

EXPLANATORY MEMORANDUM

SOCIAL SECURITY (CREDITS, AND CREDITING AND TREATMENT OF CONTRIBUTIONS) (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. 409

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under powers conferred by sections 22(5) and 171(1), (3) and (4) of, and paragraph 8(1)(d) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, paragraph 18 of Schedule 1 to the Jobseekers (Northern Ireland) Order 1995, Articles 10(1), 11(3) and 74(1), (3), (5) and (6) of the Social Security (Northern Ireland) Order 1998 and paragraph 11 of Schedule 2 to the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 The Regulations introduce a number of amendments to current Social Security legislation in consequence of changes made by Her Majesty's Revenue and Customs (HMRC) to the payment and collection of Class 2 National Insurance Contributions (NICs) and the introduction of the accelerated payment process under the National Insurance Contributions Act 2015.

3. Background

- 3.1 Two classes of National Insurance Contributions are payable in respect of self-employment:
- Class 2 are flat-rate weekly contributions (£2.80 per week in 2016/17). They are due for every week or partial week of self-employment in a tax year if the person's net profits are equal to, or exceed, the Small Profits Threshold¹ (£5,965 in 2016/17);
 - Class 4 are payable at:
 - 9% of net profits between the Lower Profits Limit (£8,060 in 2016/17) and the Upper Profits Limit (£43,000 in 2016/17), and
 - 2% of net profits above the Upper Profits Limit.
- 3.2 The National Insurance Contributions Act 2015 brought the payment and collection of Class 2 NICs within the self-assessment process from the 2015/16

¹ The small profits threshold is the point at which liability for Class 2 NICs currently arises.

tax year onwards. Previously they were paid as a separate weekly payment to HMRC but are now collected annually alongside Class 4.

- 3.3 NICs are an excepted matter under Schedule 2 to the Northern Ireland Act 1998 and the responsibility of HMRC. However, Class 2 NICs are used to determine eligibility for some social security benefits. The Regulations amend social security legislation in consequence of Class 2 NICs changing from a weekly to an annual liability. The intention is to ensure that no-one claiming contributory Employment and Support Allowance, contribution-based Jobseeker's Allowance, State Pension or Bereavement Benefit, in circumstances where entitlement relies on the payment of Class 2 NICs for the previous tax year, will lose out.

Changes relating to the new deadline for payment of Class 2 NICs

- 3.4 As a consequence of Class 2 NICs changing from a weekly to an annual liability, the deadline for payment of Class 2 NICs in respect of any year has been aligned with the deadline for payment of income tax and Class 4 NICs - 31 January of the calendar year immediately following the end of the tax year in question. This means that, for example, Class 2 NICs for the 2015/16 tax year do not have to be paid before 31 January 2017. Payment may be made before that date if the contributor concerned chooses to do so. Where they choose not to, this change could have implications for satisfaction of the contribution conditions for certain benefits.
- 3.5 The contribution conditions for Employment and Support Allowance and Jobseeker's Allowance are basically the same, other than that Class 2 NICs do not normally count for the purposes of contribution-based Jobseeker's Allowance. The exception arises in respect of special rates of Class 2 paid by share fishermen and volunteer development workers. While the amendments principally affect self-employed people claiming contributory Employment and Support Allowance, they may also affect people in these special categories who claim contribution-based Jobseeker's Allowance. For ease of reference, the position in relation to Employment and Support Allowance is considered.
- 3.6 To satisfy contribution conditions, a self-employed person must:
- have paid Class 2 NICs, for at least 26 weeks in at least one of the two tax years (the "relevant income tax years") prior to the benefit year in which the claim is made (the "relevant benefit year"); and they must have paid those NICs before the start of the first week in respect of which entitlement to Employment and Support Allowance is being considered; and
 - in respect of both relevant income tax years prior to the relevant benefit year, have paid (or be treated as having paid) Class 2 NICs for at least 50 weeks.

A mixture of Class 1 and Class 2 contributions can also be used to satisfy the contribution conditions.

- 3.7 A "benefit year" begins with the first Sunday in January in any calendar year. Under HMRC's new arrangements, the final date for payment of Class 2 NICs for any tax year has become 31 January of the following calendar year. It follows that, from January 2017, benefit claims may be made which rely on Class 2 NICs for the most recent tax year which, lawfully, have not yet been paid. In these circumstances, claims will fail.
- 3.8 The Regulations amend existing legislation to allow for claims to be revisited and disallowance decisions revised, where appropriate, once the relevant NICs have been paid, provided the payment is made on or before 31 January. The contributions will be treated as having been made before the start of the first week in respect of which entitlement is being considered. This will help the claimant to satisfy the contribution conditions. The changes collectively allow benefit entitlement to arise from the same date it would otherwise have arisen, so the claimant will not lose out overall. While there may be a delay before the claimant can become entitled to the contributory benefit, this is an unavoidable outcome of the new Class 2 payment arrangements. In the interim, by way of mitigation people will still have access to the range of means-tested benefits that act as a safety net. It is possible for the person concerned to make their NICs payment before the final deadline.
- 3.9 In respect of the second contribution condition, which applies to contributory Employment Support Allowance and contribution-based Jobseeker's Allowance, the legislation currently provides that if contributions in respect of any tax year are paid on or after the start of the following benefit year (i.e. on or after the first Sunday in January after the end of the tax year), a "late payment" penalty is imposed, preventing any award of benefit for any period within 42 days from the date on which the payment is made. As the final payment date for Class 2 NICs has been moved to 31 January the "due date" for benefit purposes will change to 31 January also. This will mean that from January 2017 onwards no one who pays their Class 2 NICs on or before the 31 January deadline will run the risk of a "late payment" penalty.
- 3.10 Whilst it is not uncommon for National Insurance Contributions properly paid by the due dates to be brought to account on a person's National Insurance record after a pension claim has been made and decided, the new deadline for payment of Class 2 NICs increases this likelihood. However, the entitlement and contribution conditions for the State Pension are relatively generous and the impact of payments of Class 2 NICs which, under HMRC's new arrangements, are made later than would previously have been the case, on earlier decisions is likely to be minimal.
- 3.11 Similar changes to those outlined above are being made in respect of decisions on Bereavement Benefit. The changes will provide for an "any time" revision where Class 2 NICs are paid after the date of the decision but by the due date.

Changes relating to the refund of NICs paid under the self-assessment and accelerated payment processes

- 3.12 From 2015/16 the profits figure in self assessment arrangements can be adjusted by the individual or HMRC after the due date for filing the self assessment. Where the profits figure is subsequently revised downwards and falls below the Small Profits Threshold, HMRC can refund Class 2 NICs as there was no liability. If the contributor chooses not to pursue the refund, the NICs will be regarded as voluntary NICs and will remain on the contributor's record. However, if the contributor pursues and accepts the refund, the contributions in question will be removed from the National Insurance record. (In such cases, HMRC will make it clear in its communication products that a refund of Class 2 NICs may jeopardise a person's current and future entitlement to contributory benefits.)
- 3.13 Accelerated payments (APs) relate to tax and NICs on payments which HMRC considers are being made under an avoidance scheme or arrangement. HMRC require the tax and NICs in dispute to be paid on demand, rather than when the litigation and any investigations are complete. NICs paid under the AP process are regarded as lawfully paid contributions, and earners can become entitled to contributory benefits or statutory payments as a consequence. If HMRC's opinion is subsequently overturned by the Courts, some or all of the NICs paid by the contributor under the AP process will be due to be refunded. In this event, the relevant contributions will be removed from the contributor's record, which then affects entitlement to contributory benefits.
- 3.14 These Regulations, therefore, make provision allowing for benefit decisions to be revised, as appropriate, where NICs are retrospectively removed from the contributor's record, as this has a material effect on the original decision. Entitlement will be retrospectively disallowed, any current award of benefit based on those NICs terminated and recovery of the overpayment pursued, where appropriate. In the case of refunds under the AP process, the law specifically provides that the refund does not affect any payments of benefit made to the person before the repayment of NICs. Accordingly, recovery of any overpayment can be pursued only for periods arising after the date of repayment.

The Regulations

- 3.15 Regulation 2 is a technical provision which allows for contribution-based jobseeker's allowance and contributory employment support allowance to be treated as benefits for the purposes of making these Regulations.
- 3.16 Regulation 3 makes miscellaneous amendments to tidy up existing provisions.
- 3.17 Regulations 4 and 6 allow for relevant benefit entitlement decisions to be revised where the Class 2 contributions are paid by 31 January and also in cases where NICs has been repaid to a claimant.
- 3.18 Regulation 5 provides that where claimants pay their Class 2 contributions for the previous tax year by 31 January, the payment will be treated as having being made

before the start of the first week in respect of which entitlement to benefit is being considered.

4. Consultation

- 4.1 There is no requirement to consult on this Rule It makes in relation to Northern Ireland only provision corresponding to provision made by the Secretary of State for Work and Pensions in relation to Great Britain.

5. Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for these Regulations. The amendments are intended to ensure that no-one claiming contributory Employment and Support Allowance, contribution-based Job Seeker's Allowance, State Pension or Bereavement Benefit, in circumstances where entitlement relies on the payment of Class 2 NICs for the previous tax year, will not lose out overall by HMRC's reforms. The proposals have little implication for any of the section 75 categories. In light of this, the Department has concluded that the proposals would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

- 6.1 The Statutory Rule does not require a Regulatory Impact Assessment as it does not impose a cost on business, charities, social enterprise or voluntary bodies.

7. Financial Implications

- 7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
- (a) is not incompatible with any of the Convention rights,
 - (b) is not incompatible with Community law,
 - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 None.

10. Parity or Replicatory Measure

- 10.1 The corresponding Great Britain Regulations are the Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations 2016 (S.I. 2016/1145) and come into force on 1 January 2017. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.