships**

140. *Subsection (1)* provides for amendments to the SSCBA 1992.
141. *Subsection (2)* inserts new section 18A into the SSCBA 1992.
142. Subsection (1) of new section 18A of the SSCBA 1992 allows the Treasury to make regulations under the new section if a provision of the Income Tax Acts relating to partners is passed or made, and the Treasury consider it appropriate to make regulations taking into account that tax provision. The regulations may modify the way a partner's liabilities for Class 4 contributions are determined, or otherwise modify the law relating to Class 4 contributions.
143. Subsection (2) of new section 18A defines a “firm” as having the same meaning as in the Income Tax (Trading and Other Income) Act 2005 (including a limited liability partnership in relation to which section 863(1) of that Act applies). It

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further provides that “partner” is to be read accordingly, and includes a former partner.

144. Subsection (3) of new section 18A provides that regulations under that section may have retrospective effect but that they may not have effect before the beginning of the tax year in which they are made.
145. *Subsection (3)* amends section 176(1)(a) of the SSCBA 1992 to provide that regulations made under new section 18A are subject to the affirmative procedure.
146. *Subsections (4) to (6)* amend the SSCB(NI)A 1992 to make equivalent provision to subsections (1) to (3) in relation to Northern Ireland.
147. *Subsection (7)* provides that the amendments made by this section will come into force two months from the day the Act is passed.

**Clause 14: Limited Liability Partnerships**

148. *Subsection (1) and (2)* insert a new section 4AA into the SSCBA 1992 that gives the Treasury, with the concurrence of the Secretary of State for Work and Pensions, the power to provide, that in prescribed circumstances a person (“E”) is to be treated as employed in employed earner’s employment by a LLP, that the LLP is to be treated as the secondary contributor in relation to E’s earnings from the LLP and that payments of a prescribed description are to be treated as earnings of E paid at prescribed times from E’s employment with the LLP.
149. New section 4AA also creates a power to modify the definition of employee and employer in Parts XI to XII ZB so that E is an employee and the LLP is the employer for the purposes of the legislation governing statutory sick, maternity, paternity and adoption payments. The power in section 4AA is expressly not limited by section 4(4) of the LLP Act 2000 and can be exercised to make amendments to the SSCBA that the Treasury considers are necessary to assimilate the law relating to income tax and the law relating to contributions as a result of a provision of the Income Tax Acts relating to LLPs or LLP members being passed.
150. *Subsection (3)* inserts a new paragraph (d) to subsection (3) of section 4B of the SSCBA 1992 which makes new section 4AA a relevant power for the purposes of section 4B. The effect of this is that regulations under the power in section 4AA can have retrospective effect where they are made to reflect retrospective tax legislation.
151. *Subsection (4)* inserts a new subsection (11) to section 10 of the SSCBA 1992 which gives the Treasury the power to modify the law relating to Class 1A

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contributions in the case of an employed earner's employment which is treated as existing by virtue of regulations made under new section 4AA.

152. *Subsections (5) to (8)* make equivalent amendments for Northern Ireland inserting in the SSCB(NI)A 1992 a new section 4AA, paragraph (d) to subsection (3) of 4B and subsection (11) to section 10.

**Clause 15: Office holders who receive “earnings” to be employed earners**

153. *Subsections (1) and (2)* provide that the word “general” be removed from section 2(1)(a) SSCBA 1992 and the SSCB(NI)A 1992, which currently define “employed earner” to include “a person who is gainfully employed ... in an office (including an elective office) with general earnings”. Section 122(1) SSCBA 1992 and 121(1) SSCB(NI)A 1992 defines “general earnings” by reference to section 7, and Chapter 1 of Part 3, of the Income Tax (Earnings and Pensions) Act 2003. The change makes clear that in order to be regarded as an employed earner, an office holder has to be in receipt of earnings as defined for NICs purposes. “Earnings” are defined in section 3(1) of both Acts to include “any remuneration or profit derived from an employment”. There is no statutory definition of “remuneration” within the Acts, however, case law interpreting it has established that it includes salaries, wages and other forms of reward such as bonuses, commission and tips.
154. *Subsection (3)* introduces Schedule 2 which provides for consequential amendments to the SSCBA 1992, the SSCB(NI)A 1992, the Pension Act 1993 and the Pension (Northern Ireland) Act 1993 as a result of the amendments made by subsections (1) and (2).
155. *Subsection (4)* provides that the amendments made by the section and Schedule 2 will come into force two months from the day the Bill is passed.

**Clause 16: Armed Forces early departure payments retrospectively disregarded**

156. Clause 16 provides for payments made under the Armed Forces Early Departure Scheme Order 2005 (S.I. 2005/437) to be disregarded for NICs purposes for the tax years 2005-2006 to 2012-13 inclusive. It does so by providing for Paragraph 10A of Part 6 of Schedule 3 to the Social Security (Contributions) Regulation 2001 (S.I. 2001/1004) to have retrospective effect for those years (it already has prospective effect).

**Clause 17: Repeal of certain redundant reliefs relating to Class 4 contributions**

157. *Subsections (1) and (2)* provide for the repeal of two Class 4 NICs reliefs that are no longer required from Schedule 2 to the SSCBA 1992 and the SSCB(NI)A 1992 (levy of Class 4 contributions with income tax).

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158. *Subsection (3)* provides that the repeal of one of the reliefs (paragraph 3(3) of Schedule 2) takes effect for the tax year after the one during which this Bill is passed and for subsequent tax years. The other, in paragraph 9 of that Schedule, is to be repealed from Royal Assent.

**Clause 18: Certain orders and regulations in respect of Northern Ireland**

159. *Subsection (1)* provides for the amendment of section 172 of the SSCB(NI)A 1992.
160. *Subsection (2)* corrects a reference to “subsection (9)” that should be to “subsection (10)”.
161. *Subsection (3)* provides for the use of the negative resolution procedure when making regulations under section 117 of the SSCB(NI)A 1992 that are consequential upon section 142(7) of the Social Security Administration (Northern Ireland) Act 1992 (SSA(NI)A ). This subsection also applies the negative resolution procedure to certain consolidating regulations and to regulations which replace provisions of previous regulations with new provisions to the same effect. This brings the position in line with the equivalent provision in the SSCBA 1992.
162. *Subsection (4)* provides for the amendment of section 165 of the SSA(NI)A. *Subsections (5) and (6)* insert “the Secretary of State” into section 165(1) and (3) of the SSA(NI)A to make it clear that instruments made under the SSA(NI)A by the Secretary of State are to be made by statutory rules.
163. *Subsection (7)* provides that the amendments made by this section come into force two months from the day the Act is passed.

**Clause 19: HMRC administration expenses: financial provision**

164. *Subsection (1)* amends section 165(5)(a) of the Social Security Administration Act 1992 by inserting “or the National Insurance Contributions Act 2013” after “adoption pay”. This will enable HMRC administrative expenses incurred in relation to the Bill ultimately to be met from the National Insurance Fund.
165. *Subsection (2)* makes an equivalent provision for Northern Ireland.

**Clause 20: Abbreviations of Acts**

166. This clause defines abbreviations used in the Bill.

**Clause 21: Short title and extent**

167. *Subsection (1)* provides for the Act resulting from the Bill to be known as the National Insurance Contributions Act 2013.

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168. *Subsection (2)* provides that the Act extends to England, Wales, Scotland, and Northern Ireland, subject to subsection (3).
169. *Subsection (3)* provides that an amendment or repeal made by the Bill has the same extent as the provision amended or repealed.

## **FINANCIAL EFFECTS**

170. The cost of the employment allowance is estimated to be £1.3 billion in 2014-15 rising to £1.7 billion in 2017-18.
171. The cost of the age-related secondary percentage is estimated to be £465 million in 2015-16 rising to £530 million in 2018-19.
172. The GAAR, once it is applied to NICs by this Bill, is estimated to increase receipts of combined tax and NICs by £60 million in 2014-15 rising to £85 million in 2017-18.
173. Clauses 13 and 14 are part of the Partnerships Review set out in paragraph 17 above. The Review as a whole is estimated to increase receipts of combined tax and NICs by £125 million in 2014-15 rising to £285 million in 2017-18.

## **PUBLIC SECTOR MANPOWER**

174. The additional public sector manpower cost for the Bill is estimated to be around £5 million, which includes staffing and administration costs, and is mainly attributable to the cost of introducing the employment allowance and the age-related secondary percentage.

## **SUMMARY OF IMPACT ASSESSMENT**

175. Information on the Tax Information and Impact Notes (TIINs) that relate to the measures in this Bill are summarised in this section and are available on the GOV.UK website.
176. The employment allowance applies to all businesses, charities and Community Amateur Sports Clubs (CASCs). From April 2014 they will be entitled to an annual allowance of £2,000. The allowance aims to reduce barriers faced by small business, charities and CASCs which wish to grow by supporting them with the costs of employment. There are no direct impacts on individuals and households. The measure is not expected to lead to increase in administration or general costs for businesses. The operational impact on HMRC will not be significant.

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177. A TIIN has been prepared for the age-related secondary percentage measure. The measure is aimed at employers who employ employees under the age of 21. It removes the requirement to pay Class 1 secondary NICs for most employees under the age of 21. The measure will take effect from 6th April 2015. The economic impact of the measure will depend on the aggregate of labour demand and the performance of the wider economy. Although there are no direct impacts on individuals or households it is expected to remove the Class 1 secondary NICs liability for nearly 1.5 million employees aged 16-20. The operational impact on HMRC is estimated at £2 million and one-off costs for employers are estimated at £7.5million. As all employers are eligible its introduction is unlikely to affect competition.
178. A TIIN for the GAAR was published at Budget 2013. It considered the impact of the measure in relation to income tax, NICs, corporation tax (including amounts treated as corporation tax), capital gains tax, inheritance tax, petroleum revenue tax, stamp duty land tax and annual tax on enveloped dwellings. The measure is not expected to have any significant macroeconomic impacts. The impact on individuals will be on those participating in abusive avoidance schemes. The GAAR will only impact on businesses participating in abusive schemes. The impact on HMRC's costs is expected to be limited.
179. A TIIN has been prepared for the oil and gas workers on the continental shelf measure. The measure is aimed at ensuring the correct amount of NICs is paid when UK and UKCS workers are employed by offshore companies. With effect from Royal Assent of the Act, section 120 of the SSCBA 1992 is to be amended, creating a new power, in order that provision can be made in regulations in respect of a certification scheme where someone other than the secondary contributor is paying and administering NICs as the agent of the secondary contributor. This measure is expected to have a negligible impact on businesses. Businesses affected will have a small increase in their on going administrative burdens as they will have to assure their supply chain and fulfil the record keeping requirements. The operational impact of this measure is expected to be negligible. Although there will be a small increase in administering the certification process and collecting the returns from businesses.
180. The updated Partnerships Review TIIN covers two elements of the consultation proposals. The first element represents the first strand of the consultation proposals (detail in paragraph 17 above). This deals with disguised employment and aims at preventing LLPs and their members from benefitting from the 'default partner' status of all individual members by disapplying the presumption of self employment. The initial TIIN published in July 2013 covers this change. The second strand does not require any NICs changes and is not included in this Bill.

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181. The second element of the partnerships TIIN relates to a regulation making power to change the Class 4 NICs legislation in support for a mechanism whereby the partnership will be subject to income tax arising on certain profits its individual partners cannot access in the base year as a result of deferral of these profits consistent with the regulatory requirements as set out in the AIFMD. This mechanism follows the objectives and principles used for the second strand of the Partnership Review and is a new strand of the review. HMRC's assessment of the impact of this second element is included in this updated TIIN.
182. The broader economic impact of the Partnership Review as a whole is expected to be small. The legislation will result in some LLPs in certain industry sectors where disguised employment has been most prevalent paying increased amounts of NICs. There will also be changes to the NICs liability for certain partnerships and individual partners in the alternative investment fund sector.
183. Clause 15 clarifies the law in respect of who is regarded as an employed earner for NICs purposes. The change makes it clear that in order to be regarded as an employed earner, an office holder has to be in receipt of earnings as defined for NICs purposes and gainfully employed. This measure is not expected to have any significant economic impacts or any impact on individuals and households. This measure is expected to have no impact on businesses and civil society organisations and there will be no operational impact on HMRC.
184. In relation to Armed Forces early departure payments (EDPs), the Social Security (Contributions) (Amendment and Application of Schedule 38 to the Finance Act 2012) Regulations 2013 included provision to disregard EDPs from liability for Class 1 NICs from 6th April 2013. An accompanying TIIN was published when those regulations were published in draft which also considered the impact of proposed primary legislation to retrospectively disregard such EDPs. Therefore, no new TIIN is being provided for clause 16. This measure is not expected to have any significant economic impacts. By not paying NICs on these payments the impact on an individuals benefit entitlement will be negligible. This measure is expected to have no impact on businesses and civil society organisations and there will be no operational impact on HMRC.
185. Clause 17 repeals two redundant Class 4 NICs reliefs. This measure has no significant economic impacts. It is expected that the abolition of these reliefs will not impact on any individuals or households. The impact on micro businesses' compliance costs and administrative burdens is likely to be negligible and there will be no operational impact on HMRC.
186. The TIIN about the provision correcting minor omissions in the SSCB(NI)A 1992 in clause 18 has been updated to make clear that instruments made by the Secretary of State under SSA(NI)A 1992 are to be made by statutory rule. This



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measure is not expected to have any significant economic impacts and there is no direct impact on individuals. This measure is expected to have no impact on businesses and civil society organisations and there will be no operational impact on HMRC.

## **COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS**

187. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions in the Bill with the Convention rights (as defined by section 1 of that Act).
188. The Commercial Secretary to the Treasury, Lord Deighton, has made the following statement:
- “In my view the provisions of the National Insurance Contributions Bill are compatible with the Convention rights.”
189. A number of provisions in the Bill engage Article 1 of Protocol 1 (“A1P1”) to the Convention taken alone or with Article 14.

### **Article 1 Protocol 1**

190. A1P1 protects the right to peaceful enjoyment of possessions and is engaged where national insurance is in point since it deprives the person concerned of a possession, namely the amount of money which must be paid. However, the courts have made it clear that a wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy<sup>1</sup>.
191. This means that the Court will leave a wide discretion to the State in how they design their taxation, social or economic systems, and only interfere where an individual’s rights are clearly breached. In ascertaining whether there has been such a breach, the Court will look at the aim of the measure, and then consider whether the measure is a proportionate way to achieve that aim. In doing so the Court will seek to discover whether a fair balance has been struck between interests of the community and protection of individual rights, and whether the

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<sup>1</sup> See for example James and Others v. the United Kingdom, judgment of 21 February 1986, Series A no. 98, § 46; National and Provincial Building Society and Others v. the United Kingdom, judgment of 23 October 1997, Reports 1997-VII, § 80; as referred to in paragraph 52 of the merits decision in Stec and others v. the United Kingdom Applications nos. 65731/01 and 65900/01 dated 12 April 2006. The Court will generally respect the legislature’s policy choice unless it is “manifestly without reasonable foundation”. See also Runkee and White v the United Kingdom Applications nos. 42949/98 and 53134/99 and R v Secretary of State for Work and Pensions ex parte Carson & Reynolds [2005] UKHL 37.

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measure imposes an excessive or individual burden<sup>2</sup>. Within this wide margin of appreciation, States must still ensure that taxation and social strategy is imposed according to the law, that the measures pursue a legitimate purpose and that the means employed are not disproportionate to the ends involved.

192. Clauses 10 and 11 apply the GAAR to NICs. The GAAR targets artificial and abusive NICs avoidance schemes and only applies where there has been an abuse of the NICs system. The exercise of the right of a State to enforce a NICs liability where there has been an abuse is in the public interest and well within the margin of discretion accorded to States by the Convention in the field of social security.
193. Clause 13 confers a power on the Treasury to modify the way in which the Class 4 liabilities of a partner in a firm are determined, where a provision of the Income Tax Acts relating to partners in firms is passed or made. Clause 14 creates a power to make an individual who meets certain criteria (E) an employed earner of the LLP for NICs purposes and an employee for the purposes of the legislation governing statutory payments. It also creates a power to treat payments made by an LLP to a third party as earnings of E from E's employment with the LLP.
194. The Department considers that the clauses themselves do not directly engage Convention rights, as they do not substantively affect the position of any individual. The powers conferred by the clauses are capable of being exercised consistently with Convention rights. The powers can be exercised retrospectively. Retrospective taxation is not prohibited under the Convention, provided that it strikes a fair balance between the public and private interests involved, and does not impose an unreasonable burden on an individual.
195. Clause 15 amends the definition of employed earners so that office holders who receive earnings in whatever form are to be employed earners for the purposes of social security legislation. The Department considers that any interference is justified as it falls within the wide margin of appreciation given to States in the field of social security.
196. Clause 16 removes the liability for Class 1 NICs from the Early Departure Payment Scheme ("EDPS") made by the Ministry of Defence ("MoD") to Qualifying Service Personal ("QSP") for the tax years 2005-2006 to 2012-2013. Prior to April 2006 all payments from a statutory scheme benefitted from an exemption from liability for Class 1 NICs. However, in 2006 there was a change to the statutory disregard, the effect of which was that payments paid under the EDPS scheme became subject to NICs where benefits were taken before age 55. This meant that payments made from 6th April 2006 were liable for the deduction

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<sup>2</sup> For a recent summary of the Court's position see paragraphs 62 and 63 of the case of Bulves AD v Bulgaria Application no 3991/03.

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of NICs. The Department, by statutory instrument, removed the liability for NICs from 6th April 2013.

197. The effect of introducing the legislation would, in addition to removing the liability to NICs, impact on the QSP eligibility to certain contribution based benefits, such as Jobseekers Allowance, state pension and additional state pension, because as the contributions will never have been owed the QSP would not be entitled to the contributions appearing on their contributions record. However, the Department considers that the change falls within the State's margin of appreciation for managing its social security affairs. The Department considers that it is justified in the public interest of preventing the QSP obtaining an unexpected windfall given that they cannot have expected to accrue the benefits of NICs which they were not paying.

**Article 14 taken with Article 1 Protocol 1**

198. Consideration was also given as to whether A1P1 was engaged when taken with Article 14 if a business has been denied a benefit extended to others on discriminatory grounds. Clauses 1 to 8 introduce an annual allowance for all business, charities and Community Amateur Sports Clubs to be offset against their employer ("secondary") Class 1 NICs liability. The allowance will not be available to public authorities that are not charities; those who employ personal, family or domestic staff; and on the deemed payment made by service companies where the business is deemed to be a secondary contributor.
199. Regulations made under the power in clause 14 will follow the income tax legislation being introduced under Finance Bill 2014. They will, in certain circumstances, treat payments made by the LLP to a member who is an intermediary between the LLP and an individual providing services to the LLP (P) as earnings of P from P's employment with the LLP. A consequence of this aspect of the Regulations is that a person working for an LLP through an intermediary that is a member of that LLP will be treated less favourably for NICs purposes than a person working for an LLP through an intermediary that is not a member of that LLP.
200. The Department considers that Article 14 when taken with A1P1 only prohibits differences in treatment based on personal characteristics and that such characteristics must be independent of the treatment complained of<sup>3</sup>. It has been accepted in a number of cases that "other status" should be widely construed<sup>4</sup>. So

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<sup>3</sup> Clift v UK Application No. 7205/07. Also in R(Clift) v Secretary of State for the Home Department [2007] 1 AC 484 the House of Lords confined the scope of Article 14 to discriminatory treatment having as its legal basis or reason a personal characteristic by which persons or groups of persons are distinguishable from each other, rejecting a challenge of differential treatment on the basis of length of sentence.

<sup>4</sup> Michalak [2003] 1 WLR 617, par 34.

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a State will have a wide margin of appreciation in assessing whether, and to what extent, differences in otherwise similar situations justify different treatment particularly where the assertion for the non-human business complainant is that one of its Convention rights is violated if it compares itself to another business entity otherwise in a similar position but for a non-critical business characteristic. The Department considers that there is no discrimination within the meaning of Article 14 when taken with A1P1.

201. The reduced rate of secondary class 1 NICs introduced by clause 9 will only apply in respect of employees under the age of 21. The Department considers that any discrimination is justified in focusing available resources at the youngest end of the unemployment scale where unemployment is at its most acute.

### **COMMENCEMENT DATES**

202. The provisions relating to the GAAR in clauses 10 and 11, the oil and gas workers in clause 12, to LLPs in clause 14, to EDPs in clause 16 and clauses 8 and 19 to 21 will take effect from the date of Royal Assent of the Act.
203. The provisions relating to the employment allowance in clauses 1 to 7 and Schedule 1 will commence on 6th April 2014.
204. The powers conferred on the Treasury in relation to the age-related secondary percentage in clause 9 and clause 9(5) and (10) will commence two months from the day the Act is passed. The remainder of clause 9 will come into force on 6th April 2015.
205. The provisions relating to partnerships class 4 contributions in clause 13, office holders in receipt of “earnings” (clause 15 and Schedule 2) and the correcting provision relating to the making of certain instruments for Northern Ireland (clause 18) will commence two months from the day the Act is passed.
206. Clause 17 repeals the redundant Class 4 reliefs. The repeal of the relief in paragraph 3(3) of Schedule 2 to SSCBA 1992 and SSCB(NI)A 1992 will have effect for the tax year after the one in which the Act is passed and for subsequent tax years. The repeals of paragraph 9 of that Schedule to those Acts will have effect from Royal Assent.

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**ANNEX A**

**GLOSSARY**

Term	Explanation
AIPI	Article 1 of Protocol 1
CASC	Community Amateur Sports Clubs
CTA 2010	Corporation Tax Act 2010
EDPs	Early departure payments
GAAR	General Anti-Abuse Rule
HMRC	HM Revenue & Customs
LLP	Limited Liability Partnership
LLPA	Limited Liability Partnerships Act 2000
NICs	National Insurance contributions
PAYE	Pay As You Earn
QSP	Qualifying Service Personal
SSA(NI)A	Social Security Administration (Northern Ireland) Act 1992
SSCBA 1992	Social Security Contributions and Benefits Act 1992
SSCB(NI)A 1992	Social Security and Benefits (Northern Ireland) Act 1992
TIIN	Tax Information and Impact Notes

**NATIONAL INSURANCE  
CONTRIBUTIONS BILL**

**EXPLANATORY NOTES**

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