

2011 No. 797

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 3)
Regulations 2011**

<i>Made</i> - - - -	<i>15th March 2011</i>
<i>Laid before Parliament</i>	<i>17th March 2011</i>
<i>Coming into force</i> - -	<i>6th April 2011</i>

These Regulations are made by the Treasury with the concurrence of the Secretary of State and the Department for Social Development in relation to regulation 7 and to regulation 2 insofar as it relates to the amendments made by regulation 7(a).

The powers exercised by the Treasury are those conferred by sections 3(2), 3(3), 13(1) and 175(4) of, and paragraphs 7B(1) and 7B(2)(d), 8(1)(ia), 8(1)(q) and 8(1A) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(b), and sections 3(2) and (3), 13(1), 171(4) and (10) of, and paragraphs 7B(1) and (2)(d), 8(1)(ia), 8(1)(q) and 8(1A) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(c) and now exercisable by them.

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- (a) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) were transferred to the Department for Social Development by Article 8(b) of, and Part 2 of Schedule 6 to, S.R. (NI) 1999 No. 481.
- (b) 1992 c. 4. Section 3 has been amended: the relevant amendment is that made by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer Act”). Section 13(1) was amended by paragraph 14 of Schedule 3 to the Transfer Act and S.I. 2009/593. Section 175(4) was amended by paragraph 29 of Schedule 3 to the Transfer Act. Paragraph 7B of Schedule 1 was inserted by section 57 of the Social Security Act 1998 (c. 14). Relevant amendments were made by paragraph 38 of Schedule 3, and paragraph 7 of Schedule 9, to the Transfer Act and paragraphs 169 and 185(e) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1). Paragraph 8(1)(ia) of Schedule 1 was inserted by paragraph 77 of Schedule 7 to the Social Security Act 1998 and amended by section 74(5) of the Child Support, Pensions and Social Security Act 2000 (c. 19). Paragraph 8(1A) of Schedule 1 was inserted by paragraph 39 of Schedule 3 to the Transfer Act. Paragraph 7B of Schedule 1 refers to contributions paid to the Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.
- (c) 1992 c. 7. Section 3 has been amended: the relevant amendment is that made by paragraph 4 of Schedule 3 to S.I. 1999/671. Section 13 was amended by paragraph 15 of Schedule 3 to S.I. 1999/671 and article 3 of S.I. 2009/593. Section 171(10) was substituted by, and paragraph 8(1A) of Schedule 1 was inserted by, paragraphs 28 and 38 respectively of Schedule 3 to S.I. 1999/671. Paragraph 7B of Schedule 1 was inserted by article 54 of S.I. 1998/1506 (N.I.10) and amended by paragraph 37 of Schedule 3 to S.I. 1999/671. Paragraph 8(1)(ia) of Schedule 1 was inserted by paragraph 58 of Schedule 6 to S.I. 1998/1506 (N.I. 10) and amended by section 78(5) of the Child Support, Pensions and Social Security Act 2000. Paragraph 7B of Schedule 1 refers to contributions paid to the Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005. Section 50(1) of that Act provides that a reference to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 3) Regulations 2011 and shall come into force on 6th April 2011.

(2) Part 3 has effect in relation to Class 2 contributions in respect of contribution weeks beginning on or after 10th April 2011.

Amendment of the Social Security (Contributions) Regulations 2001

2. The Social Security (Contributions) Regulations 2001(a) are amended as follows.

PART 2

Repayment of Class 1A Contributions

Repayment of Class 1A contributions

3. After regulation 55 insert—

“Repayment of Class 1A contributions: certain earnings no longer treated as earnings for income tax purposes

55A.—(1) Subject to regulations 51 and 57 and to paragraph (2), where an officer of Revenue and Customs is satisfied that an amount treated as earnings in respect of which a Class 1A contribution was paid is no longer treated as earnings in accordance with the provisions of sections 100A and 100B of the Income Tax (Earnings and Pensions) Act 2003 (homes outside UK owned through company etc)(b), the amount paid shall be repaid to the person who paid that contribution.

(2) The repayment of all or part of a Class 1A contribution under paragraph (1) is subject to the condition that an application shall be made in writing to HMRC on or before 6th April 2015.”.

4. In regulation 51—

- (a) in each place it occurs for “the Board” substitute “HMRC”;
- (b) in paragraph (2) for “to any person under regulation 55(1)” substitute “to any person under regulation 55(1), or regulation 55A,”.

5. In regulation 57(1) after “52A” insert “, 55, 55A”.

PART 3

Payment of Class 2 and Class 3 Contributions

Payment of Class 2 and Class 3 Contributions

6. In regulation 89—

(a) S.I. 2001/1004, amended by S.I. 2004/770; there are other amending instruments but none is relevant.
(b) 2003 c. 1; sections 100A and 100B were inserted by section 45(1) of the Finance Act 2008 (c. 9) and treated by subsection (2) of that section as always having had effect.

- (a) in paragraph (1) after “(2),” insert “(2A),”;
- (b) after paragraph (1) insert—
 - “(1A) Where a person who is liable to pay a Class 2 contribution in respect of any contribution week in a biannual contribution period has notified HMRC of his liability in accordance with the provisions of regulation 87 or 87A HMRC shall, no later than the notification date, issue to him a written notice of the number of contribution weeks in that biannual contribution period and of the weekly rate at which the contribution is payable.”;
- (c) for paragraph (2) substitute—
 - “(2) Where a person who is liable to pay a Class 2 contribution in respect of any contribution week in a biannual contribution period has notified HMRC of his liability in accordance with the provisions of regulation 87 or 87A that person shall, subject to paragraph (4) below, pay to HMRC—
 - (a) the amount of contributions for which he is liable in relation to the first biannual contribution period not later than 31st January following the end of that period;
 - (b) the amount of contributions for which he is liable in relation to the second biannual contribution period not later than 31st July following the end of that period.”;
- (d) after paragraph (2) insert—
 - “(2A) Where—
 - (a) a person who is entitled, although not liable, to pay a Class 2 contribution in any year has notified HMRC of his entitlement in accordance with the provisions of regulation 87 or 87A; and
 - (b) HMRC has, no later than the notification date, issued him with written notice of the amount he may pay in respect of his entitlement in that period;
 that person may, if the person so wishes, pay to HMRC a sum not exceeding that amount.”;
- (e) in paragraph (3)—
 - (i) in sub-paragraph (a) omit “who is entitled although not liable to pay a Class 2 contribution, or”;
 - (ii) after “regulation 87” insert “or 87A”;
 - (iii) in each place it occurs for “the Board” substitute “HMRC”;
- (f) in paragraph (4)—
 - (i) in the words following sub-paragraph (b) for “28 days after the specified date of notification” substitute “the date for payment specified in the notice”;
 - (ii) in each place it occurs, for “the Board” substitute “HMRC”;
- (g) for paragraphs (5) to (7) substitute—
 - “(5) This paragraph applies to a person who—
 - (a) has notified HMRC in accordance with the provisions of regulation 87 or 87A that—
 - (i) he is liable to pay a Class 2 contribution in respect of one or more weeks in a biannual contribution period, or
 - (ii) he is entitled although not liable to pay a Class 2 contribution in a biannual contribution period, or is entitled to pay a Class 3 contribution in a contribution quarter; and
 - (b) has—
 - (i) not, by the notification date, had written notice issued to him in respect of that week or weeks of the kind referred to in paragraph (2A);
 - (ii) not had written notice issued to him in respect of that week or weeks of a kind mentioned in paragraph (3) and more than 14 days have elapsed since the end of the contribution quarter in question; or

- (iii) notified HMRC in accordance with regulation 87 or 87A that he has ceased to be liable to pay Class 2 contributions or ceased to be entitled to pay Class 2 or Class 3 contributions as the case may be.
- (6) This paragraph applies to a person—
- (a) to whom a written notice of the kind referred to in paragraph (1A), (2A), (3) or (4) has been issued and who has informed HMRC immediately—
 - (i) that the notice he received has since been lost, destroyed or defaced, or
 - (ii) that he disputes the amount of contributions which he is liable or entitled to pay in the biannual contribution period or contribution quarter in question; or
 - (b) who—
 - (i) in relation to a notice of the kind referred to in paragraph (1A) or (2A) has notified HMRC not later than 28 days after the notification date that he has not received such a notice;
 - (ii) in relation to a notice of the kind referred to in paragraph (3) has notified HMRC not later than 28 days after the end of the contribution quarter in question that he has not received such a notice.
- (7) In this regulation—
- (a) “biannual contribution period” means either the first biannual contribution period or the second biannual contribution period;
 - (b) “first biannual contribution period” means the 26 contribution weeks beginning with the first day of the first contribution week of any year;
 - (c) “second biannual contribution period” means the period of not less than 26 contribution weeks commencing on the first day of the twenty seventh contribution week in that year;
 - (d) “contribution quarter” means one of the four periods of not less than 13 contribution weeks commencing on the first, fourteenth, twenty-seventh or fortieth contribution week, as the case may be, in any year;
 - (e) “notification date” means—
 - (i) in relation to the first biannual contribution period, 1st December following the end of that period;
 - (ii) in relation to the second biannual contribution period, 1st June following the end of that period.”.

PART 4

Experts seconded to a body of the European Union

Experts seconded to a body of the European Union

7. In Part 8 of Schedule 3 (travelling, relocation and other expenses and allowances to be disregarded in the calculation of employed earner’s earnings) after paragraph 15 insert—

“Experts seconded to a body of the European Union

- 15A.** A payment in respect of subsistence allowances paid—
- (a) by a body of the European Union that is located in the United Kingdom and listed in the table below;
 - (b) to persons who, because of their expertise in matters relating to the subject matter of the functions of the body, are seconded to the body by their employers.

Bodies of the European Union located in the United Kingdom

The European Medicines Agency(a)

The European Police College(b)

The European Banking Authority(c)”

Michael Fabricant

Angela Watkinson

15th March 2011

Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs

Signed by authority of the Secretary of State for Work and Pensions

Steve Webb

Minister of State

15th March 2011

Department for Work and Pensions

The Department for Social Development concurs

Sealed with the Official Seal of the Department for Social Development on 10th March 2011



Anne McCleary

A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (“the 2001 Regulations”). They come into force on 6th April 2011.

Part 2 concerns the repayment of Class 1A National Insurance Contributions (NICs). Regulation 3 inserts a new regulation 55A into the 2001 Regulations. Regulation 55A provides for repayment of a Class 1A NICs which were paid on an amount treated as earnings which is now exempt from income tax by virtue of the provisions at sections 100A and 100B of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”). Those provisions in ITEPA introduced an exemption from income tax in respect of benefits in kind provided for certain employees and office holders in the form of qualifying overseas holiday homes. The income tax exemption is treated as always having had effect. Regulation 55A provides for the repayment of Class 1A NICs where an officer of Revenue and Customs is satisfied that the contribution was paid on the same amount treated as earnings as is now exempt under the ITEPA provisions subject to the condition that an application is made in writing to HMRC on or before 6th April 2015.

Regulations 4 and 5 make consequential amendments to regulations 51 and 57 of the 2001 Regulations. Regulation 57 is also amended to include a cross reference to regulation 55, to clarify the existing position that regulation 57 is subject to regulation 55.

A full impact assessment has not been produced for this Part of the instrument as no impact is foreseen on the private or voluntary sectors.

(a) The European Agency for the Evaluation of Medicinal Products was established by Council Regulation (EEC) No 2309/93 OJ No L 214, 24.8.93, p1. The name was changed to the European Medicines Agency by Regulation (EC) No 726/2004 OJ No L 136, 30.4.04, p1.

(b) The European Police College was established by Council Decision 2005/681/JHA OJ No L 256, 1.10.05, p63.

(c) The European Banking Authority was established by Regulation (EU) No 1093/2010 OJ No L 331, 15.12.10, p12.

Part 3 concerns the payment of Class 2 and Class 3 NICs.

Regulations 89 and 90 of the 2001 Regulations set out the time for payment of Class 2 and Class 3 NICs.

Regulation 6 of these Regulations amends regulation 89 in relation to those who are liable or entitled to pay Class 2 NICs. They have effect in relation to Class 2 NICs in respect of contribution weeks beginning on or after 10th April 2011.

HMRC currently send individuals who are liable, or entitled, to pay Class 2 NICs and who do not pay by direct debit a quarterly notice informing them of the amount they are liable, or entitled, to pay. Such notices will now be sent on a biannual basis.

Those liable to pay Class 2 NICs in relation to “biannual contribution periods” (as defined in the new regulation 89(7)) will be required to pay those contributions on the dates specified in the new regulation 89(2) or, where the individual informs HMRC that no notice has been received, the date specified in a notice sent to the individual by HMRC in accordance with paragraph 89(4). Those entitled, but not liable, to pay Class 2 Contributions will be entitled to pay such contributions in accordance with new regulation 89(2A).

A full Impact Assessment of the effect that this Part of the instrument will have on the costs of business and the voluntary sector is available from the HMRC website at <http://www.hmrc.gov.uk/better-regulation/ia.htm>

Part 4 concerns subsistence allowances paid to experts seconded to a body of the European Union.

Regulation 7 adds a new paragraph 15A to Part 8 of Schedule 3 to the 2001 Regulations. The new paragraph 15A provides that payments of subsistence allowances paid by specified bodies of the European Union located in the United Kingdom are to be disregarded in the calculation of earnings for National Insurance purposes. The payments are those made to persons who are seconded to a specified body because of their expertise in matters relating to the subject matter of the functions of the body.

A full and final Impact Assessment has not been produced for this Part of the instrument as a negligible impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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The Social Security (Contributions) (Amendment No. 3)
Regulations 2011

£5.75