

1996 No. 1245

SOCIAL SECURITY

The Social Security (Additional Pension) (Contributions Paid in Error) Regulations 1996

<i>Made</i> - - - -	<i>7th May 1996</i>
<i>Laid before Parliament</i>	<i>14th May 1996</i>
<i>Coming into force</i>	<i>4th June 1996</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 61A, 122(1) and 175(1) to (4) of, and paragraph 8(1)(m) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992 (a) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it (b), hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Additional Pension) (Contributions Paid in Error) Regulations 1996 and shall come into force on 4th June 1996.

(2) In these Regulations “the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992.

Prescribed conditions for the application of section 61A of the Contributions and Benefits Act

2.—(1) The prescribed conditions for the application, in the case of an individual, of section 61A of the Contributions and Benefits Act (which provides for cases where primary Class 1 contributions have been paid in error) are—

- (a) that the Secretary of State is satisfied that the error was not made with the individual’s consent or connivance or attributable to any negligence on the individual’s part;
- (b) that none of the contributions in question have been returned to the individual in accordance with regulation 32 of the Social Security (Contributions) Regulations 1979 (c) (which provides for the return of contributions overpaid or paid in error); and
- (c) that, by the date on which the individual reaches pensionable age (d), or such later date as the Secretary of State considers reasonable in a particular case, the Secretary of State has not received written notification from the individual in accordance with paragraph (2).

(a) 1992 c. 4. Section 61A was inserted by section 133 of the Pensions Act 1995 (c. 26). Section 122(1) is cited for the meaning it gives to “prescribe”.
(b) See section 173(1)(b) of the Social Security Administration Act 1992 (c. 5).
(c) S.I. 1979/591; relevant amending instruments are S.I. 1984/77, 1992/97 and 1992/1440.
(d) See section 126 of, and Part I of Schedule 4 to, the Pensions Act 1995, which provide for the progressive equalisation of pension age for men and women from 6th April 2010.

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(2) The written notification referred to in paragraph (1)(c) is a notice stating that the individual does not wish regulation 3 to apply in his case.

(3) In a case where the individual in question has died, a reference to the individual in this regulation, except in paragraph (1)(a), shall include a reference to his surviving spouse.

Purposes for which primary Class 1 contributions paid in error are to be treated as properly paid

3.—(1) Where section 61A of the Contributions and Benefits Act applies in the case of an individual and the Secretary of State is of the opinion that it is appropriate for this regulation to apply—

- (a) the entitlement of the individual to, and the amount of, additional pension shall be determined as if the individual had been an employed earner and, accordingly, all of the primary Class 1 contributions in question had been properly paid;
- (b) in the case of an individual who is entitled to a transitional award of incapacity benefit, regulations made by virtue of section 4(8) of the Social Security (Incapacity for Work) Act 1994 **(a)** (provision during transition from invalidity benefit to incapacity benefit for incapacity benefit to include the additional pension element of invalidity pension) shall have effect as if, in relation to the provisions in force before the commencement of that section with respect to that additional pension element, the individual had been an employed earner and, accordingly, all of the primary Class 1 contributions in question had been properly paid; and
- (c) where any amount calculated by reference to the contributions in question has been paid in respect of the individual by way of minimum contributions under section 43 of the Pension Schemes Act 1993 **(b)** (contributions to personal pension schemes) the individual shall be treated for the purposes of that Act as if he had been an employed earner and, accordingly, the amount had been properly paid.

(2) The reference in paragraph (1)(a) to additional pension is to additional pension for the individual or the individual's spouse falling to be calculated under section 45 of the Contributions and Benefits Act for the purposes of—

- (a) Category A retirement pension;
- (b) Category B retirement pension for widows or widowers;
- (c) widowed mother's allowance and widow's pension; and
- (d) incapacity benefit (except in transitional cases).

[Regulation 4 revoked by reg. 157 of S.I. 2001/1004.]

Signed by authority of the Secretary of State for Social Security.

7th May 1997

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

(a) 1994 c. 18.
(b) 1993 c. 48.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to cases where primary Class 1 contributions have been paid in error because the individual concerned was not an employed earner.

Regulation 2 sets out the conditions which must be satisfied before section 61A of the Social Security Contributions and Benefits Act 1992 (under which these Regulations are made) can apply to an individual.

Regulation 3 provides, where section 61A applies and the Secretary of State considers it appropriate, for the individual's entitlement to additional pension or to the additional pension element in a transitional award of incapacity benefit to be determined as though he had been an employed earner and the contributions in question had been properly paid. It also provides for any minimum contributions paid by the Secretary of State to a personal pension scheme chosen by the individual to be treated as properly paid.

Regulation 4 makes a consequential amendment to regulation 32 of the Social Security (Contributions) Regulations 1979 which prevents the refund of primary Class 1 contributions to the individual in cases where regulation 3 applies.

These Regulations do not impose any costs on business.

