These Notes refer to the National Insurance Contributions Bill as brought from the House of Commons on 13th January 2011 [HL Bill 39]

NATIONAL INSURANCE CONTRIBUTIONS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the National Insurance Contributions Bill as brought from the House of Commons on 13th January 2011. They have been prepared by HMRC in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. These 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. If 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 in the Bill. Part 1 covers the increase in rates of Class 1 and Class 4 NICs and the destination of the increased product of the additional rates. Part 2 covers the Regional Secondary Contributions Holiday for New Businesses (the Holiday). Part 3 contains general provision concerning abbreviations, commencement, extent and short title. Annex A is a glossary of terms used in these notes.

BACKGROUND

Overview of NICs[1]

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 contributions payable by earners, employers and others. The money is collected via NICs. 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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[1] Amounts and rates are for the 2010-11 tax year.

6. The scheme defines the category of a worker as 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 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 11% of earnings above £110 up to £844 per week (£5,715 to £43,875 per year) and 1% of all earnings above this limit. Secondary contributions are payable at 12.8% of all earnings above £110 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 PAYE income tax.

- Class 1A contributions are payable annually by employers on most taxable benefits in kind. They are payable by employers only. Class 1A contributions are payable at a rate of 12.8%.

- 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 12.8% 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 £2.40 per week – a self-employed person can apply to be exempted from liability where earnings are below £5,075 per year. Class 2 contributions are paid either monthly or quarterly.

- Class 3 contributions are paid on a voluntary basis, at a flat rate of £12.05 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. Class 4 NICs are payable at a rate of 8% on profits between £5,715 and £43,875 and 1% of profits above £43,875.

Increase in the rates of NICs

8. In the Pre-Budget Report on 24th November 2008 the previous Chancellor announced an increase in NICs rates of 0.5% starting in 2011/12. In the Pre-Budget Report on 9th December 2009 the previous Chancellor announced a doubling of the previously announced increases. In the Emergency Budget on 22nd June 2010 the Government confirmed the rate rises would remain in place as part of a wider package of measures, which also increased the income tax personal allowance, and the secondary threshold below which employers pay no NICs.

9. The Bill includes provision to increase the following rates of NICs from 6th April 2011:

- the main rates of primary Class 1 and Class 4 NICs are intended to be increased by 1% to 12% and 9% respectively;
- the Class 1 secondary rate of NICs is intended to be increased by 1% to 13.8% and will also apply to Class 1A and Class 1B NICs; and
- the additional rates of primary Class 1 and Class 4 NICs are intended to be increased by 1% to 2%.

A scheme to help new businesses in targeted areas of the United Kingdom

On 19th May 2010, the Chancellor of the Exchequer said, in a speech to the Confederation of British Industry:

> "I want to help new businesses by abolishing employers' National Insurance Contributions on the first ten jobs they create."

10. At the Emergency Budget on 22nd June 2010 the Budget documentation included the following:

> "1.87 The Government's strategy to support private sector enterprise in all parts of the UK aims:
>
> to encourage the creation of private sector jobs in regions reliant on public sector employment, through reducing the cost to new businesses of employing staff. The Government will shortly announce details of a scheme to help new businesses in targeted areas of the UK that need it most. During a three year qualifying period, new businesses which start up in these areas will get a substantial reduction in their employer National Insurance Contributions (NICs). Within the qualifying period, these employers will not have to pay the first £5,000 of Class 1 employer NICs due in the first twelve months of employment. This will apply for each of the first 10 employees hired in the first year of business and operate in selected countries and regions. Subject to meeting the necessary legal requirements, the scheme is intended to start no later than September 2010. Any new business set up from 22 June 2010 which meets the criteria set out in the forthcoming announcement will benefit from the scheme."[2]

[2] http://www.hm-treasury.gov.uk/d/junebudget_complete.pdf

SUMMARY

11. This is a relatively short Bill containing two measures. Part 1 covers the increase in rates and Part 2 covers the Holiday. Part 3 contains general provisions concerning the measures in Parts 1 and 2.

12. The Holiday is aimed at encouraging the creation of private sector jobs in regions most reliant on public sector employment, through reducing the cost to new businesses of employing staff. During a three year qualifying period, new businesses which start up in these areas will get a substantial reduction in their employer NICs. Within the qualifying period, these employers will not have to pay the first £5,000 of Class 1 employer NICs due in the first twelve months of employment.

13. This will apply for each of the first 10 employees hired in the first year of business and will operate in selected parts of the UK. The scheme started on 6th September 2010. Any new businesses set up on or after 22nd June 2010 which meet the eligibility criteria set out in the draft legislation published on 27th August 2010 will be able to benefit from the Holiday.

14. The measure will not apply in three English regions. These are Greater London, the South East Region and the Eastern Region.

15. In order that the Holiday could begin to operate on 6 September (before the passing of any legislation giving effect to it), the Commissioners for HMRC have exercised their "collection and management" powers under sections 5 and 9 of the Commissioners for Revenue and Customs Act 2005 so as not to require qualifying employers to pay employer NICs in respect of their qualifying employees from the implementation date. The Commissioners have satisfied themselves that this is an arrangement which will cost less (thus increasing net yield) than collecting employer NICs until Royal Assent of the Bill and then refunding them.

16. This is on the basis that:

- Ministers made a statement of what the scheme entailed, specified which people could expect to benefit from the scheme, and stated the intention to legislate with retrospective effect back to the implementation date; and

- HMRC published draft provisions to accompany the statement.

17. The Budget notes included a statement that made it clear to those taking up the Holiday in advance of Royal Assent that it was subject to the successful passage of the legislation and that, if the Bill was not passed or the legislation relating to the Holiday was

substantially altered, they would have to pay to HMRC any employer NICs withheld by 19th April 2011.

TERRITORIAL EXTENT AND APPLICATION

18. NICs are a reserved matter in Wales and Scotland but an excepted matter for Northern Ireland. The provisions in this Bill therefore extend to England and Wales, Scotland and Northern Ireland. Northern Ireland has separate National Insurance legislation equivalent to that made for the rest of the UK. So, where appropriate, the Bill either amends, or refers to, the equivalent Northern Ireland legislation relating to NICs (see, for example, clauses 6(5), 8(6), 9(5) and 11(2)).

COMMENTARY ON CLAUSES

Part 1: Increases in rates

Clause 1: Class 1 contributions

19. Clause 1 specifies the changes to be made to section 8(2) of the Social Security Contributions and Benefits Act 1992 (SSCBA 1992) and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992) (calculation of primary Class 1 percentages).

20. *Subsection (1)(a)* provides that the main rate of Class 1 primary contributions (the employee contribution) is increased from 11% to 12%.

21. *Subsection (1)(b)* provides that the additional rate of Class 1 contributions (the additional primary percentage) is increased from 1% to 2%.

22. *Subsection (2)* provides that the Class 1 secondary contribution (the employer contribution) is increased from 12.8% to 13.8%.

Clause 2: Class 4 contributions

23. Clause 2 specifies the changes to be made to section 15(3ZA) of SSCBA 1992 and SSCB(NI)A 1992 (Class 4 percentages).

24. *Subsection (1)(a)* provides that the main rate of Class 4 contributions is increased from 8% to 9%.

25. *Subsection (1)(b)* provides that the additional rate of Class 4 contributions is increased from 1% to 2%.

26. *Subsection (2)* amends section 143(4)(b) of the Social Security Administration Act 1992 (SSAA 1992) (power to alter contributions with a view to adjusting level of National

Insurance Fund). It increases from 8.25% to 9.25% the limit for any increase in the rate of Class 4 contributions that may be made by Treasury order.

Clause 3: Increased product of additional rates to be paid into National Insurance Fund

27. Clause 3 amends section 162(5) of SSAA 1992 and section 142(5) of SSA(NI)A 1992 (destination of contributions: 100 per cent of product of additional primary percentage rate and additional Class 4 percentage rate to form part of health service allocation). The purpose of this is that, although the additional rates are being increased from 1% to 2%, the revenue from the additional 1% rise will not go towards the NHS, but instead will be paid into the National Insurance Fund.

Part 2: Regional secondary contributions holiday for new businesses
Clause 4: "Holiday" for new businesses

28. This clause introduces Part 2 of the Bill, which provides for the regional secondary contributions holiday for new businesses.

29. *Subsection (1)* sets three conditions, all of which must be met if the clause is to apply.

30. The first condition, in *subsection (1)(a)*, provides that a person, or a number of persons in partnership, ("P") must have started a new business during the relevant period. Clause 5 defines what is meant by "starting a new business".

31. *Subsection (4)* defines "the relevant period". It begins on 22nd June 2010, when the Chancellor announced the Holiday in the Emergency Budget. It ends on 5th September 2013, three years after the implementation date.

32. The second condition, in *subsection (1)(b),* provides that the principal place at which the new business is carried on at the time it starts must not be in any of the excluded regions.

33. *Subsection (5)* provides that "the excluded regions" for the purposes of the Holiday are Greater London, the South East Region and the Eastern Region. Clause 11 defines "the South East Region" and "the Eastern Region".

34. The third condition, in *subsection (1)(c)*, provides that P's new business will not qualify for the holiday unless there are "qualifying employees" in relation to it. Clause 6 specifies when a person is a qualifying employee.

35. *Subsection (2)* sets out how the benefit of the Holiday will be provided. It gives two alternative means by which P can benefit.

36. First, subsection (2)(a) provides that P may deduct the appropriate amount in respect of each qualifying employee from Class 1 contributions payments that P is liable to make.

"Class 1 contributions payments" is defined in Clause 11 and Clause 7 specifies what is the "appropriate amount".

37. Secondly, subsection (2)(b) provides that if P is not able to deduct this amount, it may be refunded to P. Clause 8 explains how a deduction or refund is made.

Example

- Brandon starts a new business on 27th September 2010 and takes on two employees on 1st November 2010. Brandon is eligible for the Holiday but does not claim. After the end of the 2010/11 tax year he is advised by his accountant that he could have claimed the Holiday. Brandon decides to claim and calculates what his NICs Holiday entitlement was for the period from 1st November 2010 to 5th April 2011 and makes an application for a refund to HMRC. Provided the information is complete, Brandon would be entitled to a refund of the secondary Class 1 contributions payable in respect of the two employees for the 2010/11 tax year. He will continue to enjoy the Holiday for his two employees up to 31st October 2011 by making deductions from the payments he is due to make to HMRC during the 2011/12 tax year.

Clause 5: Starting a new business

38. This clause defines what is meant by "starting a new business".

39. *Subsection (1)* provides that P starts a new business when P begins to carry on a new business.

40. *Subsection (2)* defines when a business is not to be regarded as a "new business". In the vast majority of cases there will be no question about whether a new business has started as no business will have existed before and so this test will be satisfied.

41. The definition of a new business provides that a business will not be a new business if the person applying for the Holiday has at any time in the six months before the start of the business carried on another business consisting of most of the activities of which the most recent business consists. This is to prevent a business ceasing and then restarting or restructuring itself in order to take advantage of the Holiday in circumstances where it is not actually a new business.

Example

- Roy carries on a business as a carpenter with two employees. He is offered a job working for a larger business and accepts, closing his own business and releasing his employees. He doesn't enjoy his new job and leaves after 3 months. He begins to carry on his old business as a carpenter, and re-hires his former employees. This is not a new business as, within the six months prior to it starting, Roy carried on another business consisting of the activities of which the business consists.

42. *Subsections (2)(b)* and *(3)* provide that a business is not a "new" business if P carries it on as a result of a transfer. That happens when P begins to carry on the business on another person ceasing to carry on the activities of which it consists or mostly consists in consequence of arrangements involving P and the other person. So where:

a) there is a transfer of activities of an existing business from one person to another,
b) those activities constitute all or most of the activities of the business to which the transfer is made, and
c) there is an arrangement for the transfer between the parties,

this will not count as a new business.

Examples

- Sam is a publican, running a pub in a small village. He wishes to retire and sells the pub as a going concern to Tom, who takes over the trade and continues to employ the pub's staff. Tom is not carrying on a new business, as the whole of the trade he is now carrying on was previously carried on by Sam.

- Jim is a sole trader, a plumber. The business incorporates and Jim's wife Rosie is named as the sole director. Jim is then taken on by the company as an employee. This is not a new business, as the whole of the trade carried on by the company was previously carried on by Jim.

43. *Subsection (4)(a)* provides that P is to be taken, for the purposes of *subsection (3)*, to begin to carry on a business on another person ceasing to carry on such activities if the business begins to be carried on by P otherwise than in partnership on such activities ceasing to be carried on by persons in partnership.

Example

- John and Paul are dentists, practising in partnership. They fall out and dissolve their partnership, dividing their practice and its patients between themselves and both now carry on their professions alone. Neither Paul nor John is carrying on a new business, as each is carrying on a profession whose activities were previously carried on by them in partnership.

44. *Subsection (4)(b)* provides that P is to be taken, for the purposes of *subsection (3)*, to begin to carry on a business on another person ceasing to carry on such activities if P is a partnership which begins to carry on the business on such activities ceasing to be carried on –

(i) by a person or persons otherwise than in partnership,

(ii) by a partnership not consisting only of all the persons constituting P, or

(iii) partly as mentioned in sub-paragraph (i) and partly as mentioned in sub-paragraph (ii).

Example

- Alan, Ben, Charles and David are partners in an accountancy firm. Ben wishes to retire. The firm is expanding, and the remaining partners decide to admit 2 new partners, Ellen and Frances. The partnership also buys the business of another accountant, George, who also wishes to retire. The new business carried on in partnership by Alan, Charles, David, Ellen and Frances is not a new business. The activities of the business were previously carried on by a combination of (1) a partnership of different constitution than the current partnership (being the one carried on by Alan, Ben, Charles and David), and (2) a person otherwise than in partnership (the business carried on by George).

45. *Subsection (5)* provides that P will not be starting a new business if *(a)* before beginning to carry on a business, P enters into arrangements under which P may at any time during the relevant period carry on as part of the business activities carried on by another person, and *(b)* the business would have been prevented by *subsection (2)(b)* from being a new business if P had been undertaking the activities at the time he started his business, and the other person at that time had ceased to carry them on.

46. The intended effect of this provision is that a person will be prevented from enjoying a holiday if, before beginning to carry on a business, the person enters into arrangements that mean that at some point after the person's business has started he may undertake activities carried on by another business and, had the person been undertaking those activities at the time the business was started, a holiday would not have been allowed.

Example

- A partner in a firm of solicitors handles all the divorce work. He breaks away from the firm and makes an arrangement with the firm that, if his new firm does not prosper, he will be entitled to buy the divorce business of the old firm. His new firm advertises for new divorce work but is only moderately successful. So, he exercises his option to buy the divorce business from the old firm. By virtue of the "arrangements" rule, the partner's new firm will not count as a "new" business.

47. *Subsection (6)* defines the meaning of "business" for the purposes of clause 5. A business means something which is -

(i) a trade, profession or vocation for the purposes of the Income Tax Acts or the Corporation Tax Acts,

(ii) a property business, as defined in section 263(6) of the Income Tax (Trading and Other Income) Act 2005, or

(iii) an investment business, which means a business consisting wholly or partly of making investments.

48. A charity which starts to trade will also fall within the definition whether or not it is carrying out trading activities with a view to profit.

Clause 6: Qualifying employees

49. This clause specifies when a person is a qualifying employee in relation to a new business.

50. *Subsection (1)* sets out two conditions, both of which must be met if a person is to be a qualifying employee in relation to a new business.

51. The first condition, in *subsection (1)(a)*, is, broadly speaking, that the person must have been taken on as a new employee of the new business within the business's first year of operation. It requires that the person first becomes employed as an employed earner for the purposes of the new business before the end of the initial period. "Employed earner" has the meaning given by section 2(1)(a) of the Social Security Contributions and Benefits Act 1992 and its Northern Ireland equivalent. It thus includes employees and office-holders (such as company directors).

52. Under *subsection (1)(a)*, the person must become employed before the end of the "initial period". *Subsection (3)* defines the "initial period".

53. The "initial period" means the period of one year beginning with the date on which P starts the new business or, if earlier, the first date on which an employee is first employed for the purposes of the new business. If a new business starts up on or after 22nd June 2010, but the first date on which an employee is first employed by the new business is before 22nd June

2010, the employee is treated, for the purposes of paragraph (b), as first employed on 22nd June 2010. The effect of *subsection (3)* is that no new business can have an initial period that begins before 22nd June 2010.

Example

- ABC Restaurants Ltd was first registered on 1st May 2010 and two directors were appointed. Preparatory work was undertaken and the new restaurant started to trade on 1st October 2010. The two directors appointed on 1st May 2010 qualify for the Holiday but they are treated as having been engaged for the purposes of the new business on 22nd June 2010. Each director will have a Holiday period from 6th September 2010 to 5th September 2011. ABC Ltd can have a Holiday for up to eight further employees it engages before 22nd June 2011.

54. The second condition, in *subsection (1)(b)*, is that P must be the secondary contributor in relation to any payment of earnings to or for the benefit of the employee at any time during the employee's holiday period. This means, broadly speaking, that P must be the person liable to pay employer NICs in relation to any payment of the new employee's earnings during the holiday period that relates to that employment.

55. *Subsection (1)(b)* refers to payments of earnings during the period that is the "holiday period" in relation to the person. *Subsection (4)* defines the "holiday period".

56. The holiday period in relation to a person begins on the day on which the person is first employed for the purposes of the new business or, if the person is first employed before 6th September 2010, with that date. It ends one year from the date it begins, or at the end of the relevant period, whichever of those dates is the earlier. If a qualifying employee leaves and is re-employed the employee will not be eligible for a new Holiday period. Instead, the new business will be able to enjoy whatever period remains of the employee's original Holiday period.

Example

- A new business (sole trader) commenced trading on 6th August 2010 which falls within the relevant period. The principal place at which the new business is carried out when it starts up is not in an excluded region. The first ten employees engaged between 6th August 2010 and 5th August 2011 (the initial period) will qualify for the Holiday.

- The first employee is engaged on 28th August 2010. Earnings paid to that employee between 6th September 2010 and 5th September 2011 (the Holiday period) will be eligible for the Holiday.

- The second employee is engaged on 30th September 2010. Earnings paid to that employee between 30th September 2010 and 29th September 2011 (the Holiday period) will be eligible for the Holiday.

- The third employee is engaged on 10th September 2011. As the employee's start date is outside the first year of business (the initial period) the new business is not eligible to claim the Holiday for this employee.

- The second employee leaves the new business in January 2011 and rejoins it in July 2011. The new business can resume the Holiday for this qualifying employee until the end of his original Holiday period which ends on 29th September 2011.

57. *Subsection (2)* limits the Holiday to the first 10 qualifying employees.

58. Under certain circumstances, the NICs anti-avoidance legislation concerning personal service companies (commonly known as "IR35") and managed service companies imposes a NIC liability on deemed payments of employment income. *Subsection (5)* provides that the Holiday will not apply to employer NICs liable to be paid on those deemed payments.

Clause 7: The appropriate amount

59. This clause specifies what the appropriate amount is in respect of a qualifying employee.

60. *Subsection (1)* provides that this amount is "the relevant amount of secondary Class 1 contributions".

61. That phrase is then defined in *subsection (2)* as the amount of secondary Class 1 contributions which P is liable to pay in respect of relevant earnings.

62. *Subsection (3)* defines "relevant earnings". A qualifying employee's earnings will not automatically attract the Holiday. To attract the Holiday:

- the earnings need to be paid in respect of employment as an employee for the purposes of the new business;

- they need to be paid during the holiday period; and

- they need to be paid when the principal place at which the business is carried on is not in any of the excluded regions.

63. So *subsection (3)* provides that the requirement for the business not to be in any of the excluded regions must be satisfied at any time when it is paying earnings to a qualifying employee as well as at the time when the business starts.

64. *Subsection (4)* provides that the appropriate amount is capped at the first £5,000 of employer NICs. This limit is applied in relation to each qualifying employee separately.

65. *Subsection (5)* ensures that this clause is consistent with the special NICs timing rules which apply to earnings paid to mariners. The calculation of primary and secondary Class 1 contributions in respect of earnings paid to mariners proceeds largely in the same manner as other employed earners except that there are special rules where a mariner's earnings are paid at the end of his voyage. *Subsection (5)* is intended to ensure that earnings paid in respect of that part of the voyage that falls during the holiday period count for the purposes of the Holiday, despite the fact that they may not be paid until after the holiday period has ended.

66. *Subsection (6)* is concerned with contracted-out NICs. If the qualifying employee is contracted out of the State Earnings Related Pension Scheme, P will pay secondary NICs at a rebated (i.e. reduced) rate. Some contracted-out scheme rules require the employer to pay the rebate into an occupational pension scheme or other pension provider. Accordingly, *subsection (6)* gives employers of contracted-out qualifying employees the benefit of deducting employer NICs at the full, non-contracted-out rate, so that they can pay the rebate to the pension provider.

Clause 8: Making of deductions or refunds

67. This clause explains how a deduction or refund is made.

68. *Subsection (1)* lays down the primary means of obtaining the benefit of the Holiday. The appropriate amount (see clause 7) may be deducted from any one or more Class 1 contributions payments made by P in respect of the same tax year as the one in which the earnings giving rise to the appropriate amount were paid. Clause 11(1) defines "Class 1 contributions payments" as monthly or quarterly payments of Class 1 NICs.

69. *Subsection (2)* lays down the secondary means of obtaining the benefit of the Holiday. To the extent that the appropriate amount cannot be deducted under this clause, P is entitled to a refund from HMRC if P requests a refund.

70. *Subsection (3)* provides that no deductions or refund may be made until an application is made to HMRC and HMRC grants the application.

71. As the Holiday is a scheme to help new businesses in targeted areas of the UK it is considered under EU rules as a state aid. The details of the Holiday are such that in connection with Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) the "de minimis" Regulations apply so that the state aid is lawful aid granted by the UK. The ceiling for the aid covered by the de minimis rule is in general €200,000 (cash grant equivalent) over any three fiscal year period. Lower ceilings apply for some sectors. Road transport has a ceiling of €100,000, agriculture has a ceiling of €7,500, and fisheries and

aquaculture has a ceiling of €30,000. HMRC's mandatory application process for new businesses is in place to ensure compliance with these limits.

72. The applicable legislation (which refers to the Treaty provisions in place before TFEU came into force) comprises:

- Commission Regulation (EC) No 1998/2006 of 15th December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid;
- Commission Regulation (EC) No 1535/2007 of 20th December 2007 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the sector of agricultural production; and
- Commission Regulation (EC) No 875/2007 of 24th July 2007 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the fisheries sector and amending Regulation (EC) No 1860/2004.

73. *Subsection (4*) provides that HMRC can specify what information the application is to contain, the form in which it is to be made, and the manner in which it is to be made. The information requested in the application form includes:

- PAYE and Accounts Office references;
- business name;
- the date the business started;
- the business address and post code; and
- the region or country in which the principal business address falls.

74. Businesses that have not received any state aid are required to apply online. Businesses that fall within the agriculture or fisheries and aquaculture sectors which have had any form of de minimis state aid, or any other aid towards the costs of hiring new employees, during the current and two previous financial years will not qualify for the Holiday. Other businesses that are in receipt of state aid are required to submit a paper application.

75. *Subsection (5)* provides that the deadline for making an application for a refund in respect of a qualifying employee is four years from the day on which the last deduction could be made in respect of the qualifying employee.

76. *Subsection (6)* provides for a right of appeal. The standard NICs appeal procedures which apply in relation to decisions about (for example) the categorisation of earners as

employed or self-employed will also apply to decisions about deductions or refunds under clause 8. Paragraphs (a) and (b) apply, respectively, the Great Britain legislation and the Northern Ireland legislation relating to NICs appeals to the decisions to which this subsection applies.

77. *Subsection 7* specifies the decisions to which *subsection (6)* applies, and which can therefore be appealed. They are decisions about entitlement to deductions, and the amount of a deduction, if entitled, and decisions about refunds and the amount of a refund, if entitled.

Clause 9: Retention of records

78. This clause introduces a record-keeping obligation on P relating to records concerning the Holiday.

79. *Subsection (2)* sets out the details of the record-keeping requirement. The documents or records which P must keep and preserve are those relating to two matters:

- whether P was entitled to make a deduction in respect of the employee, and, if so,
- how P calculated any amount that has been, or could have been, deducted.

80. P must keep and preserve the relevant documents or records for at least 3 years beginning with the date on which the last deduction under clause 8 is, or could be, made in respect of each qualifying employee. The period provided - 3 years - is consistent with the period for which employers are required to retain other NICs-related records.

81. There is already a general NICs record-keeping requirement imposed on employers: so, in order to prevent there being overlapping duties, *subsection (3)* ensures that the general requirement does not apply in relation to records relating specifically to the Holiday.

82. *Subsection (4)* explains that the duty under this clause may be discharged by preserving the relevant documents or records in any form or by any means.

83. *Subsection (5)* applies to this clause the information and inspection powers contained in Schedule 36 to the Finance Act 2008. These powers make provision that enable HMRC to check compliance with the law. They include the power for officers of HMRC to issue notices requiring persons to provide information or to produce documents if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position. They also include the power to inspect business documents that are on the business premises. *Subsection (5)* will extend the powers in Schedule 36 to ensure that HMRC officers can check compliance with the Holiday legislation.

Clause 10: Anti-avoidance

84. This clause sets out an anti-avoidance rule.

85. *Subsection (1)* provides that the Holiday is not available if P starts the new business pursuant to avoidance arrangements.

86. *Subsection (2)* defines "avoidance arrangements" by reference to the purpose for which the arrangements were made. The Holiday will not be available to P if the main purpose, or one of the main purposes, of P in being party to such arrangements is that they result in P carrying on activities as part of the new business which might otherwise have been carried on as part of another business (whether by P or any other person), but which P carries on as part of the new business in order to obtain Holiday deductions or refunds (or increased deductions or refunds).

87. "Arrangements" are then defined at clause 11(1) in a non-exhaustive manner to include "any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable)".

Clause 11: Interpretation of Part 2

88. *Subsection (1)* defines, or gives signposts to the definitions of, words and phrases which have been used in Part 2.

89. The principal enactments relating to NICs are SSCBA 1992 and, in relation to employment in Northern Ireland, SSCB(NI)A 1992. Subsection (2) provides that expressions used both in this Part and in Part 1 of SSCBA 1992 or, if appropriate, Part 1 of SSCB(NI)A 1992 have the same meaning in this Part as they do for the purposes of that Part.

Part 3: General

Clause 12: Abbreviations of Act

90. This clause sets out the abbreviations used in this Bill.

Clause 13: Commencement

91. Part 1 of the Bill comes into force on 6th April 2011.

92. Parts 2 and 3 will come into force on the day on which this Bill is enacted.

Clause 14: Extent

93. This clause provides that the amendments made by Part 1 have the same extent as the provisions to which they relate and that Parts 2 and 3 extend to England and Wales, Scotland and Northern Ireland.

FINANCIAL EFFECTS OF THE BILL

94. The revenue the Exchequer expects to raise from rate rises in 2011-12 is as follows:

Measure	Revenue (£m)
Increase in main primary (employee) rate by 1%	3,660
Increase in additional primary (employee) rate by 1%	580
Increase in secondary (employer) rate by 1%	4,500
Increase in main self-employed rate by 1%	240
Increase in additional self-employed rate by 1%	40

95. The cost of the secondary rate increase with respect to Class 1A and 1B NICs is not included in the table above. Although these rate rises are also expected to occur in 2011-12, Class 1A and Class 1B NICs paid in respect of that year will not be received until 2012-13.

96. The cost to the Exchequer of the Holiday is estimated to be £940m.

97. The net effect on the National Insurance Fund of the measures in the Bill will be positive.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

98. HMRC costs are based on the estimated manpower resource required to administer the Holiday. This includes dealing with initial customer telephone calls, managing the application process and any required compliance activity. It is anticipated that around 240 extra full time employees are required to operate the scheme over three years, and given the volumes of work expected, and the appropriate staff wage rate, the estimated cost to HMRC is around £12m for the duration of the scheme.

SUMMARY OF REGULATORY APPRAISAL

99. HMRC has conducted an Impact Assessment in respect of the Holiday. The cost to the Exchequer of the Holiday is estimated to be £940m. This is the amount that the Exchequer will not collect from eligible businesses in Class 1 employer NICs. An assessment has not been prepared for the increase in rates of NICs as this does not impose any additional compliance costs on business. A brief summary of the assessment for the Holiday follows.

Annual Costs and Benefits

100. The policy is temporary so all costs are one-off rather than annually recurring. The main costs to employers are those of familiarising themselves with the policy and monitoring and recording the NICs deductions for each qualifying employee. The average compliance cost per business is around £160. The policy will be operated manually by HMRC; this incurs costs for HMRC of around £12m to administer the scheme. One-off costs for businesses are estimated to be £75m.

101. There may be a time saving in relation to the end of year P14 / P35 obligations for employers who have monitored Class 1 employer NICs throughout the year. This is likely to apply only to a small number of firms who still operate manual payroll process and should only be a marginal process saving. The benefits are estimated to be negligible.

102. Eligible firms will save on their secondary Class 1 NICs contributions. It is estimated that around 400,000 employers will claim the Holiday with regard to 800,000 employees. The average benefit per business is around £2,000 and the total benefit around £940m.

Carbon assessment

103. It is considered that the Holiday has no impact in this respect.

Small Firms Impact Test

104. On the whole, the benefits of the scheme far outweigh the costs. Employers are required to opt into the scheme, which allows businesses who are concerned about the regulatory burden a choice as to whether to take part. The screening tests having been considered, the policy is not anticipated to have any significant negative impacts on small firms.

Equality Impact Assessments

105. An initial screening of the race, disability and gender equality tests indicated that there would be no significant negative impacts. The scheme will not impact negatively on any communities or groups, and the policy will not contribute to equality or inequality. On this basis no full equality impact assessment has been prepared.

106. Copies of the Impact Assessment are available from:

Raj Nayyar

HM Revenue & Customs

Room 1E

100 Parliament Street

London SW1A 2BQ

Tel. 0207 147 2521

or on the HMRC website http://www.hmrc.gov.uk/ria/

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

107. The Department's view is that the provisions of the draft Bill are compatible with the Convention rights defined in section 1 of the Human Rights Act 1998, and that the Minister in charge of the Bill is properly able to sign a compatibility statement under section 19(1)(a) of the Human Rights Act 1998 in respect of it.

COMMENCEMENT

108. In respect of the increases in the rates of NICs from 6th April 2011, Part 1 of this Bill comes into force on 6th April 2011. Parts 2 and 3 of the Bill come into force on the day the Act is passed, although the Holiday operates as from 6th September 2010.

ANNEX A: GLOSSARY

The commentary uses a number of abbreviations and defined terms. They are tabulated below.

Contracted-out rate	Contracted-out rate contributions are contributions payable in respect of earnings paid to earners who are in contracted-out salary related or contracted-out money purchase employments.
Employer NICs	Class 1 secondary contributions.
HMRC	Her Majesty's Revenue and Customs
The Holiday	The Regional Secondary Contributions Holiday for New Businesses
The implementation date	6th September 2010
NICs	National Insurance contributions
SSCBA 1992	The Social Security Contributions and Benefits Act 1992
SSCB(NI)A 1992	The Social Security Contributions and Benefits (Northern Ireland) Act 1992

NATIONAL INSURANCE CONTRIBUTIONS BILL

EXPLANATORY NOTES

These notes refer to the National Insurance Contributions Bill as brought from the House of Commons on 13th January 2011 [HL Bill 39]

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