

**2006 No. 576**

**SOCIAL SECURITY**

**The Social Security (Contributions) (Amendment No. 2)  
Regulations 2006**

<i>Made</i> - - - -	<i>9th March 2006</i>
<i>Laid before Parliament</i>	<i>10th March 2006</i>
<i>Coming into force</i> - -	<i>6th April 2006</i>

These Regulations are made by the Treasury and the Commissioners for Her Majesty's Revenue and Customs.

The powers exercised by the Treasury are those contained in sections 3(2) and (3) and 10(9) of, and paragraph 7B of Schedule 1 to, the Social Security Contributions and Benefits Act 1992 ("the Act")(a) and sections 3(2) and (3) and 10(9) of, and paragraph 7B of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("the Northern Ireland Act")(b).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those contained in paragraph 6(1) of Schedule 1 to the Act and paragraph 6(1) of Schedule 1 to the Northern Ireland Act and now vested in them(c).

The Secretary of State and the Department for Social Development(d) concur in the making of these Regulations.

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- (a) 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"). Paragraph 7B was inserted by section 57 of the Social Security Act 1998 and amended by paragraph 38 of Schedule 3, and paragraph 7 of Schedule 9, to the Transfer Act.
- (b) 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. Paragraph 7B was inserted by article 54 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10) and amended by paragraph 37 of Schedule 3 and the relevant entry in Part I of Schedule 9 to the Transfer Order.
- (c) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (d) The functions of the Department of Health and Social Services for Northern Ireland under the Northern Ireland Act 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).

## **Citation and commencement**

1. These Regulations may be cited as the Social Security (Contributions) (Amendment No. 2) Regulations 2006 and shall come into force on 6th April 2006.

## **Amendment of the Social Security (Contributions) Regulations 2001**

2. The Social Security (Contributions) Regulations 2001(a) are amended as follows.
3. In regulation 1(2) (interpretation) after the definition of “readily convertible asset” insert—  
““registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004(b);”.
4. In regulation 40 (prescribed general earnings in respect of which Class 1A contributions not payable)(c)—
  - (a) in paragraph (2)(a) for “paragraphs 4 to 7;” substitute “paragraphs 2(b), 3 to 5, 7, 10 and 11;”; and
  - (b) omit paragraphs (6) and (6A).
5. Omit regulation 53.
6. In regulation 90K(4)(b) (default surcharge) omit paragraph (i)(d).
7. In Schedule 2 (calculation of earnings for the purposes of earnings-related contributions) omit paragraph 13 (apportionment of a payment to a retirement benefits scheme for the benefit of two or more people).
- 8.—(1) Part 6 of Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions) is amended as follows.
  - (2) For paragraph 1 (pension payments and pension contributions to be disregarded) substitute—

### **“Pension payments and pension contributions disregarded**

1. The payments mentioned in paragraphs 2 to 11 are disregarded in the calculation of earnings for the purposes of earnings-related contributions.”.
- (3) For paragraphs 2 (personal pension contributions by employers) and 3 (approved schemes etc.)(e) substitute—

### **“Contributions to, and benefits from, registered pension schemes**

2. A payment—
  - (a) by way of employer’s contribution towards a registered pension scheme to which section 308(1) of ITEPA 2003(f) (exemption of contributions to registered pension scheme) applies;
  - (b) by way of any benefit pursuant to a registered pension scheme to which—

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(a) S.I. 2001/1004.

(b) 2004 c. 12.

(c) Regulation 40 has been amended. The relevant amendments are those made by regulation 6(6) of S.I. 2003/2085, regulation 9(b) of S.I. 2004/770 and regulation 6 of S.I. 2003/2085.

(d) Regulation 90K was inserted by regulation 23 of S.I. 2004/770.

(e) Paragraph 2 was substituted by regulation 28(4)(a), and paragraph 3 was amended by regulation 28(4)(b), of S.I. 2004/770.

(f) 2003 c. 1. Section 308 was substituted by section 201(2) of the Finance Act 2004 (c. 12 : “the 2004 Act”).

- (i) section 204(1) (authorised pensions and lump sums) of, and Schedule 31 (taxation of benefits under registered pension schemes) to, the Finance Act 2004(a) applies; or
- (ii) section 208 or 209 of that Act (unauthorised payments) applies.

### **Migrant member relief and corresponding relief**

- 3. A payment by way of—
  - (a) an employer’s contribution to which paragraph 2 of Schedule 33 of the Finance Act 2004 (relief for employers’ contributions) applies;
  - (b) an employer’s contribution to which article 15(2) of the Taxation of Pension Schemes (Transitional Provisions) Order 2006(b) (employers with pre-commencement entitlement to corresponding relief) applies; or
  - (c) any benefit referable to a contribution falling within sub-paragraph (a) or (b).”
- (4) In paragraph 5 after “6th April 1998” insert “and before 6th April 2006”.
- (5) Omit paragraph 6.
- (6) In paragraph 7 (payments to pension schemes exempt from UK taxation under double taxation agreements)(c)—
  - (a) in sub-paragraph (1)—
    - (i) after paragraph (b) insert—
      - “(bb) Article 27(2) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Canada) Order 1980(d);”;
    - (ii) after paragraph (d) add—
      - “(e) Article 17(3) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (South Africa) Order 2002(e);
      - (f) Article 17(3) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Chile) Order 2003(f).”;
  - (b) omit sub-paragraph (2).
- (7) After paragraph 7 add—

### **“Contributions to, and benefits from, employer-financed retirement benefits schemes**

- 8. A payment by way of—
  - (a) an employer’s contribution towards an employer-financed retirement benefits scheme; and
  - (b) benefits, pursuant to an employer-financed retirement benefits scheme, to which paragraph 10 applies.

Here and in paragraph 10 “employer-financed retirement benefits scheme” has the meaning given in section 393A(g) of ITEPA 2003.

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(a) 2004 c. 12.  
 (b) S.I. 2006/572.  
 (c) Paragraph 7 was amended by regulation 9(3) of S.I. 2005/778.  
 (d) S.I. 1980/709. Article 27(7) was inserted by Article 13(3) of Part 1 of the Schedule in S.I. 2003/2619.  
 (e) S.I. 2002/3138.  
 (f) S.I. 2003/3200.  
 (g) Section 393A was substituted for section 393 as originally enacted by section 249(3) of the 2004 Act.

## **Contributions to, and pension payments from, employer-financed pension only schemes**

- 9.—(1) A payment by way of—
- (a) an employer’s contribution towards an employer-financed pension only scheme; and
  - (b) a pension, pursuant to an employer-financed pension only scheme, which is income charged to tax pursuant to Part 9 of ITEPA 2003 to which paragraph 10 applies.
- (2) In this paragraph “employer-financed pension only scheme” means a scheme—
- (a) financed by payments made by or on behalf of the secondary contributor, and
  - (b) providing only a pension (and which is accordingly not an employer-financed retirement benefits scheme because it does not provide relevant benefits).

Here “relevant benefits” has the meaning given in section 393B of ITEPA 2003(a).

## **Payments from employer-financed retirement benefits schemes and employer-financed pension only schemes**

- 10.—(1) This paragraph applies to payments in paragraphs 8(b) and 9(1)(b) which—
- (a) if the scheme had been a registered pension scheme—
    - (i) would have been authorised member payments under any of the provisions of section 164 of the Finance Act 2004 (authorised member payments) listed in sub-paragraph (4); and
    - (ii) would satisfy any of the conditions in sub-paragraph (5); and
  - (b) are made after the employment of the employed earner by—
    - (i) the secondary contributor,
    - (ii) a subsidiary of the secondary contributor, or
    - (iii) a person connected with the secondary contributor or a subsidiary of the secondary contributor,has ceased.

For the purposes of this sub-paragraph—

“subsidiary” has the meaning given in section 838 of the Taxes Act 1988(b); and an employer is connected with any of the persons with respect to whom he would be a connected person by virtue of section 839 of that Act(c).

- (2) In the following provisions of this paragraph—
- (a) “the Act” means the Finance Act 2004(d);
  - (b) a reference to a numbered section or Schedule (without more) is a reference to the section or Schedule bearing that number in the Act; and
  - (b) any reference to a numbered pension rule is to the pension rule contained in section 165 bearing that number.
- (3) In applying any provision of the Act for the purposes of this paragraph, a reference to the scheme administrator is to be read as a reference to—
- (a) the responsible person, within the meaning of section 399A of ITEPA 2003(a), in relation to the employer-financed retirement benefits scheme, or

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(a) Section 393B was substituted for section 393 as originally enacted by section 249(3) of the 2004 Act.

(b) 1988 c. 1.

(c) Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 and by paragraph 341 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(d) 2004 c. 12.

- (b) the person who would be the responsible person if the scheme were an employer-financed retirement benefits scheme.
- (4) The provisions referred to in sub-paragraph (1)(a)(i) are—
- (a) section 164(a) (pensions permitted by the pension rules (see section 165)),
  - (b) section 164(b) (lump sums permitted by the lump sum rule (see section 166)),
  - (c) section 164(e) (payments pursuant to a pension sharing order or provision), and
  - (d) section 164(f) (payments of a description prescribed by regulations made by the Commissioners for Revenue and Customs).
- (5) The conditions referred to in sub-paragraph (1)(a)(ii) are that, if the scheme had been a registered pension scheme—
- (a) any pension payable under its rules would have satisfied—
    - (i) pension rules 1 and 3,
    - (ii) pension rule 4 or pension rule 6, and
    - (iii) paragraph 1(1)(e) of Schedule 29;
  - (b) in relation to any lump sum payable under its rules, section 166(1)(a) (pension commencement lump sum) and paragraphs 1 to 3 of Schedule 29, as modified by sub-paragraph (6) below, would have been satisfied;
  - (c) in relation to any lump sum payable under its rules, section 166(1)(b) (serious ill-health lump sum) and paragraph 4 of Schedule 29, as modified by sub-paragraph (6) below, would have been satisfied; and
  - (d) any pension is payable until the member’s death in instalments at least annually.
- (6) The amount to be disregarded shall be computed in accordance with Part 1 of Schedule 29 (lump sum rule)(b) as if that Part were modified as follows—
- (a) in paragraph 1 (pension commencement lump sum)—
    - (i) paragraphs (b) and (f) of sub-paragraph (1) were omitted,
    - (ii) for sub-paragraph (2) there were substituted—
 

“(2) But if a lump sum falling within sub-paragraph (1) exceeds the permitted lump sum, no part of it shall be disregarded.”;
    - (iii) sub-paragraph (4) were omitted; and
    - (iv) for sub-paragraph (5) there were substituted—
 

“(5) Paragraph 2 defines the permitted lump sum.”;
  - (b) for paragraph 2 there were substituted—
 

“2. The permitted lump sum is the higher of—

$$\frac{MVF}{4} \text{ and } \frac{LS + (MAP \times 20)}{4}$$

where—

MVF is the market value of the employee’s employer-financed retirement benefits scheme fund at the time the benefit is paid to the individual,

LS is the amount of the lump sum, and

MAP is the maximum annual pension which could be paid to the member under the arrangement.”;

- (c) paragraph 3 were omitted;

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(a) Section 399A was inserted by section 249(11) of the Finance Act 2004.  
 (b) Part 1 was amended by Schedule 10 to the Finance Act 2005.

(d) in paragraph 4, paragraphs (b) and (c) of sub-paragraph (1) and sub-paragraph (2) were omitted.

(7) No payment by way of benefits shall be disregarded by virtue of this paragraph if they are payable in respect of a period during which an earner is—

(a) engaged as a self-employed earner under a contract for services with, or

(b) re-employed as an employed earner by,

the secondary contributor from employment with whom the benefits were derived.

**Superannuation funds to which section 615(3) of the Taxes Act applies**

**11.** A payment by way of employer's contribution to a superannuation fund to which section 615(3) of the Taxes Act applies, and a payment by way of an annuity paid by such a fund from which income tax is not deducted.”.

**9.**—(1) Schedule 4 is amended as follows.

(2) In paragraph 11(4)—

(a) for the formula substitute “(N + P + L + S) - (SP + CD)”;

(b) in the description of “N” omit paragraph (b);

(c) in the description of “P” omit “if any adjustment to that amount under regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002 were disregarded”;

(d) in the description of “L” omit “and in regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002”; and

(e) omit the description of “T”.

*Tom Watson*

*Vernon Coaker*

9th March 2006

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.

*Stephen C. Timms*

Minister of State,

9th March 2006

Department for Work and Pensions

The Department for Social Development concurs.

Sealed with the Official Seal of the Department for Social Development on 9th March 2006



*John O'Neill*

A Senior Officer of the Department for Social Development

*David Varney*

*Paul Gray*

9th March 2006

Two of the Commissioners for Her Majesty's Revenue and Customs

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) in consequence of the income tax provisions relating to pensions and pension contributions contained in Part 4 of the Finance Act 2004. They also make two amendments to the computation of amounts by reference to which employers are entitled to make payments on account of national insurance contributions to HM Revenue and Customs quarterly rather than monthly. These two amendments are consequent upon the abolition of payment by employers of tax credits to their employees.

These Regulations do not impose new costs on business.

**2006 No. 576**

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**The Social Security (Contributions) (Amendment No. 2)  
Regulations 2006**

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