

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 3)
REGULATIONS 2010

2010 No. 646

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument amends the Social Security (Contributions) Regulations 2001 (SI 2001 No. 1004) (“the 2001 Regulations”) to reflect changes made by primary legislation as regards the upper accrual point (UAP).
 - 2.2 This instrument makes minor technical changes to the provision in the 2001 Regulations that specifies the way in which National Insurance contributions (NICs) refunds are calculated to take account of the introduction of the UAP.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Context**
 - 4.1 Taken together sections 41, 42A and 45 of the Pensions Schemes Act 1993 govern entitlement to contracted-out rebates and minimum payments available to those who are contracted-out of the additional state pension scheme. In broad terms until 6 April 2009, contracted-out rebates accrued on the portion of an employee’s earnings between the value of the lower earnings limit (LEL) and upper earnings limit (UEL) for Class 1 NICs. Under the provisions of the Pensions Act 2007, the UEL was set to be replaced by the UAP from a date to be announced. The National Insurance Contributions Act 2008 and the Pensions (No.2) Act (Northern Ireland) 2008 brought forward introduction of the UAP to 6 April 2009 and fixed its value at £770 per week for Great Britain and Northern Ireland respectively. From 6 April 2009 entitlement to contracted-out rebates for those in contracted-out employment and entitlement to minimum contributions for those who hold Appropriate Personal Pensions are calculated by reference to the new UAP.
 - 4.2 Earners who hold two or more separate employments can sometimes pay in excess of their annual maximum of NICs liability. Where such overpayments occur the excess is refunded to the earner under regulation 52A of the 2001 Regulations. By changing the way in which contracted-out rebates are calculated, consequential changes are needed to the refund calculations contained in regulation 52A that are applied where the earner has received contracted-out rebates.

5. Territorial Extent and Application

This instrument applies to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The UAP was introduced on 6 April 2009. The first tax year for which NICs refund calculations are affected by introduction of the UAP ends on 5 April 2010. This instrument makes technical changes to the refund calculations for tax years 2009/10 to allow for correct excess refunds to be made.

7.2 Section 6(5) of the Social Security Contributions and Benefits Act 1992 and Section 6(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 provide that earners who hold two or more employments are required to pay NICs on the earnings they receive from each employment held. Where NICs are paid in such circumstances, earners can sometimes pay in excess of their annual maximum of NICs liability. The annual maximum of Class 1 and 2 NICs liability is set out in regulation 21 of the 2001 Regulations.

7.3 Where an earner exceeds the amount of NICs required by regulation 21, he is entitled to claim a refund of the excess under regulation 52A. Regulation 52A contains calculations that take into account whether the person has received contracted-out rebates or holds an Appropriate Personal Pension. Currently these calculations reflect that contracted-out rebates are payable on earnings between the LEL and the UEL.

7.4. As part of the reforms introduced by the Pensions Act 2007 and the Pensions Act (Northern Ireland) 2008, the proportion of a person's earnings on which contracted-out rebates are payable was reduced from the UEL to the UAP. The technical amendments in this instrument will allow the excess refund calculations to recognise that from 6 April 2009 contracted-out rebates are payable on earnings up to the UAP rather than the UEL. This is a minor technical change required as a consequence of the introduction of the UAP.

Consolidation

7.5 These amendments make small changes to the 2001 Regulations and HMRC has no current plans to consolidate these regulations.

8. Consultation outcome

No consultation has been undertaken. This is a minor technical change, necessitated by changes made by primary legislation that has already taken effect.

9. Guidance

These Regulations make minor technical changes and no further guidance is required.

10. Impact

10.1 These Regulations make a small technical change to the way in which NICs refunds are calculated. There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

These Regulations have no effect on small business.

12. Monitoring & review

These Regulations make changes to existing calculation methods for refunds of contributions which are reviewed annually.

13. Contact

Mellannie Merrifield at HM Revenue & Customs, Tel: 0191 225 9076 or e-mail: mellannie.merrifield@hmrc.gsi.gov.uk can answer any queries regarding the instrument.