
STATUTORY INSTRUMENTS

2005 No. 778

SOCIAL SECURITY

**The Social Security (Contributions)
(Amendment No. 3) Regulations 2005**

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| <i>Made</i> | - - - - | <i>16th March 2005</i> |
| <i>Laid before Parliament</i> | | <i>17th March 2005</i> |
| <i>Coming into force</i> | - - | <i>6th April 2005</i> |

The Treasury, with the concurrence of the Secretary of State insofar as required, in exercise of the powers conferred upon them by sections 3(2) and (3), 10(9), 13(1) and (7), 14(1) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(1) and, with the concurrence of the Department for Social Development insofar as required, in exercise of the powers conferred upon them by sections 3(2) and (3), 10(9), 13(1) and (7), 14(1) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(2) make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 3) Regulations 2005 and shall come into force on 6th April 2005.

(2) In these Regulations, “the principal Regulations” means the Social Security (Contributions) Regulations 2001(3).

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- (1) 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 10 was substituted by section 74(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19: “the 2000 Act”), and amended by paragraphs 1 and 2 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19: “the 2002 Act”) and paragraph 174 of Schedule 6, and the relevant entry in Part 1 of Schedule 8, to the Income Tax (Earnings and Pensions) Act 2003 (c. 1: “ITEPA”). Section 13 has been amended: the relevant amendment is that made by paragraph 14 of Schedule 3 to the Transfer Act. Section 14 has been amended: the relevant amendment is that made by paragraph 15 of Schedule 3 to the Transfer Act. Section 175 has been amended: the relevant amendments are those made by paragraph 29 of Schedule 3 to the Transfer Act and the relevant entry in Schedule 6 to the Tax Credits Act 2002.
- (2) 1992 c. 7. Section 3 has been amended: the relevant amendment is that made 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 10 was substituted by section 78 of the 2000 Act and amended by paragraph 21 of Schedule 1 to the 2002 Act and paragraph 195 of Schedule 6, and the relevant entry in Part 1 of Schedule 8 to ITEPA. Section 13 has been amended: the relevant amendment is that made by paragraph 15 of Schedule 3 to the Transfer Order. Section 14 has been amended: the relevant amendment is that made by paragraph 16 of Schedule 3 to the Transfer Order. The functions of the Department of Health and Social Services for Northern Ireland 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). Section 171 has been amended: the relevant amendment is that made by paragraph 28 of Schedule 3 to the Transfer Order.
- (3) S.I. 2001/1004.

Amendment of the principal Regulations

2. The principal Regulations shall be amended as follows.

3.—(1) Amend regulation 1(2) (interpretation) as follows.

(2) Before the definition of “the Act” insert—

““the acquired gender” has the same meaning as it has in the Gender Recognition Act 2004(4);”.

(3) After the definition of “electronic communications” (5) insert—

““full gender recognition certificate” means a certificate issued under section 4 of the Gender Recognition Act 2004;”.

4. At the end of regulation 8 (earnings periods for directors) add—

“(7) If a full gender recognition certificate is issued under the Gender Recognition Act 2004 to a person aged at least 60 but not more than 64—

(a) whose gender before its issue was female; and

(b) whose acquired gender is male;

the periods in the year of issue respectively falling before and after its issue shall be treated, for the purpose of computing liability for primary Class 1 contributions, as separate earnings periods.”.

5. In regulation 40 (prescribed general earnings in respect of which Class 1A contributions not payable)(6) omit paragraphs (5), (8) and (9).

6.—(1) Amend regulation 49 (payment of precluded Class 3 contributions) as follows.

(2) In paragraph (1) omit sub-paragraph (e).

(3) After paragraph (2) insert—

“(2A) No person shall be entitled to pay a Class 3 contribution in respect of the year in which he attains pensionable age or any subsequent year.

This is subject to the following qualification.

(2B) A person—

(a) who has attained the age of 60;

(b) to whom a full gender recognition certificate is issued; and

(c) whose acquired gender is male;

is not precluded from paying Class 3 contributions for the relevant years.

(2C) For the purposes of paragraph (2B) the relevant years are—

(a) the year in which the person attains the age of 60;

(b) any subsequent year before that in which the full gender recognition certificate is issued; and

(c) the year in which the full gender recognition certificate is issued.”.

7. After regulation 65A (amount of Class 3 contributions payable by virtue of regulation 50A)(7) insert—

(4) 2004 c. 7.

(5) The definition of “electronic communications” was substituted by paragraph 23(1)(d) and (2) of Schedule 1 to S.I. 2003/2155.

(6) Regulation 40 has been amended. The relevant amending instruments are S.I. 2001/2412, 2003/2085 and 2004/770.

(7) Regulation 65A was inserted by S.I. 2004/1362.

“Amount of Class 3 contributions payable after issue of a full gender recognition certificate

65B. The amount of a contribution payable by virtue of regulation 49(2B) (Class 3 contributions not precluded where gender recognition certificate issued) which is paid in the year in which the full gender recognition certificate is issued or the following year shall, notwithstanding section 13(6) of the Act, be calculated by reference to the weekly rate which would have been applicable if it had been paid during the contribution year to which it relates.”.

8. In paragraph 14 of Schedule 2 (valuation of non-cash vouchers—

- (a) in sub-paragraph (2), for “qualification” substitute “qualifications”; and
- (b) at the end add the following sub-paragraph—

“(4) The valuation of qualifying childcare vouchers is determined in accordance with paragraph 7 of Part 5 of Schedule 3.”.

9.—(1) Amend Schedule 3 (amounts to be disregarded in the computation of earnings) as follows.

(2) In Part 5 (certain non-cash vouchers to be disregarded as payments in kind) for paragraph 7(8) substitute—

“Qualifying childcare vouchers

7.—(1) A qualifying childcare voucher, subject to the qualifications in sub-paragraphs (2) and (5).

(2) Where the chargeable expense of the voucher exceeds the exempt amount, only that amount shall be disregarded by virtue of sub-paragraph (1).

(3) The exempt amount is the amount found by the formula—

$$E \times QW.$$

Here—

E is the sum of—

- (a) £50; and
- (b) the administration costs for the qualifying childcare voucher;

QW is the number of qualifying weeks—

- (a) for which the earner has been employed by the secondary contributor during the tax year in which the qualifying childcare voucher is provided; and
- (b) for which no other qualifying childcare voucher has been provided by the secondary contributor.

(4) Where an earner has two or more employed earner’s employments, the earnings from which fall to be aggregated in accordance with regulation 14 or 15, the reference to the secondary contributor in paragraph (b) of the definition of QW is a reference to the secondary contributor in respect any of those employments.

(5) An earner is only entitled to one exempt amount even if childcare vouchers are provided in respect of more than one child.

(6) For the purposes of this paragraph—

- (a) “chargeable expense” has the meaning given in paragraph 14 of Schedule 2;

(8) Paragraph 7 was amended by regulation 28(3)(d) of S.I. [2004/770](#).

- (b) “qualifying childcare voucher” and “qualifying week” have the meanings given in section 270A of the Income Tax (Earnings and Pensions) Act 2003⁽⁹⁾;
 - (c) the administration costs for a voucher means the difference between the cost of provision of a voucher and its face value; and
 - (d) the face value of a voucher is the amount stated on or recorded in the voucher as the value of the provision of care for a child that may be obtained by using it.”
- (3) In Part 6, in paragraph 7—
- (a) in the heading for “Pensions” substitute “Payments to pension schemes”; and
 - (b) after paragraph (c) insert—
 - “(d) Article 18 of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (The United States of America) Order 2002⁽¹⁰⁾.”

Transitional provision

10. In relation to any earnings period ending on or before 6th October 2005, paragraph 7(3) of Part 5 of Schedule 3 to the principal Regulations ⁽¹¹⁾ shall have effect as if, for the purposes of paragraph (a) of QW, the number of qualifying weeks for which the employee had been employed, before the end of the earnings period were 26, regardless of the number of weeks for which he had actually been employed.

Revocation

11. Regulation 28(3)(d) of the Social Security (Contributions, Categorisation of Earners and Intermediaries) (Amendment) Regulations 2004⁽¹²⁾ (which is spent by virtue of the substitution made by regulation 9(2) of this instrument) is revoked.

16th March 2005

Jim Murphy
Nick Ainger
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.

17th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

⁽⁹⁾ 2003 c. 1 as amended by paragraph 3, Schedule 13 of FA 2004.

⁽¹⁰⁾ S.I. 2002/2848.

⁽¹¹⁾ Inserted by regulation 9(2) of this instrument.

⁽¹²⁾ S.I. 2004/770.

The Department for Social Development concurs.
Sealed with the Official Seal of the Department for Social Development on 16th March 2005

L.S.

16th March 2005

John O'Neill
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 (S.I.2001/1004: “the principal Regulations”).

Regulation 1 provides for citation and commencement.

Regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends the list of definitions in regulation 1 of the principal Regulations, inserting new definitions of “the acquired gender” and “full gender recognition certificate”.

Regulation 4 amends regulation 8 of the principal Regulations to make provision for the earnings periods of a person who was born a woman, is a company director, and is aged between 60 and 64 when a full gender recognition certificate is issued recognising the person’s gender as male.

Regulation 5 amends regulation 40 of the principal Regulations, bringing the treatment of childcare provision, for Class 1A National Insurance Contributions purposes more closely into line with the treatment for income tax purposes.

Regulation 6 amends regulation 49 of the principal Regulations to permit the payment of a Class 3 contribution in the case of a person who was born a woman and is aged between 60 and 64 when a full gender recognition certificate is issued recognising the person’s gender as male. The amendment permits the payment of Class 3 contributions for the years beginning with that in which the person reached the age of 60 and ending with the year in which the gender recognition certificate was issued.

Regulation 7 inserts a new regulation 65B into the principal Regulations. This prescribes that the amount of a Class 3 contribution paid by virtue of regulation 49(2B) of the principal Regulations (inserted by regulation 6(3) of this instrument) paid in the year in which a gender recognition certificate is issued or in the following year shall be the amount prescribed for the year to which the contribution relates.

Regulation 9 amends Schedule 3 to the principal Regulations. Paragraph (2) of the regulation substitutes a new paragraph 7 in Part 5 of that Schedule, bringing the treatment of qualifying childcare vouchers for contributions purposes into line (so far as practicable) with their treatment for tax purposes. Paragraph (3) adds a reference to double taxation convention with the United States to the list of such conventions under which contributions to pension schemes are disregarded for National Insurance contributions purposes.

Regulation 10 makes transitional provision in respect of the introduction of the new treatment of qualifying childcare vouchers.

Regulation 11 revokes a previous amendment to paragraph 7 of Part 5 of Schedule 3 to the 2001 Regulations.

A full regulatory impact assessment in respect of the childcare aspects of these Regulations was prepared by the Inland Revenue in April 2004 and is available on the Inland Revenue website at <http://www.inlandrevenue.gov.uk/ria/emp-supp-childcare.pdf>. The other provisions of these Regulations do not impose new costs on business.