

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 2)
REGULATIONS 2008**

2008 No. 607

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
 - 2.1 This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001 No. 1004) (SSCR).
 - 2.2 Regulation 3 of this instrument makes changes to the SSCR to allow contributors to pay voluntary Class 2 or Class 3 contributions for the 2005/06 tax year at the rate originally applicable.
 - 2.3 Regulation 4 introduces a series of payments to be disregarded in the computation of an earner's liability to Class 1 National Insurance contributions (NICs), namely fuel for a van, Council Tax Relief to members of the Armed Forces, In-work Emergency Discretion Fund (IWEDF) payments and the equivalent Northern Ireland payments.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Background**

Voluntary Contributions

- 4.1 In relation to Regulation 3 the basis for applying a higher rate to the payment of Class 2 and Class 3 contributions is set out in sections 12(3) and 13(6) respectively of the Social Security Contributions and Benefits Act 1992. The corresponding Northern Ireland provisions are in sections 12(3) and 13(6) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- 4.2 Section 12(3) refers to payment of Class 2 contributions after the end of the tax year immediately following the contribution year. Section 13(6) refers to payment of Class 3 contributions after the end of the next tax year but one, following the contribution year. Where either provision applies the Class 2 or Class 3 contribution rate is computed at the highest rate in force between the contribution year and the year in which payment is made.

- 4.3 Sections 12(6) and 13(7) respectively give the Treasury power to make regulations providing that the rate is to be computed by reference to the amount of a Class 2 or Class 3 contribution, as the case may be, for a tax year earlier than the payment year but not earlier than the contribution year.

Disregards

- 4.4 The disregards in Regulation 4 are introduced because without them the payments referred to in paragraph 2.3 would be liable to Class 1 NICs.
- 4.5 Section 175(5) of the Social Security Contributions and Benefits Act 1992 and the similar provisions of the Act's Northern Ireland analogue provide that regulations under (inter alia) section 3 may provide for the exercise of a discretion. In respect of Regulation 4(3) (b) HM Treasury is reliant on this power here because the Secretary of State for Defence will specify relevant operational areas by means of administrative orders. Similarly in relation to Regulation 4(4) (b) HM Treasury is reliant on this power here because the payments to be disregarded rely on arrangements put in place at the discretion of the Secretary of State (in Great Britain, pursuant to section 2 of the Employment and Training Act 1973) or the Department of Economic Development (in Northern Ireland, pursuant to section 2 of the Employment and Training Act (Northern Ireland) 1950).

5. Extent

These Regulations apply throughout the United Kingdom; however, in relation to the new disregards added by Regulation 4(4) (b), that for In-Work Emergency Discretion Fund payments is expressed not to apply in Northern Ireland, and that for the Northern Ireland equivalent is expressed only to apply in Northern Ireland.

6. European Convention on Human Rights

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 This section covers the policy background relating to changes at Regulation 3 and 4. It should also be noted that these changes will make only small amendments to the Social Security (Contributions) Regulations 2001 which are very large and complex (the printed text ran to around 150 pages in 2001). HM Revenue and Customs has no current plans to consolidate these Regulations. On the last occasion it was a task involving 18 months' work and contributions from four different Government departments.
- 7.2 Regulation 3 – Voluntary Contributions: Subject to specific conditions governing entitlement to pay, voluntary Class 2 and Class 3 contributions can be paid for a tax year to make it count for appropriate benefit purposes where the contributor has not paid or been credited

with sufficient contributions to make the year a qualifying year. Contributors are generally notified of any shortfall in their records by a letter referred to as a deficiency notice (DN).

- 7.3 Major IT changes are necessary to implement the Pensions Act 2007 which reforms the State Pension and Home Responsibilities Protection (HRP) from 6 April 2010. Until these changes are fully implemented the Department for Work and Pensions (DWP) are unable to provide individualised pension forecasts for anyone reaching State Pension age on or after 6 April 2010.
- 7.4 Furthermore, for anyone reaching State Pension age on or after 6 April 2010 who has entitlement to HRP, HMRC cannot establish the number of qualifying years an individual has until HRP is converted to credits. As a result the DNs in respect of the 2005-06 tax year were not issued to those reaching State Pension age on or after 6 April 2010 with HRP shown on the record.
- 7.5 Regulation 3 removes the higher rate provision that would apply to the payment of voluntary contributions for the 2005/06 tax year for those reaching State Pension age on or after 6 April 2010 who may not have received a DN or may have delayed paying voluntary contributions until individualised pension forecasts become available from DWP.
- 7.6 Regulation 4(2) & (3) (a) – Van Fuel: With effect from 6 April 2005, section 160 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) introduced a charge to income tax on the benefit of fuel provided for vans chargeable to income tax under section 154 of ITEPA 2003. From 6 April 2005 it was the policy intention to align the income tax and NICs position so that Class 1A NICs would be due on the benefit of the van fuel treated as earnings in section 160 of ITEPA 2003, but no Class 1 NICs would be due on payments by way of the provision of van fuel, including payments made by way of non-cash vouchers, chargeable to income tax under section 160 of ITEPA 2003. It has only recently come to light that the SSCRs were not amended to ensure that Class 1 NICs liability could not arise. The amendment comes into force from 6 April 2008.
- 7.7 Regulation 4(3)(b) – HM Forces’ Council Tax Relief: On 25 September 2007, the Secretary of State for Defence announced that a (non-taxable) lump sum payment, to help them with their Council Tax bills, would be paid to eligible Service personnel deployed to specified operational locations, from 1 April 2008. He announced that these payments were a further enhancement to the Armed Forces operational welfare package and are designed to offset around 25 per cent of their Council Tax payments whilst Service personnel are on operations.
- 7.8 This provision is intended to complement the income tax position and give effect to the policy intention that these payments may be made without the deduction of NICs and income tax. The income tax position is to be dealt with by a Clause in the Finance Bill 2008. A parallel disregard is being introduced by regulations for Tax Credit purposes.

- 7.9 Regulation 4(4)- In-Work Emergency Discretion Fund: In Great Britain, from 6 April 2008, IWEDF payments will provide lone parents with access to funding to help them overcome financial barriers that might otherwise make it difficult to remain in work. Lone parents could receive discretionary IWEDF payments if they are in work of over 16 hours per week; have been working for less than six months; were previously on benefits for at least six months; and participated in a New Deal programme. These payments are to be disregarded because the first months of starting work can be a period of significant financial change for lone parent and if these payments were liable to NICs they could adversely affect the net pay and erode the positive impact of making such payments.
- 7.10 A similar scheme of In-Work Emergency Fund payments will apply in Northern Ireland and such payments are to be treated in the same way as IWEDF payments for National Insurance purposes.
- 7.11 This provision is intended to complement the income tax position and give effect to the policy intention that these payments may be made without the deduction of NICs and income tax. The income tax position is to be dealt with by a Clause in the Finance Bill 2008. A parallel disregard will be introduced by regulations for Tax Credit purposes.

8. Impact

An impact assessment has not been prepared in respect of this instrument as no impact on the private or voluntary sectors is foreseen.

9. Contact

Raj Nayyar
Her Majesty's Revenue and Customs
Room 1E/09
100 Parliament Street
London
SW1A 2BQ
Tel: 0207 147 2521
Fax: 0207 147 2531