

2011 No. 2700

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 5)
Regulations 2011**

<i>Made</i> - - - -	<i>10th November 2011</i>
<i>Laid before Parliament</i>	<i>11th November 2011</i>
<i>Coming into force</i> - -	<i>6th December 2011</i>

The Treasury, in exercise of the powers conferred by sections 3(2) and (3), 4(6) and (7) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and sections 3(2) and (3), 4(6) and (7) and 171(3), (4) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b), make the following Regulations.

The Secretary of State and the Department for Social Development(c) concur in the making of these Regulations.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 5) Regulations 2011 and shall come into force on 6th December 2011.

(2) Regulation 3 does not apply in relation to an amount which counts as employment income by virtue of Chapter 2 of Part 7A of the Income Tax (Earnings and Pensions) Act 2003(d) if that Chapter applies because of paragraph 53 or paragraph 54 of Schedule 2 to the Finance Act 2011(e).

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- (a) 1992 c. 4. Section 3(2) was amended, and the power to make regulations under it transferred to the Treasury, by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the 1999 Act”). Section 4(6) was last substituted by section 74(3) of the Child Support, Pensions and Social Security Act 2000 (c.19) (“the 2000 Act”) and amended by paragraph 172(4) of Part 2 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“the 2003 Act”). Section 4(7), which confers the power to make regulations under section 4 on the Treasury, was inserted by paragraph 4 of Schedule 3 to the 1999 Act. Section 175(4) was amended by paragraph 29 of Schedule 3 to the 1999 Act.
- (b) 1992 c. 7. Section 3(2) was amended, and the power to make regulations under it transferred to the Treasury, by paragraph 4 of Schedule 3 to S.I. 1999/671 (“the 1999 Order”). Section 4(6) was last substituted by section 78(3) of the 2000 Act and amended by paragraph 193(4) of Part 2 of Schedule 6 to the 2003 Act. Section 4(7), which confers the power to make regulations under section 4 on the Treasury, was inserted by paragraph 5 of Schedule 3 to the 1999 Order. Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to the 1999 Order.
- (c) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 were transferred to the Department for Social Development by article 8(b) of and Part 2 of Schedule 6 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481).
- (d) 2003 c.1. Part 7A was inserted by paragraph 1 of Schedule 2 to the Finance Act 2011 (c.11).
- (e) 2011 c.11.

Amendment of the Social Security (Contributions) Regulations 2001

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

Amounts to be treated as earnings

3. After regulation 22A insert the following—

“Amounts to be treated as earnings: Part 7A of ITEPA 2003

22B.—(1) For the purposes of section 3 of the Act(b) (earnings), the amount specified in paragraph (2) shall be treated as remuneration derived from an employed earner’s employment.

(2) The amount is the amount which counts as employment income of the employed earner by virtue of Chapter 2 of Part 7A of ITEPA 2003(c).

(3) Paragraph (2) does not apply if the relevant step which gives rise to the amount which counts as employment income by virtue of Chapter 2 of Part 7A of ITEPA 2003 would otherwise give rise to earnings for the purposes of the Act.

(4) In paragraph (3) “relevant step” means a relevant step for the purposes of Part 7A of ITEPA 2003.”.

Payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions

4. In Part 5 of Schedule 3 (certain non-cash vouchers to be disregarded as payments in kind), in paragraph 7—

(a) for sub-paragraph (1) substitute—

“(1) A qualifying childcare voucher, where an employee joined a scheme—

(a) before 6th April 2011;

(b) before 6th April 2011 but ceased to be employed by the employer and was subsequently re-employed by the employer and re-joined the scheme before 6th April 2011; or

(c) before 6th April 2011 and there was a continuous period of 52 weeks ending before 6th April 2011 throughout which vouchers were not being provided for the employee under the scheme,

subject to the qualifications in sub-paragraphs (2) and (5).”; and

(b) omit sub-paragraph (1A).

5. In Part 5 of Schedule 3, in paragraph 7A—

(a) for sub-paragraph (1) and the heading substitute—

“Qualifying childcare vouchers for employees who joined a scheme on or after 6th April 2011, or before 6th April 2011 where there has been a break in employment or a 52 week break in receiving vouchers recommencing on or after 6th April 2011

7A.—(1) A qualifying childcare voucher, where an employee joined a scheme—

(a) on or after 6th April 2011;

(a) S.I. 2001/1004; relevant amending instruments are S.I. 2002/307, 2004/770, 2005/778, 2006/576, 2006/883 and 2011/1000.

(b) Regulation 1 of the Social Security (Contributions) Regulations 2001 defines “the Act”.

(c) Section 122 of the Social Security Contributions and Benefits Act 1992 and section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 define “ITEPA 2003”.

- (b) before 6th April 2011 but ceased to be employed by the employer and was subsequently re-employed by the employer and re-joined the scheme on or after 6th April 2011; or
- (c) before 6th April 2011 and there was a continuous period of 52 weeks ending on or after 6th April 2011 throughout which vouchers were not being provided for the employee under the scheme,

subject to the qualifications in sub-paragraphs (3) and (6).”;

- (b) in sub-paragraph (15)—
 - (i) in paragraph (a) omit “and”, and
 - (ii) for paragraph (b) substitute—
 - “(b) guaranteed contractual bonuses;
 - (c) contractual commission;
 - (d) guaranteed overtime payments;
 - (e) location or cost of living allowances;
 - (f) shift allowances;
 - (g) skills allowances;
 - (h) retention and recruitment allowances; and
 - (i) market rate supplements.”; and
- (c) in sub-paragraph (16)—
 - (i) before paragraph (a) insert—
 - “(za) contributions under a pension scheme if the employee has authorised the employer to make the deductions from relevant payments (as defined by regulation 4 of the PAYE Regulations^(a)) for which relief at source is given under section 192(1) of the Finance Act 2004^(b) (relief at source);”;
 - (ii) in paragraph (a) omit “registered” and after “tax year” add “in accordance with the PAYE Regulations” ;
 - (iii) in paragraph (b) after “tax year” add “in accordance with the PAYE Regulations”;
 - (iv) in paragraph (c) after “with” insert “the”; and
 - (v) for paragraph (e) substitute—
 - “(e) amounts equivalent to the amount of the personal allowance under section 35(1) of the Income Tax Act 2007^(c), and in addition if applicable, the amount of the blind person’s allowance under section 38 of that Act.”.

6. In Part 6 of Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions: pensions and pension contributions)—

- (a) in the heading which appears before paragraph 7, after “to” insert “and benefits from”;
- (b) in paragraph 7(1) after “by virtue of” insert “any of the following provisions, and any benefit referable to that payment”; and
- (c) in paragraph 10—
 - (i) in sub-paragraph (4)(a), for “section 164(a)” substitute “section 164(1)(a)”;
 - (ii) in sub-paragraph (4)(b), for “section 164(b)” substitute “section 164(1)(b)”;
 - (iii) in sub-paragraph (4)(c), for “section 164(e)” substitute “section 164(1)(e)”;
 - (iv) in sub-paragraph (4)(d), for “section 164(f)” substitute “section 164(1)(f)”;

(a) Regulation 1 of the Social Security (Contributions) Regulations 2001 defines “the PAYE Regulations”.

(b) 2004 c. 12.

(c) 2007 c. 3. Section 35 was amended by sections 3 and 4 of the Finance Act 2009 (c. 10) and the figures in subsection (1) of sections 35 and 38 were last amended by S.I. 2010/2879.

- (v) omit sub-paragraph (5)(a)(iii); and
- (vi) in sub-paragraph (6)(d), for “sub-paragraph (2)” substitute “sub-paragraphs (2) and (3)”.

7. In Part 10 of Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions: miscellaneous and supplemental) insert the following after paragraph 2—

“Payments connected to amounts within regulation 22B

2A.—(1) A payment (“A”) the subject of which represents, or arises or derives (whether wholly or partly or directly or indirectly) from, an amount (“B”) treated as remuneration under regulation 22B which has previously been included in an employed earner’s earnings for the purposes of assessing earnings-related contributions.

(2) Paragraph (1) does not apply to the extent that A exceeds B.

(3) For the purposes of determining whether paragraph (1) applies, A is to be treated as including the value of any payment made before A which represents, or arises or derives (whether wholly or partly or directly or indirectly) from, B.”.

Angela Watkinson
Jeremy Wright

10th November 2011

Two of the Lords Commissioners for 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

9th November 2011

Department for Work and Pensions

The Department for Social Development concurs.

Sealed with the Official Seal of the Department for Social Development on 4th November 2011



Anne McCleary

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 Principal Regulations”).

Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) was inserted by Schedule 2 to the Finance Act 2011. Subject to a number of conditions, it provides for an income tax charge where rewards, recognition or loans in respect of an employee’s employment are provided through a third party. For that purpose the value of relevant steps taken by persons other than an employee’s employer, and in some limited cases by the employer themselves, count as employment income. “Relevant step” is defined in section 554A(2) of ITEPA 2003.

Regulations 22 and 22A of the Principal Regulations specify amounts that are to be treated as earnings for the purposes of National Insurance contributions because they would not otherwise be earnings. Regulation 3 of these Regulations adds regulation 22B for the same purpose, covering amounts which count as employment income of an employee by virtue of Part 7A of ITEPA 2003 subject to the exception in paragraph (3).

New regulation 22B of the Principal Regulations is subject to regulation 1(2) of these Regulations. This provides that regulation 22B does not apply in relation to amounts which count as employment income under Chapter 2 of Part 7A of ITEPA 2003 only because of the special commencement provisions for that Part in paragraphs 53 and 54 of Schedule 2 to the Finance Act 2011.

Schedule 3 to the Principal Regulations allows certain payments to be disregarded in the calculation of earnings for the purpose of establishing liability for earnings-related national insurance contributions.

Part 5 of the Schedule provides for certain non-cash vouchers to be disregarded as payments in kind.

The Social Security (Contributions) (Amendment No. 4) Regulations 2011 amended the Principal Regulations by introducing a reduction in the disregard for qualifying childcare vouchers for higher earners. In particular it introduced a new condition (Condition D) which provided that where employees joined a scheme on or after 6th April 2011 the amount of the disregard would be determined on the basis of an estimate of an employee’s relevant earnings.

Regulations 4 and 5(a) amend paragraphs 7 and 7A respectively of Schedule 3 so as to make clear which provisions apply in circumstances where an employee stops working for an employer but is subsequently re-employed by the employer or where there has been a break in receipt of vouchers by the employee for a continuous period of 52 weeks.

Regulation 5(b) substitutes a new definition of “relevant earnings” (in addition to salary, wages or fees) and regulation 5(c) amends the meaning of “excluded amounts”. These amendments reflect recent changes to the related tax exemption for employer supported childcare. Relevant earnings are earnings which are taken into account by an employer when estimating an employee’s income for the purposes of obtaining the relevant disregard and excluded amounts are amounts which are not taken into account.

Regulation 6 of these Regulations amends Part 6 of Schedule 3 to the Principal Regulations in consequence of amendments made to the Finance Act 2004.

Regulation 7 of these Regulations inserts a new paragraph 2A into Part 10 of Schedule 3 to the Principal Regulations. This provides that payments which represent or arise or derive from amounts which have already been treated as earnings under new regulation 22B are to be disregarded in the calculation of an employee’s earnings for the purposes of section 3 of the Social Security Contributions and Benefits Act 1992. The value of this disregard is capped by paragraphs (2) and (3) at the amount treated as earnings under new regulation 22B.

A Tax Information and Impact Note covering regulations 1(2), 3 and 7 of this instrument was published on 23rd March 2011 alongside the Budget and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

Two Tax Information and Impact Notes relating to regulation 4 and 5 of this instrument were published in December 2010 alongside draft Finance Bill 2011 provisions with a further update in March 2011 and are available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. They remain an accurate summary of the impacts that apply to this instrument.

A Tax Information and Impact Note has not been prepared for regulation 6 of this Instrument as it contains no substantive changes to tax policy.

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STATUTORY INSTRUMENTS

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The Social Security (Contributions) (Amendment No. 5)
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£5.75

E1779 11/2011 111779T 19585

ISBN 978-0-11-151678-2



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