

2004 No. 173

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment) Regulations
2004**

<i>Made</i> - - - -	<i>29th January 2004</i>
<i>Laid before Parliament</i>	<i>30th January 2004</i>
<i>Coming into force</i> - -	<i>23rd February 2004</i>

The Treasury, with the concurrence of the Secretary of State for Work and Pensions, in exercise of the powers conferred upon them by sections 3(2) and (3) and 175(3) of the Social Security Contributions and Benefits Act 1992(a), and, with the concurrence of the Department for Social Development, in exercise of the powers conferred upon them by sections 3(2) and (3) and 171(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment) Regulations 2004 and shall come into force on 23rd February 2004.

Amendment of the Social Security (Contributions) Regulations 2001

2.—(1) Paragraph 5 of Part 10 of Schedule 3 to the Social Security (Contributions) Regulations 2001 (gratuities and offerings to be disregarded in the computation of earnings) (c) shall be amended as follows.

(2) In sub-paragraph (1) for the words from “which satisfies either” to the end of the sub-paragraph substitute—

“which—

- (a) satisfies the condition in either sub-paragraph (2) or (3); and
- (b) is not within sub-paragraph (4) or (5).”

(3) In sub-paragraph (2) for “The first condition” substitute “The condition in this sub-paragraph”.

(a) 1992 c. 4. Relevant amendments to section 3 were made by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(b) 1992 c. 7 (“the 1992 Northern Ireland Act”). Relevant amendments to section 3 were 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 functions of the Department of Health and Social Services for Northern Ireland under the 1992 Northern Ireland Act were transferred to the Department for Social Development by Article 8(b) of, and Part II of Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481).

(c) S.I. 2001/1004. A relevant amendment is made to Schedule 4 to those Regulations (application of provisions of the Income Tax (Employments) Regulations 1993 for the purposes of contributions) by regulation 6 of S.I. 2002/2929.

(4) In sub-paragraph (3) for “The alternative condition” substitute “The condition in this sub-paragraph”.

(5) At the end of the paragraph add—

“(4) A payment made to the earner by a person who is connected with the secondary contributor is within this sub-paragraph unless—

(a) it is—

(i) made in recognition for personal services rendered to the connected person by the earner or by another earner employed by the same secondary contributor; and

(ii) similar in amount to that which might reasonably be expected to be paid by a person who is not so connected; or

(b) the person making the payment does so in his capacity as a tronc-master.

(5) A payment made to the earner is within this sub-paragraph if it is made by a trustee holding property for any persons who include, or any class of persons which includes, the earner.

In this sub-paragraph “trustee” does not include a tronc-master.

(6) A person is connected with the secondary contributor for the purposes of this paragraph if his relationship with the secondary contributor, or where the employer and secondary contributor are different, with either of them, is as described in subsection (2), (3), (4), (5), (6) or (7) of section 839 of the Taxes Act (connected persons)(a).”.

Jim Murphy
Joan Ryan

29th January 2004

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.

Chris Pond

Parliamentary Under Secretary of State,
Department for Work and Pensions

29th January 2004

The Department for Social Development concurs.

Sealed with the Official Seal of the Department for Social Development on 29th January 2004



John O’Neill

Senior Officer of the Department for Social Development

(a) Section 839 has been amended. The relevant amendment is the substitution of subsection (3) by paragraph 20 of Schedule 17 to the Finance Act 1995(c. 4).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004: “the 2001 Regulations”).

Regulation 1 provides for the citation and commencement of the instrument.

Regulation 2 amends paragraph 5 of Part 10 of Schedule 3 to the 2001 Regulations, adding two new sub-paragraphs (4) and (5). Before amendment, that paragraph provided a conditional disregard for gratuities and offerings (“the paragraph 5 disregard”).

The new sub-paragraph (4) excludes from the paragraph 5 disregard a payment made by a person connected with the secondary contributor unless—

- (a) it is—
 - (i) made in recognition of personal services rendered to the connected person by the employed earner or another earner employed by the same secondary contributor, and
 - (ii) similar in amount to that which might reasonably be expected to be paid by a person who was not so connected; or
- (b) the person making the payment is a tronc-master.

The new sub-paragraph (5) also excludes from the paragraph 5 disregard a payment made by a trustee holding property for persons who include, or any class of persons which includes, the earner. For the purposes of this sub-paragraph the reference to a trustee does not include a tronc-master.

These Regulations do not impose new costs on business.

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