

# **National Insurance Contributions Bill**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by HM Revenue & Customs, are published separately as Bill 53 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Chancellor of the Exchequer has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the National Insurance Contributions Bill are compatible with the Convention rights.

# National Insurance Contributions Bill

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TO

Make provision about national insurance contributions in cases where there is a retrospective change to the law relating to income tax and to enable related provision to be made for the purposes of contributory benefits, statutory payments and other matters; to make provision about the disclosure of information in relation to arrangements for the avoidance of national insurance contributions; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Power to make provision in consequence of retrospective tax legislation*

**1 Earnings: power to make provision in consequence of retrospective tax legislation: Great Britain**

- (1) After section 4A of the Social Security Contributions and Benefits Act 1992 (c. 4) insert— 5

**“4B Earnings: power to make retrospective provision in consequence of retrospective tax legislation**

- (1) This section applies where—
- (a) a provision of the Income Tax Acts which relates to income tax chargeable under the employment income Parts of ITEPA 2003 is passed or made so as to have retrospective effect (“the retrospective tax provision”), and 10
  - (b) it appears to the Treasury to be appropriate to make regulations under a relevant power for the purpose of reflecting the whole or part of the provision made by the retrospective tax provision. 15
- (2) Those regulations may be made so as to have retrospective effect if it appears to the Treasury to be expedient, in consequence of the retrospective tax provision, for the regulations to have that effect.

- (3) A “relevant power” means a power to make regulations under any of the following provisions –
- (a) section 3 (power to prescribe the manner and basis of the calculation or estimation of earnings);
  - (b) section 4(6) (power to treat amounts chargeable to income tax under the employment income Parts of ITEPA 2003 as earnings);
  - (c) section 4A (power to treat payments or benefits to workers supplied by service companies etc as earnings).
- (4) It does not matter whether the retrospective tax provision in question was passed or made before the day on which the National Insurance Contributions Act 2006 was passed.
- (5) But nothing in subsection (2) authorises regulations to be made which have effect in relation to any time before 2nd December 2004.
- (6) Regulations under a relevant power made by virtue of subsection (2) may affect, for the purposes of any contributions legislation for the purposes of which the regulations are made, the earnings in respect of an employment paid to or for the benefit of an earner at a time before the regulations are made.
- (7) In such a case, subsections (8) and (9) apply and in those subsections and this subsection –
- “relevant contributions legislation” means any contributions legislation for the purposes of which the regulations have the effect mentioned in subsection (6);
  - “the relevant time” means the time before the regulations are made mentioned in that subsection;
  - “the revised earnings” means the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time as determined after applying the regulations.
- (8) References in any relevant contributions legislation, or any provision made under any such legislation, which relate to –
- (a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or
  - (b) the amount of such earnings so paid at that time,
- are to be read, in so far as they so relate, as references which relate to the revised earnings or, as the case may be, the amount of those earnings.
- (9) Any matter which, at the time when the regulations are made, has been determined for the purposes of any relevant contributions legislation, or any provision made under any such legislation, wholly or partly by reference to –
- (a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or
  - (b) the amount of such earnings so paid at that time,
- is to be redetermined as it would have been determined at the time of the original determination if it had been determined wholly or partly, as the case may be, by reference to the revised earnings or the amount of those earnings.

- (10) The matters referred to in subsection (9) may include –
- (a) whether Class 1 contributions are payable in respect of earnings paid to or for the benefit of the earner in a tax week, and
  - (b) the amount of any such contribution.
- (11) Subsections (7) to (10) are subject to any express provision to the contrary (including any such provision made by regulations under section 4C(1)). 5
- (12) The power conferred by subsection (2) is without prejudice to any powers conferred by or by virtue of any other provision of this Act or of any other enactment (including any instrument made under an Act). 10
- (13) For the purposes of this section “contributions legislation” means any Part of this Act or provision of such a Part.
- 4C Power to make provision in consequence of provision made by or by virtue of section 4B(2) etc**
- (1) The Treasury may by regulations made with the concurrence of the Secretary of State make such provision as appears to the Treasury to be expedient for any of the purposes mentioned in subsection (2) in consequence of any provision made by or by virtue of section 4B(2). 15
- (2) Those purposes are –
- (a) any purpose relating to any contributions; 20
  - (b) any purpose relating to any contributory benefit or contribution-based jobseeker’s allowance;
  - (c) any purpose relating to any statutory payment;
  - (d) any purpose relating to minimum payments (within the meaning of the Pensions Act) by employers to occupational pension schemes; 25
  - (e) any purpose of Chapter 2 of Part 3 of that Act (reduction in state scheme contributions and benefits for members of certified schemes);
  - (f) such other purposes as may be prescribed by regulations made by the Treasury with the concurrence of the Secretary of State. 30
- (3) Regulations under subsection (1) may, in particular, make provision –
- (a) modifying any provision of any enactment (including this Act and any enactment passed or made on or after the commencement day); 35
  - (b) for any provision of any such enactment to apply in such cases, and with such modifications (if any), as the regulations may prescribe.
- (4) Regulations under subsection (1) may be made so as to have retrospective effect but must not have effect in relation to any time before 2nd December 2004. 40
- (5) In particular, regulations under subsection (1) made by virtue of subsection (4) may affect any of the following matters –
- (a) liability to pay contributions, including liability to pay Class 1 contributions at a reduced rate by virtue of Chapter 2 of Part 3 of the Pensions Act; 45

- (b) the amount of any contribution, including the amount of any such reduced rate contribution and of any related rebate under section 41(1D) or 42A(2C) of that Act;
- (c) entitlement to a contributory benefit or contribution-based jobseeker's allowance; 5
- (d) the amount of any such benefit or allowance;
- (e) entitlement to a statutory payment;
- (f) the amount of any such payment;
- (g) liability to make minimum payments (within the meaning of the Pensions Act) to occupational pension schemes; 10
- (h) the amount of any such payment;
- (i) liability to make payments under section 42A(3) of the Pensions Act or to pay minimum contributions under section 43 of that Act;
- (j) the amount of any such payment or contribution. 15
- (6) In such a case, where the matter has been determined before the time when the regulations are made, the regulations may provide for the matter to be redetermined accordingly.
- (7) If (ignoring this subsection) the operative provisions would directly or indirectly have effect in any case so as – 20
- (a) to remove a person's entitlement to a contributory benefit, contribution-based jobseeker's allowance or statutory payment, or
- (b) to reduce the amount of any such benefit, allowance or payment to which a person has an entitlement, 25
- those provisions are to be read with such modifications as are necessary to ensure that they do not have that effect.
- (8) For the purposes of subsection (7) –
- (a) "the operative provisions" are section 4B(7) to (10) and any provision made by virtue of section 4B(2) or under subsection (1) of this section; 30
- (b) a person's "entitlement" includes any future entitlement which the person may have.
- (9) The powers conferred by this section are without prejudice to any powers conferred by or by virtue of any other provision of this Act or any other enactment. 35
- (10) In particular, any modification of any provision of an instrument by regulations made under subsection (1) is without prejudice to any other power to amend or revoke the provisions of the instrument (including the modified provision). 40
- (11) For the purposes of this section –
- "the commencement day" means the day on which the National Insurance Contributions Act 2006 was passed;
- "enactment" includes an instrument made under an Act;
- "statutory payment" means – 45
- (a) statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay; or

- (b) any other payment prescribed by regulations made by the Treasury with the concurrence of the Secretary of State.”
- (2) In section 176 of that Act (parliamentary control of statutory instruments)—
- (a) in subsection (1)(a), at the appropriate place in the list insert— 5  
“section 4B(2);  
section 4C;”, and
- (b) after subsection (2) insert—
- “(2A) In the case of a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of section 4B(2) to which subsection (1) above applies, the draft of the instrument must be laid before Parliament before the end of the period of 12 months beginning with the appropriate date. 10
- (2B) For the purposes of subsection (2A), the “appropriate date” means— 15
- (a) where the corresponding retrospective tax provision was passed or made before the day on which the National Insurance Contributions Act 2006 was passed, the date upon which that Act was passed, and
- (b) in any other case, the date upon which the corresponding retrospective tax provision was passed or made. 20
- (2C) For the purposes of subsection (2B), “the corresponding retrospective tax provision” in relation to the regulations means— 25
- (a) the retrospective tax provision mentioned in subsection (1) of section 4B in relation to which the regulations are to be made by virtue of subsection (2) of that section, or
- (b) where there is more than one such tax provision, whichever of those provisions was the first to be passed or made.” 30
- 2 Earnings: power to make provision in consequence of retrospective tax legislation: Northern Ireland**
- (1) After section 4A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) insert— 35
- “4B Earnings: power to make retrospective provision in consequence of retrospective tax legislation**
- (1) This section applies where—
- (a) a provision of the Income Tax Acts which relates to income tax chargeable under the employment income Parts of ITEPA 2003 is passed or made so as to have retrospective effect (“the retrospective tax provision”), and 40
- (b) it appears to the Treasury to be appropriate to make regulations under a relevant power for the purpose of reflecting the whole or part of the provision made by the retrospective tax provision. 45

- (2) Those regulations may be made so as to have retrospective effect if it appears to the Treasury to be expedient, in consequence of the retrospective tax provision, for the regulations to have that effect.
- (3) A “relevant power” means a power to make regulations under any of the following provisions— 5
- (a) section 3 (power to prescribe the manner and basis of the calculation or estimation of earnings);
  - (b) section 4(6) (power to treat amounts chargeable to income tax under the employment income Parts of ITEPA 2003 as earnings); 10
  - (c) section 4A (power to treat payments or benefits to workers supplied by service companies etc as earnings).
- (4) It does not matter whether the retrospective tax provision in question was passed or made before the day on which the National Insurance Contributions Act 2006 was passed. 15
- (5) But nothing in subsection (2) authorises regulations to be made which have effect in relation to any time before 2nd December 2004.
- (6) Regulations under a relevant power made by virtue of subsection (2) may affect, for the purposes of any contributions legislation for the purposes of which the regulations are made, the earnings in respect of an employment paid to or for the benefit of an earner at a time before the regulations are made. 20
- (7) In such a case, subsections (8) and (9) apply and in those subsections and this subsection—
- “relevant contributions legislation” means any contributions legislation for the purposes of which the regulations have the effect mentioned in subsection (6); 25
  - “the relevant time” means the time before the regulations are made mentioned in that subsection;
  - “the revised earnings” means the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time as determined after applying the regulations. 30
- (8) References in any relevant contributions legislation, or any provision made under any such legislation, which relate to—
- (a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or 35
  - (b) the amount of such earnings so paid at that time,
- are to be read, in so far as they so relate, as references which relate to the revised earnings or, as the case may be, the amount of those earnings. 40
- (9) Any matter which, at the time when the regulations are made, has been determined for the purposes of any relevant contributions legislation, or any provision made under any such legislation, wholly or partly by reference to—
- (a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or 45
  - (b) the amount of such earnings so paid at that time,

is to be redetermined as it would have been determined at the time of the original determination if it had been determined wholly or partly, as the case may be, by reference to the revised earnings or the amount of those earnings.

- (10) The matters referred to in subsection (9) may include – 5
- (a) whether Class 1 contributions are payable in respect of earnings paid to or for the benefit of the earner in a tax week, and
  - (b) the amount of any such contribution.
- (11) Subsections (7) to (10) are subject to any express provision to the contrary (including any such provision made by regulations under section 4C(1)). 10
- (12) The power conferred by subsection (2) is without prejudice to any powers conferred by or by virtue of any other provision of this Act or of any other enactment.
- (13) For the purposes of this section – 15
- “contributions legislation” means any Part of this Act or provision of such a Part;
  - “enactment” has the same meaning as it has for the purposes of section 4C.
- 4C Power to make provision in consequence of provision made by or by virtue of section 4B(2) etc** 20
- (1) The Treasury may by regulations made with the concurrence of the relevant Northern Ireland department (if any) make such provision as appears to the Treasury to be expedient for any of the purposes mentioned in subsection (2) in consequence of any provision made by or by virtue of section 4B(2). 25
- (2) Those purposes are –
- (a) any purpose relating to any contributions;
  - (b) any purpose relating to any contributory benefit or contribution-based jobseeker’s allowance; 30
  - (c) any purpose relating to any statutory payment;
  - (d) any purpose relating to minimum payments (within the meaning of the Pensions Act) by employers to occupational pension schemes;
  - (e) any purpose of Chapter 2 of Part 3 of that Act (reduction in state scheme contributions and benefits for members of certified schemes); 35
  - (f) such other purposes as may be prescribed by regulations made by the Treasury with the concurrence of the relevant Northern Ireland department (if any). 40
- (3) Regulations under subsection (1) may, in particular, make provision –
- (a) modifying any provision of any enactment (including this Act and any enactment passed or made on or after the commencement day);
  - (b) for any provision of any such enactment to apply in such cases, and with such modifications (if any), as the regulations may prescribe. 45

- (4) Regulations under subsection (1) may be made so as to have retrospective effect but must not have effect in relation to any time before 2nd December 2004.
- (5) In particular, regulations under subsection (1) made by virtue of subsection (4) may affect any of the following matters— 5
- (a) liability to pay contributions, including liability to pay Class 1 contributions at a reduced rate by virtue of Chapter 2 of Part 3 of the Pensions Act;
  - (b) the amount of any contribution, including the amount of any such reduced rate contribution and of any related rebate under section 37(1D) or 38A(2C) of that Act; 10
  - (c) entitlement to a contributory benefit or contribution-based jobseeker’s allowance;
  - (d) the amount of any such benefit or allowance;
  - (e) entitlement to a statutory payment; 15
  - (f) the amount of any such payment;
  - (g) liability to make minimum payments (within the meaning of the Pensions Act) to occupational pension schemes;
  - (h) the amount of any such payment;
  - (i) liability to make payments under section 38A(3) of the Pensions Act or to pay minimum contributions under section 39 of that Act; 20
  - (j) the amount of any such payment or contribution.
- (6) In such a case, where the matter has been determined before the time when the regulations are made, the regulations may provide for the matter to be redetermined accordingly. 25
- (7) If (ignoring this subsection) the operative provisions would directly or indirectly have effect in any case so as—
- (a) to remove a person’s entitlement to a contributory benefit, contribution-based jobseeker’s allowance or statutory payment, or 30
  - (b) to reduce the amount of any such benefit, allowance or payment to which a person has an entitlement,
- those provisions are to be read with such modifications as are necessary to ensure that they do not have that effect. 35
- (8) For the purposes of subsection (7)—
- (a) “the operative provisions” are section 4B(7) to (10) and any provision made by virtue of section 4B(2) or under subsection (1) of this section;
  - (b) a person’s “entitlement” includes any future entitlement which the person may have. 40
- (9) The powers conferred by this section are without prejudice to any powers conferred by or by virtue of any other provision of this Act or any other enactment.
- (10) In particular, any modification of any provision of an instrument by regulations made under subsection (1) is without prejudice to any other power to amend or revoke the provisions of the instrument (including the modified provision). 45

- (11) For the purposes of this section—  
 “the commencement day” means the day on which the National Insurance Contributions Act 2006 was passed;  
 “enactment” includes—  
 (a) Northern Ireland legislation, and 5  
 (b) an instrument made under Northern Ireland legislation (as well as an instrument made under an Act);  
 “statutory payment” means—  
 (a) statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay; or 10  
 (b) any other payment prescribed by regulations made by the Treasury with the concurrence of the relevant Northern Ireland department (if any);  
 “the relevant Northern Ireland department”, in relation to regulations made under this section, means each Northern Ireland department responsible for any of the matters to which the regulations relate.” 15
- (2) In section 172 of that Act (parliamentary control of statutory instruments)—  
 (a) in subsection (11A), after “by virtue of section” insert “4B(2), 4C,”, and  
 (b) after subsection (11B) insert— 20
- “(11C) In the case of a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of section 4B(2) to which subsection (11A) above applies, the draft of the instrument must be laid before Parliament before the end of the period of 12 months beginning with the appropriate date. 25
- (11D) For the purposes of subsection (11C), the “appropriate date” means—  
 (a) where the corresponding retrospective tax provision was passed or made before the day on which the National Insurance Contributions Act 2006 was passed, the date upon which that Act was passed, and 30  
 (b) in any other case, the date upon which the corresponding retrospective tax provision was passed or made.
- (11E) For the purposes of subsection (11D), “the corresponding retrospective tax provision” in relation to the regulations means—  
 (a) the retrospective tax provision mentioned in subsection (1) of section 4B in relation to which the regulations are to be made by virtue of subsection (2) of that section, or 40  
 (b) where there is more than one such tax provision, whichever of those provisions was the first to be passed or made.”
- 3 Class 1A contributions: power to make provision in consequence of retrospective tax legislation: Great Britain 45**
- (1) After section 10ZB of the Social Security Contributions and Benefits Act 1992

(c. 4) insert—

**“10ZC Class 1A contributions: power to make provision in consequence of retrospective tax legislation**

- (1) The Treasury may by regulations make such provision as appears to the Treasury to be expedient for any purpose of the law relating to Class 1A contributions in consequence of any relevant retrospective tax provision—
  - (a) which is passed or made at or before the time when the regulations are made, or
  - (b) which may be passed or made after that time.
- (2) “Relevant retrospective tax provision” means a provision of the Income Tax Acts which—
  - (a) has retrospective effect, and
  - (b) affects the amount of general earnings received by an earner from an employment on which he is chargeable to income tax under the employment income Parts of ITEPA 2003 for a tax year.
- (3) It does not matter whether the relevant retrospective tax provision was passed or made before the commencement day.
- (4) Regulations under this section may, in particular, make provision—
  - (a) modifying any provision of any enactment (including this Act and any enactment passed or made on or after the commencement day);
  - (b) for any provision of any such enactment to apply in such cases, and with such modifications (if any), as the regulations may prescribe.
- (5) Regulations under this section may be made so as to have retrospective effect but must not have effect in relation to any time before 2nd December 2004.
- (6) In particular, regulations under this section made by virtue of subsection (5)—
  - (a) may affect matters determined before the time when the regulations are made, and
  - (b) may provide for those matters to be redetermined accordingly.
- (7) Regulations under this section—
  - (a) may not impose any liability to pay a Class 1A contribution, and
  - (b) may not increase the amount of any Class 1A contribution.
- (8) The powers conferred by this section are without prejudice to—
  - (a) any liability to pay a Class 1A contribution which arises by virtue of any relevant retrospective tax provision, and
  - (b) any powers conferred by or by virtue of any other provision of this Act or any other enactment.
- (9) In particular, any modification of any provision of an instrument by regulations under this section is without prejudice to any other power to amend or revoke the provisions of the instrument (including the modified provision).

- (10) For the purposes of this section—  
     “the commencement day” means the day on which the National Insurance Contributions Act 2006 was passed;  
     “enactment” includes an instrument made under an Act.”
- (2) In section 176 of that Act (parliamentary control of statutory instruments), in subsection (1)(a), at the appropriate place in the list insert—  
     “section 10ZC;”.
- 4 Class 1A contributions: power to make provision in consequence of retrospective tax legislation: Northern Ireland**
- (1) After section 10ZB of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) insert—  
     **“10ZC Class 1A contributions: power to make provision in consequence of retrospective tax legislation**
- (1) The Treasury may by regulations make such provision as appears to the Treasury to be expedient for any purpose of the law relating to Class 1A contributions in consequence of any relevant retrospective tax provision—  
     (a) which is passed or made at or before the time when the regulations are made, or  
     (b) which may be passed or made after that time.
- (2) “Relevant retrospective tax provision” means a provision of the Income Tax Acts which—  
     (a) has retrospective effect, and  
     (b) affects the amount of general earnings received by an earner from an employment on which he is chargeable to income tax under the employment income Parts of ITEPA 2003 for a tax year.
- (3) It does not matter whether the relevant retrospective tax provision was passed or made before the commencement day.
- (4) Regulations under this section may, in particular, make provision—  
     (a) modifying any provision of any enactment (including this Act and any enactment passed or made on or after the commencement day);  
     (b) for any provision of any such enactment to apply in such cases, and with such modifications (if any), as the regulations may prescribe.
- (5) Regulations under this section may be made so as to have retrospective effect but must not have effect in relation to any time before 2nd December 2004.
- (6) In particular, regulations under this section made by virtue of subsection (5)—  
     (a) may affect matters determined before the time when the regulations are made, and  
     (b) may provide for those matters to be redetermined accordingly.
- (7) Regulations under this section—

- (a) may not impose any liability to pay a Class 1A contribution, and
  - (b) may not increase the amount of any Class 1A contribution.
- (8) The powers conferred by this section are without prejudice to—
- (a) any liability to pay a Class 1A contribution which arises by virtue of any relevant retrospective tax provision, and 5
  - (b) any powers conferred by or by virtue of any other provision of this Act or any other enactment.
- (9) In particular, any modification of any provision of an instrument by regulations under this section is without prejudice to any other power to amend or revoke the provisions of the instrument (including the modified provision). 10
- (10) For the purposes of this section—
- “the commencement day” means the day on which the National Insurance Contributions Act 2006 was passed;
  - “enactment” includes an instrument made under an Act.” 15
- (2) In section 172 of that Act (parliamentary control of statutory instruments), in subsection (11A), before “11(3)” insert “10ZC,”.

*Agreements and joint elections*

**5 Agreements and joint elections: Great Britain**

- (1) Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (supplementary provisions relating to Class 1 contributions) is amended as follows. 20
- (2) In paragraph 3A (restrictions on recovery of employer’s contributions), in sub-paragraph (2A)—
- (a) after “relates to” insert “— 25
  - (a) ”, and
  - (b) after “market value)” insert “, or
  - (b) any contribution, or any part of any contribution, liability to which arises as a result of regulations being given retrospective effect by virtue of section 4B(2) (earnings: power to make retrospective provision in consequence of retrospective tax legislation)”. 30
- (3) In paragraph 3B (transfer of liability for employer’s contributions to employee), in sub-paragraph (7B)—
- (a) after “relate to” insert “— 35
  - (a) ”, and
  - (b) after “market value)” insert “, or
  - (b) any liability, or any part of any liability, to a contribution arising as a result of regulations being given retrospective effect by virtue of section 4B(2) (earnings: power to make retrospective provision in consequence of retrospective tax legislation)”. 40
- (4) The amendments made by this section have effect in relation to agreements and elections whether entered into or made before, or on or after, the day on

which this Act is passed (including those entered into or made before 2nd December 2004).

## 6 Agreements and joint elections: Northern Ireland

- (1) Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (supplementary provisions relating to Class 1 contributions) is amended as follows. 5
- (2) In paragraph 3A (restrictions on recovery of employer’s contributions), in sub-paragraph (2A) –
- (a) after “relates to” insert “ –
- (a) ”, and 10
- (b) after “market value)” insert “, or
- (b) any contribution, or any part of any contribution, liability to which arises as a result of regulations being given retrospective effect by virtue of section 4B(2) (earnings: power to make retrospective provision in consequence of retrospective tax legislation)”. 15
- (3) In paragraph 3B (transfer of liability for employer’s contributions to employee), in sub-paragraph (7B) –
- (a) after “relate to” insert “ –
- (a) ”, and 20
- (b) after “market value)” insert “, or
- (b) any liability, or any part of any liability, to a contribution arising as a result of regulations being given retrospective effect by virtue of section 4B(2) (earnings: power to make retrospective provision in consequence of retrospective tax legislation)”. 25
- (4) The amendments made by this section have effect in relation to agreements and elections whether entered into or made before, or on or after, the day on which this Act is passed (including those entered into or made before 2nd December 2004). 30

### *Disclosure of avoidance*

## 7 Disclosure of contributions avoidance arrangements

- (1) The Social Security Administration Act 1992 (c. 5) is amended as follows.
- (2) After section 132 insert –

### *“Contributions avoidance arrangements* 35

#### 132A Disclosure of contributions avoidance arrangements

- (1) The Treasury may by regulations make provision requiring, or relating to, the disclosure of information in relation to any notifiable contribution arrangements or notifiable contribution proposal.
- (2) The only provision which may be made under subsection (1) is provision applying (with or without modification), or corresponding to, any of the following provisions – 40

- (a) any provision of, or made under, Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) so far as that provision relates to income tax;
- (b) section 98C of the Taxes Management Act 1970 (penalties for failure to comply with Part 7 of the Finance Act 2004) and any other provision of the Taxes Management Act 1970 so far as it relates to a penalty under that section; 5
- (c) any provision made under section 132 of the Finance Act 1999 or section 135 of the Finance Act 2002 (electronic communications); 10
- (d) any provision of any other enactment or instrument (including any enactment or instrument passed or made on or after the day on which the National Insurance Contributions Act 2006 was passed) which requires, or relates to, the disclosure of information in relation to tax avoidance arrangements which relate in whole or in part to income tax. 15
- (3) For the purposes of subsection (1) –
- “notifiable contribution arrangements” means any arrangements which –
- (a) enable, or might be expected to enable, any person to obtain an advantage in relation to a contribution, and 20
- (b) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage;
- “notifiable contribution proposal” means a proposal for arrangements which, if entered into, would be notifiable contribution arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it). 25
- (4) Where, at any time after the passing of the National Insurance Contributions Act 2006, a relevant tax provision is passed or made which changes the notifiable tax matters, the Treasury may, by regulations, amend the definitions in subsection (3) so as to make an analogous change to the matters in respect of which information may be required to be disclosed by virtue of this section. 30
- (5) In subsection (4) –
- “the notifiable tax matters” means the arrangements, proposals or other matters in respect of which information is or may be required to be disclosed under a relevant tax provision;
- “relevant tax provision” means a provision mentioned in subsection (2). 40
- (6) No provision made by regulations under this section may require any person to disclose to the Commissioners for Her Majesty’s Revenue and Customs, or any other person, any information with respect to which a claim to legal professional privilege, or, in Scotland, to confidentiality of communications, could be maintained in legal proceedings. 45
- (7) In this section –
- “advantage”, in relation to any contribution, means –

- (a) the avoidance or reduction of a liability for that contribution, or
- (b) the deferral of the payment of that contribution;
- “arrangements” includes any scheme, transaction or series of transactions; 5
- “contribution” means a contribution under –
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992, or
- (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; 10
- “tax avoidance arrangements” includes arrangements which enable, or might be expected to enable, a person to obtain an advantage in relation to any tax (within the meaning of Part 7 of the Finance Act 2004).”
- (3) In section 190(1) (statutory instruments subject to affirmative resolution procedure), after “provisions) –” insert – 15
- “(za) regulations under section 132A(4);”.
- (4) In section 192(5) (which lists the provisions of that Act which extend to Northern Ireland), at the appropriate place in the list insert – 20
- “section 132A (and sections 189 and 190, but only for the purposes of regulations under section 132A);”.

### *General*

## 8 Extent

- (1) Sections 1, 3 and 5 extend to England and Wales and Scotland only.
- (2) Sections 2, 4 and 6 extend to Northern Ireland only. 25
- (3) The remaining provisions of this Act extend to England and Wales, Scotland and Northern Ireland.

## 9 Commencement

This Act comes into force on the day on which it is passed.

## 10 Short Title 30

This Act may be cited as the National Insurance Contributions Act 2006.

# National Insurance Contributions Bill

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## B I L L

To make provision about national insurance contributions in cases where there is a retrospective change to the law relating to income tax and to enable related provision to be made for the purposes of contributory benefits, statutory payments and other matters; to make provision about the disclosure of information in relation to arrangements for the avoidance of national insurance contributions; and for connected purposes.

*Presented by Mr Chancellor of the Exchequer  
supported by  
Mr Secretary Blunkett, Mr Secretary Hain,  
Secretary Alan Johnson, Mr Des Browne,  
Dawn Primarolo, John Healey  
and Mr Ivan Lewis.*

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*Ordered, by The House of Commons,  
to be printed, 11th October 2005.*

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