

2012 No. 817

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 2)
Regulations 2012**

<i>Made</i> - - - -	<i>13th March 2012</i>
<i>Laid before Parliament</i>	<i>14th March 2012</i>
<i>Coming into force</i> - -	<i>6th April 2012</i>

These Regulations are made by the Treasury with the concurrence of the Secretary of State and the Department for Social Development^(a) in relation to regulations 3 to 6, 7(2), 9 and 11 and to regulation 2 insofar as it relates to the amendments made by regulations 3 to 6, 7(2), 9 and 11.

The powers exercised by the Treasury are those conferred by sections 1(6) and (7), 3(2) and (3), 10(9), 19(1), (2) and (5A), 122(1), and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992^(b) and sections 1(6) and (7), 3(2) and (3), 10(9), 19(1), (2) and (5A), 121(1) and 171(3), (4) and (10) of 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, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. (NI) 1999 No. 481).
- (b) 1992 c. 4. Section 1 has been amended. The relevant amendment is that made by paragraph 56(3) of Schedule 7 to the Social Security Act 1998 (c. 14). Subsection (7) was inserted by paragraph 1(3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2: "the Transfer Act"). Section 3 has been amended. The relevant amendment is that made by paragraph 3 of Schedule 3 to the Transfer Act. Section 10 was substituted by section 74(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19: "the 2000 Act") and subsection (9) was amended by paragraph 174 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1: "ITEPA 2003"). Section 19(1) was amended by paragraph 5(2) of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19: "the Contributions Act"), and subsection (5A) was inserted by paragraph 19(2) of Schedule 3 to the Transfer Act. Section 122 is cited because of the meaning it ascribes to "prescribe". Section 175(4) was amended by paragraph 29 of Schedule 3 to the Transfer Act.
- (c) 1992 c. 7. Section 1 has been amended. The relevant amendment is that made by paragraph 38(3) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)). Subsection (7) was inserted by paragraph 2 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671: "the Transfer Order"). Section 3 has been amended. The relevant amendment is that made by paragraph 4 of Schedule 3 to the Transfer Order. Section 10 was substituted by section 78(2) of the 2000 Act and subsection (9) was amended by paragraph 195 of Schedule 6 to ITEPA 2003. Section 19(1) was amended by paragraph 24(2) of Schedule 1 to the Contributions Act and subsection (5A) was inserted by paragraph 19(2) of Schedule 3 to the Transfer Order. Section 121 is cited because of the meaning it ascribes to "prescribe". Section 171(10) was substituted by paragraph 28 of Schedule 3 to the Transfer Order.

PART 1

General

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 2) Regulations 2012 and come into force on 6th April 2012.

(2) The amendments made by regulation 8 have effect in relation to contributions paid in respect of the tax year 2011-2012 and subsequent tax years.

Amendment of the Social Security (Contributions) Regulations 2001

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

PART 2

Amendments relating to pensions

Amendments relating to the abolition of certain types of contracted-out pensions

3. In paragraph (2) of regulation 1 (citation, commencement and interpretation)—

(a) omit ““COMPS employment” means employment in respect of which minimum payments are made to a money purchase pension scheme contracted out under section 9(3) of the Pensions Act;” and

(b) in the definition of “contracted-out rate”—

(i) in sub-paragraph (a) for “upper earnings limit” substitute “upper accrual point”; and

(ii) omit sub-paragraph (b).

4. For paragraph (3) of regulation 6 (earnings periods for earnings to be aggregated where the earnings period for those earnings would be of different lengths) substitute—

“(3) In this regulation “the designated earnings period” means—

(a) where the earnings are derived from employments which include any contracted-out employment and any non-contracted out employment, the earnings period in respect of earnings derived from the contracted-out employment or, if there is more than one such employment, the shorter, or as the case may be the shortest, of the earnings periods in respect of earnings derived from such employments; and

(b) in any other case, the shorter, or as the case may be the shortest, of the earnings periods in respect of the earnings derived from such employments.”.

5. In paragraph 7(13)(b) of Schedule 4 (calculation of deduction) omit “or section 42A(1) to 2(A)”.

Amendments to Part 6 of Schedule 3

6. In Part 6 of Schedule 3 (pensions and pension contributions)—

(a) in paragraph (2)(a) after “section 308” omit “(1)”; and

(b) for paragraph 10(5)(a) substitute “any pension payable under its rules would have satisfied pension rules 1, 3 and 4;”.

(a) S.I. 2001/1004, amended by S.I. 2003/193, 2003/2085, 2004/770, 2006/576, 2006/2924, 2008/607, 2010/646 and 2011/2700; there are other amending instruments but none is relevant.

PART 3

Amendments relating to the abolition of disregards

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7.—(1) In regulation 40 (prescribed general earnings in respect of which Class 1A contributions not payable) omit paragraph (4).

(2) Omit regulation 123 (payments to mariners to be disregarded).

(3) In regulation 145 (condition as to residence or presence in Great Britain or Northern Ireland)—

(a) in paragraph (1) for “paragraphs (2) and (3)” substitute “paragraph (2)”; and

(b) omit paragraph (3).

(4) In paragraph 2 of Part 8 of Schedule 3 (travelling, relocation and other expenses and allowances of the employment) omit—

(a) sub-paragraph (2)(b) and the “or” before it; and

(b) sub-paragraph (6).

PART 4

Return of contributions paid in excess of maxima prescribed

Return of contributions paid in excess of maxima prescribed

8. In paragraph (6) of regulation 52A (return of contributions paid in excess of maxima prescribed in regulation 21)—

(a) for “11%” in each place where it appears, substitute “12%”; and

(b) for “9.4%” in each place where it appears, substitute “10.4%”.

PART 5

HM Forces

HM Forces

9. In Part 8 of Schedule 3 (travelling, relocation and other expenses and allowances to be disregarded in the calculation of employed earners’ earnings)—

(a) for paragraph 12A (HM Forces’ Operational Allowance) substitute—

“HM Forces’ Operational Allowance

12A.—(1) A payment of the Operational Allowance to members of the armed forces of the Crown.

(2) The Operational Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006(a).”;

(b) for paragraph 12B (HM Forces’ Council Tax Relief) substitute—

(a) 2006 c. 52, continued in force by S.I. 2007/2123, 2008/1780, 2009/1752, 2010/2475 and section 1 of the Armed Forces Act 2011 c. 18.

“HM Forces’ Council Tax Relief

12B.—(1) A payment of Council Tax Relief to members of the armed forces of the Crown.

(2) Council Tax Relief is a payment designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006.”; and

(c) after that paragraph insert—

“HM Forces’ Continuity of Education Allowance

12C.—(1) A payment of the Continuity of Education Allowance to or in respect of members of the armed forces of the Crown.

(2) The Continuity of Education Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006.”.

PART 6

Miscellaneous provisions

Amendment of the Social Security (Contributions) (Amendment No. 5) Regulations 2003

10. Omit paragraph (4) of regulation 6 of the Social Security (Contributions) (Amendment No. 5) Regulations 2003(a).

Savings to Part 2

11.—(1) Nothing in Part 2 affects the operation of the Social Security (Contributions) Regulations 2001 in relation to obligations arising in connection with tax years beginning prior to 6th April 2012.

(2) For the purposes of paragraph (1) the reference to section 9(3) of the Pensions Act(b) in the definition of “COMPS employment” is to be read as though that section were still in force.

*Michael Fabricant
Brooks Newmark*

13th March 2012

Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State concurs with the making of these Regulations as indicated in the preamble
Signed by authority of the Secretary of State for Work and Pensions

*Steve Webb
Minister of State*

10th March 2012

Department for Work and Pensions

The Department for Social Development concurs with the making of these Regulations as indicated in the preamble
Sealed with the Official Seal of the Department for Social Development on 5th March 2012



Anne McCleary

5th March 2012

A senior officer of the Department for Social Development

(a) S.I. 2003/2085.

(b) The Pensions Act is defined in regulation 1 of S.I. 2001/1004 as the Pension Schemes Act 1993 c. 48.

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”).

The principal Regulations make provision for dealing with the reduced rate of National Insurance contributions (“NICs”), provided for in the Pensions Schemes Act 1993 (c. 48) (“the 1993 Act”), in relation to contracted out-employment. Certain types of contracted-out employment were abolished by the Pensions Act 2007 (c. 22); Part 2 of these Regulations makes consequential amendments, subject to savings, to the principal Regulations in order to reflect that abolition. Part 2 also makes minor amendments which are consequential to the abolition by the Finance Act 2011 (c. 11) of certain tax charges on registered pension schemes.

The principal Regulations provide for certain payments to be disregarded in the calculation of earnings for National Insurance purposes. Part 3 removes from the principal Regulations three disregards which, following a review by the Office of Tax Simplification, are no longer necessary.

Firstly, it removes the disregard from liability to pay Class 1A NICs on relocation expenses other than removal expenses where the employee started work in a new location before 6th April 1998.

Secondly, it removes from the computation of a person’s Class 1 NICs any payments in respect of employment as a mariner which is an interim payment in respect of earnings by way of an advance, a payment to some other person of any part of a mariner’s earnings as allocated by the mariner to that person or a payment of a special payment while sick abroad.

Thirdly, it removes the disregard from paying Class 1 NICs for certain apprentices and students coming to the UK who are not resident in the UK. The disregard is available where the UK employment occurs during a vacation from a course of full-time studies outside the UK and the temporary employment is of a nature similar or related to the course of study. It is also available where the UK employment is related to an apprenticeship which the individual is serving outside the UK and the employment in the UK began before the person was 25 and is of a nature similar or related to the apprenticeship outside the UK.

The provisions of the principal Regulations removed by regulation 7 of these Regulations were amended by a later statutory instrument. Regulation 10 makes a corresponding amendment to that later instrument in order to make sure that redundant legislation is removed from the statute book.

Part 4 of these Regulations amends the principal Regulations to reflect various recent changes to the rates in respect of NICs. Regulation 52A of the principal Regulations provides for the return of NICs paid in excess of the annual maximum prescribed in regulation 21 of the principal Regulations.

Regulation 8(a) reflects the increase from 6th April 2011 of the main rate of primary Class 1 NICs from 11% to 12% made by the National Insurance Contributions Act 2011 (c. 3).

Regulation 8(b) reflects a similar change to the reduced rates of primary Class 1 NICs in respect of members of contracted-out pension schemes. Section 41 of the 1993 Act provides for a reduction of 1.6% in the rates of primary Class 1 NICs in respect of members of certain salary related contracted-out pension schemes. As a result, the increase in the main rate of primary Class 1 NICs from 11% to 12% entails an increase in the percentage for primary Class 1 NICs due in respect of members of those contracted-out pension schemes from 9.4% to 10.4%.

Part 5 of these Regulations substitutes paragraphs 12A and 12B of Part 8 of Schedule 3 to the principal Regulations. It removes the reference to the Operational Allowance and Council Tax Relief being made and designated by the Secretary of State for Defence and instead refers to them being designated under a Royal Warrant made under the Armed Forces Act 2006 (c. 52) (“the 2006 Act”).

Part 5 also inserts a new paragraph 12C to Part 8 of Schedule 3 to the principal Regulations. The new paragraph 12C provides that payments of the Continuity of Education Allowance to or in respect of members of the armed forces of the Crown are to be disregarded in the calculation of earnings for National Insurance purposes. The Continuity of Education Allowance is an allowance that is designated as such under a Royal Warrant made under the 2006 Act.

Tax Information and Impact Notes covering Parts 3 and 5 of this instrument were published on 6th December 2011 alongside the autumn statement. They 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 covering Parts 2 and 4 of this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.