

2002 No. 2366

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. 3) Regulations 2002

Made - - - - - *16th September 2002*
Laid before Parliament *17th September 2002*
Coming into force *8th October 2002*

The Treasury, with the concurrence of the Secretary of State, in exercise of the powers conferred upon them by sections 3(2) and 119 of the Social Security Contributions and Benefits Act 1992(a) and, with the concurrence of the Department for Social Development, in exercise of the powers conferred upon them by sections 3(2) and 119 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b), and the Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 17(3) of, and paragraphs 2, 4 and 8 of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(c), section 17(3) of, and paragraphs 2, 4 and 8 of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(d), sections 8(1)(m) and 25(5) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and Articles 7(1)(m) and 23(7) of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999, hereby make the following Regulations:

Introductory

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment No. 3) Regulations 2002 and shall come into force on 8th October 2002.

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- (a) 1992 c. 4. Section 3(2) was amended by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) ("the Transfer Act"). Section 119 was amended by paragraph 69 of Schedule 7 to the Social Security Act 1998 (c. 14) and paragraph 25 of Schedule 3 and paragraph 7 of Schedule 7 to the Transfer Act.
- (b) 1992 c. 7 ("the 1992 Northern Ireland Act"). Section 3(2) was amended by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) ("the Transfer Order"). Section 119 was amended by paragraph 51 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), and by paragraph 25 of Schedule 3 and paragraph 6 of Schedule 6 to the Transfer Order. The functions of the Department of Health and Social Services for Northern Ireland under the 1992 Northern Ireland Act were transferred to the Department for Social Development by Article 8(b) of, and Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481).
- (c) Section 17(3) was amended by paragraph 17(3) of Schedule 3 to the Transfer Act. Paragraph 2 of Schedule 1 was amended by paragraph 32 of Schedule 3 to the Transfer Act, paragraph 4 was amended by paragraph 16 of Schedule 1 and paragraph 34 of Schedule 3 to the Transfer Act and paragraph 8 by paragraph 39 of Schedule 3 to the Transfer Act.
- (d) Section 17(3) was amended by paragraph 17(3) of Schedule 3 to the Transfer Order. Paragraph 2 of Schedule 1 was amended by paragraph 31 of Schedule 3 to the Transfer Order, paragraph 4 was amended by paragraph 19 of Schedule 1 and paragraph 33 of Schedule 3 to the Transfer Order and paragraph 8 was amended by paragraph 38 of Schedule 3 to the Transfer Order.

Interpretation

2. In these Regulations “the principal Regulations” means the Social Security (Contributions) Regulations 2001(a).

[Regulations 3 – 18 make various amendments to regulations 3, 30, 31, 50, 52, 54, 55, 60, 61, 65, 101, 102, 110 and 149 and inserts regulations 155A into S.I. 2001/1004.]

[Regulation 19 amends regulations 5 and 6 of S.I. 2001/769.]

[Regulation 20 refers to Northern Ireland regulations.]

Jim Fitzpatrick

Ian Pearson

16th September 2002 Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State hereby concurs.

Malcolm Wicks

Parliamentary Under-Secretary of State,
Department for Work and Pensions

11th September 2002

The Department for Social Development hereby concurs. Sealed with the Official Seal of the Department for Social Development on

6th September 2002.

L.S.

John O’Neill

Senior Officer of the Department for Social Development

Tim Flesher

Dave Hartnett

9th September 2002

Two of the Commissioners of Inland Revenue

(a) S.I. 2001/1004. There are amendments which are not relevant for the purposes of instrument.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (“the principal Regulations”). They also make consequential amendments to the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (S.I. 2001/769) and the corresponding provision in Northern Ireland (S.R. 2001 No. 102). The amendment provide for decisions to be taken by officers of the Board and accordingly appealable to the tax appeal Commissioners under section 11 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer Act”) or Article 10 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) (“the Transfer Order”).

Regulation 1 provides for the citation and commencement of these Regulations and regulation 2 for interpretation.

Regulation 3 introduces the amendments to the principal Regulations made by regulations 4 to 18.

Regulation 4 substitutes six new paragraphs ((1), (2) and (2A) to (2D)) for the existing paragraphs (1) and (2) of regulation 3. The new paragraph (1) sets out the basic rule as to earnings periods in respect of earnings paid, or treated as paid, at regular intervals. The new paragraph (2) provides a specific rule in relation to periods of the same length where the first such earnings period begins at the beginning of the year. Paragraphs (2A) and (2B) enable an officer of the Commissioners of Inland Revenue (“the Board”) to decide whether to issue a notice to a secondary contributor specifying a longer earnings period if he is satisfied that the employer’s practice is to pay the greater part of the earnings from the employment at longer intervals. Paragraph (2C) imposes requirements as to the content of the notice and the persons to whom it must be given. Paragraph (2D) provides for the circumstances in which a notice ceases to have effect.

Regulation 5 substitutes a new regulation 30 so that an officer of the Board may decide whether a pay practice is abnormal.

Regulation 6 substitutes a new regulation 31, specifying the basis upon which an officer of the Board may, if satisfied that a practice exists as to the making of irregular or unequal payments of earnings, whose effect is to avoid or reduce the incidence of earnings-related contributions, issue a direction that contributions are to be paid as if the practice were not followed.

Regulation 7 amends regulation 50. Decisions about ignorance, error and due care and diligence on the part of the contributor are to be taken by an officer of the Board.

Regulation 8 substitutes a new regulation 52. Decisions about the making of late applications for the refund of overpaid contributions are now to be taken by an officer of the Board.

Regulations 9, 10 and 16 respectively amend regulations 54, 55 and 110. In each case they amend the existing paragraph (3) of the provision of the principal Regulations. As amended, those provisions permit late applications to be made for the return of the relevant contributions if the contributor had reasonable excuse for not making the application earlier. It is for an officer of the Board to decide whether the contributor had such excuse and to decide the extent to which the period for the application should be extended.

Regulation 11 amends regulation 60(1) so that a decision under it about a failure by the secondary contributor to pay primary Class 1 contributions is to be made by an officer of the Board.

Regulation 12 amends regulation 61 so that a decision under it about a failure to pay a voluntary Class 2 contribution is to be made by an officer of the Board.

Regulation 13 amends regulation 65 so that a decision to be made under paragraphs (2)(a), (3) and (4)(c) is to be made by an officer of the Board.

Regulation 14 amends regulation 101 to permit the Board to reallocate, rather than repay, the excess of Class 4 contributions paid in error if there are other contributions due from the earner which have not been paid.

Regulation 15 amends regulation 102. The amendment removes the time limit for the making of an application for repayment except in cases where the payment was made because of an error. It also makes a drafting correction in regulation 102(1).

Regulation 17 makes a drafting correction to regulation 149.

Regulation 18 inserts a new regulation 155A. Paragraph (2) of the new regulation specifies decisions under the principal Regulations which are prescribed for the purposes of section 8(1)(m) of the Transfer Act and Article 7(1)(m) of the Transfer Order, and accordingly appealable. Paragraph (3) specifies two decisions under regulation 52 of the principal Regulations to the extent that there is not already an appeal right. Paragraph (4) specifies decisions under regulations 23, 24 and 32 of the National Insurance (Contributions) Regulations 1969 (S.I. 1969/1696) which are so prescribed. These provisions were the subject of specific savings contained in regulation 130(2) of the Social Security (Contributions) Regulations 1979 (S.I. 1979/591) ("the 1979 Regulations"). The Secretary of State's functions under them were transferred to the Board by Schedule 2 to the Transfer Act. The 1979 Regulations were revoked by regulation 157(1) of the principal Regulations, but the savings were preserved by regulation 157(4). Paragraph (5) specifies decisions under regulations 5 and 6 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (S.I. 2001/769). Regulation 156(3) of the principal Regulations provides a rule of construction so that references to an enactment applying only to Great Britain are construed, in their application to Northern Ireland, as including a reference to an enactment having a corresponding effect there.

Regulations 19 and 20 make consequential amendments to regulations 5 and 6 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 and the corresponding Northern Ireland instrument (S.R. 2001 No. 102).