
STATUTORY INSTRUMENTS

2009 No. 600

SOCIAL SECURITY

**The Social Security (Contributions)
(Amendment No. 3) Regulations 2009**

Made - - - - *11th March 2009*
Laid before Parliament *11th March 2009*
Coming into force in accordance with regulation 1

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 175(3), (4) and (5) of, and paragraph 8(1)(q) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(1), section 113 of the Social Security Administration Act 1992(2), sections 3(2) and (3) and 171(3), (4) and (5) of, and paragraph 8(1)(q) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(3), section 107(1) of the Social Security Administration (Northern Ireland) Act 1992(4) and section 133 of the Finance Act 1999(5).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those contained in paragraph 6 of Schedule 1 to the Social Security Contributions and Benefits Act 1992(6) and paragraph 6 of Schedule 1 to the Social Security Contributions and Benefits (Northern

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- (1) 1992 c. 4. Section 3(2) was amended by paragraph 3 of Schedule 3 to the [Social Security Contributions \(Transfer of Functions, etc\) Act 1999 \(c.2; "the Transfer Act"\)](#). Section 175(4) and paragraph 8 of Schedule 1 were amended respectively by paragraphs 29(4) and 39 of Schedule 3 to the Transfer Act, and section 175(5) was amended by paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c.18). Paragraph 8(1A) of Schedule 1 provides that the "appropriate authority" is the Treasury, except as provided in that paragraph.
 - (2) 1992 c. 5. Section 113 was substituted by section 60 of the Social Security Act 1998 (c.14) and amended by paragraph 5 of Schedule 5 to "the Transfer Act" (see footnote (a)), paragraph 7 of Schedule 6 to the Child Support, Pensions and Social Security Act 2000 (c. 19) and section 9 of, and Part 1 of Schedule 2 to, the National Insurance Contributions and Statutory Payments Act 2004 (c. 3).
 - (3) 1992 c. 7. Section 3(2) was amended 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 171(5) was amended by paragraph 36 of Schedule 1 and by Schedule 2 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I.1994/1898 (N.I.12)) and paragraph 8 was amended by paragraph 38 of Schedule 3 to the Transfer Order. Paragraph 8(1A) of Schedule 1 provides that the "appropriate authority" is the Treasury except as provided in that paragraph.
 - (4) 1992 c. 8. Section 107 was substituted by article 56 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and amended by paragraph 5 of Schedule 4 to the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 and paragraph 7 of Schedule 6 to the [Child Support, Pensions and Social Security Act \(Northern Ireland\) 2000 \(c. 4 \(NI\)\)](#).
 - (5) 1999 c. 16.
 - (6) 1992 c.4. Relevant amendments to paragraph 6 of Schedule 1 were made by paragraph 77 of Schedule 7 to the Social Security Act 1998 (c.14), paragraph 35 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2) and paragraph 185 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1.).

Ireland) Act 1992(7), and now exercisable by them(8).

The Secretary of State and the Department for Social Development(9) concur in the making of these Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 3) Regulations 2009 and shall come into force on 1st April 2009.

(2) These Regulations have effect as follows—

- (a) regulations 3, 4 and 8 have effect from 1st April 2009; and
- (b) regulations 5, 6 and 7 have effect from 6th April 2009.

Amendment of the Social Security (Contributions) Regulations 2001

2. The Social Security (Contributions) Regulations 2001(10) are amended as follows.

Amendment of regulation 1(2)

3. In regulation 1(2) (interpretation) insert at the appropriate places—

“HMRC” means Her Majesty’s Revenue and Customs; and

“tribunal” means the First-tier tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal(11).

Amendment of regulation 75

4. In regulation 75 (specified amount of a Class 1A contribution)—

- (a) in paragraph (6) for “paragraph 26(1) of Schedule 4” substitute “Schedule 36 to the Finance Act 2008(12) (information and inspection powers)”; and
- (b) in paragraph (7) for “paragraph 26” substitute “paragraph 26A”.

Amendment of regulation 87

5. In regulation 87 (notification of commencement or cessation of payment of Class 2 or Class 3 contributions)—

- (a) in the heading after “contributions” add “on or before 5th April 2009”;

(7) 1992 c.7. Relevant amendments to paragraph 6 of Schedule 1 were made by paragraph 58 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I.1998/1506), paragraph 34 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Northern Ireland Order 1999 (S.I. 1999/671) and paragraph 204 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003.

(8) 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(1) of that Act provides that a reference to the Commissioners of Inland Revenue, however expressed, shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

(9) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 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).

(10) S.I. 2001/1004; to which there are amendments not relevant to these Regulations.

(11) See Chapter 2 of Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15)

(12) 2008 c. 9. Schedule 36 is brought into force on 1st April 2009 by S.I. 2009/404 (C. 25).

- (b) in paragraph (2) after “person who” insert “on or before 5th April 2009”.

Insertion of regulations 87A to 87G

6. After regulation 87 insert—

“Notification of commencement or cessation of payment of Class 2 or Class 3 contributions on or after 6th April 2009

87A.—(1) A person (P) to whom paragraph (2) applies shall immediately notify the relevant date to HMRC in writing or by such means of electronic communications as may be approved.

(2) This paragraph applies where P on or after 6th April 2009—

- (a) becomes, or ceases to be, liable to pay a Class 2 contribution;
- (b) becomes, or ceases to be, entitled to pay a Class 2 contribution although not liable to do so; or
- (c) is entitled to pay a Class 3 contribution and wishes either to do so or to cease doing so.

(3) In paragraph (1) “the relevant date” means—

- (a) in relation to a person to whom paragraph (2)(a) applies, the date on which P commences or ceases to be a self-employed earner;
- (b) in relation to a person to whom paragraph (2)(b) or (c) applies, the date on which P wishes to commence or cease paying either Class 2 or Class 3 contributions, as the case may be.

(4) P is to be treated as having immediately notified HMRC in accordance with paragraph (1) if P has notified HMRC within such further time, if any, as HMRC may allow.

Penalty for failure to notify

87B.—(1) A penalty is payable by P where—

- (a) P becomes liable to pay a Class 2 contribution;
- (b) P fails to comply with the requirement to notify in accordance with regulation 87A(1); and
- (c) notification has not been made by 31st January following the end of the year⁽¹³⁾ in which P became liable to pay a Class 2 contribution.

(2) A failure by P to comply with the requirement to notify is—

- (a) “deliberate and concealed” if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the requirement, and
- (b) “deliberate but not concealed” if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the requirement.

(3) The penalty payable under paragraph (1) is—

- (a) for a deliberate and concealed failure to comply with the requirement to notify, 100% of the lost contributions,
- (b) for a deliberate but not concealed failure to comply with the requirement, 70% of the lost contributions, and

⁽¹³⁾ Regulation 1(2) of the Social Security (Contributions) Regulations 2001 defines “year” as meaning “tax year”.

- (c) for any other case, 30% of the lost contributions.
- (4) “The lost contributions” are the amount of Class 2 contributions which P is liable to pay—
 - (a) beginning on the date on which P becomes liable to pay a Class 2 contribution, and
 - (b) ending on the 31st January preceding the day on which HMRC received notification of, or otherwise became fully aware of P’s liability to pay Class 2 contributions.
- (5) When calculating the amount of “the lost contributions” no account is to be taken of any Class 2 contribution—
 - (a) that is unpaid after the end of the sixth year following the year in which liability for that contribution arose, or
 - (b) in respect of which P’s earnings meet the conditions set out in regulation 45(1) for the purposes of section 11(4) of the Act⁽¹⁴⁾ (exception from liability for Class 2 contributions on account of small earnings).
- (6) Liability to a penalty under paragraph (1) does not arise in relation to a failure to comply with the requirement to notify which is not deliberate if P satisfies HMRC or (on appeal) the tribunal that there is a reasonable excuse for the failure.
- (7) For the purposes of paragraph (6)—
 - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
 - (b) where P relies on any other person to notify HMRC, that is not a reasonable excuse unless P took reasonable care to avoid the failure,
 - (c) where P had a reasonable excuse but the excuse has ceased, P is to be treated as having continued to have that excuse if P notifies without unreasonable delay after the excuse ceased.
- (8) For the purposes of this regulation, the reference to a failure by P includes a failure by a person who acts on P’s behalf; but P is not liable to a penalty in respect of a failure by P’s agent where P satisfies HMRC or (on appeal) the tribunal that P took reasonable care to avoid the failure.

Disclosure

- 87C.**—(1) Regulation 87D makes provision for the reduction of a penalty where P discloses a failure to comply with the requirement to notify.
- (2) P discloses a failure to comply with the requirement to notify by—
 - (a) telling HMRC about it,
 - (b) giving HMRC reasonable help in quantifying the contributions unpaid by reason of it, and
 - (c) allowing HMRC access to records for the purpose of checking the amount of contributions so unpaid.
 - (3) Disclosure of a failure to comply with the requirement to notify—
 - (a) is “unprompted” if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the failure to comply with the requirement to notify, and

⁽¹⁴⁾ Regulation 1(2) of the Social Security (Contributions) Regulations 2001 provides that “the Act” means the Social Security and Contributions and Benefits Act 1992.

(b) otherwise, is “prompted”.

(4) In relation to disclosure “quality” includes timing, nature and extent.

Reduction of penalty for disclosure

87D.—(1) Where P, who would otherwise be liable to a 100% penalty has made an unprompted disclosure, HMRC shall reduce the 100% to a percentage not below 30%, which reflects the quality of the disclosure.

(2) Where P, who would otherwise be liable to a 100% penalty has made a prompted disclosure, HMRC shall reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

(3) Where P, who would otherwise be liable to a 70% penalty has made an unprompted disclosure, HMRC shall reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.

(4) Where P, who would otherwise be liable to a 70% penalty has made a prompted disclosure, HMRC shall reduce the 70% to a percentage not below 35%, which reflects the quality of the disclosure.

(5) Where P, who would otherwise be liable to a 30% penalty has made an unprompted disclosure, HMRC shall reduce the 30%—

(a) if HMRC become aware of the failure to notify less than 12 months after 31st January following the end of the year during which a person became liable to pay a Class 2 contribution, to a percentage (which may be 0%), or

(b) in any other case, to a percentage not below 10%,

which reflects the quality of the disclosure.

(6) Where P, who would otherwise be liable to a 30% penalty has made a prompted disclosure, HMRC shall reduce the 30%—

(a) if HMRC become aware of the failure to notify less than 12 months after the 31st January following the end of the year during which a person became liable to pay a Class 2 contribution, to a percentage not below 10%, or

(b) in any other case, to a percentage not below 20%,

which reflects the quality of the disclosure.

Special reduction

87E.—(1) If HMRC think it right because of special circumstances, they may reduce a penalty under regulation 87B(1).

(2) In paragraph (1) “special circumstances” does not include P’s ability to pay.

(3) In paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

Notice of decision etc.

87F.—(1) Where P becomes liable for a penalty in accordance with regulation 87B(1) an officer of Revenue and Customs(**15**) shall—

(15) Section 7 of the Commissioners for Revenue and Customs Act 2005 (c. 11) provides that a function conferred on an Officer of the Board of Inland Revenue vests in an officer of Revenue and Customs.

- (a) make a decision in accordance with section 8(1)(k)(ii) of the Transfer Act **(16)**;
 - (b) notify P; and
 - (c) state in the notice of decision the amount of the penalty imposed and the period to which it relates.
- (2) The penalty referred to in regulation 87B(1)—
- (a) must be paid before the end of the period of 30 days beginning with the date of the issue of the notice of decision; and
 - (b) shall be recoverable as if it were a Class 2 contribution due and payable.
- (3) A notice of decision must be issued before the end of the period of 12 months beginning with—
- (a) where there has been a decision that P was liable to pay Class 2 contributions and a determination of the amount P was or is liable to pay, the end of the appeal period; or
 - (b) if there is no such decision, the date on which the contributions unpaid by reason of the failure to notify are finally determined.
- (4) In paragraph (3)(a) “appeal period” means the period during which—
- (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.
- (5) A notice of decision under paragraph (1), may be combined with an assessment issued in accordance with paragraph 16 of Schedule 41 to the Finance Act 2008**(17)**.

Double jeopardy

87G. P is not liable to a penalty under regulation 87B(1) in respect of a failure or action in respect of which P has been convicted of an offence.”.

Amendment of Part 5 of Schedule 3

7.—(1) In paragraph 9 of Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001**(18)** for the words “by virtue of the Income Tax (Exemption of Minor Benefits) Regulations 2002 regulation 7 (exemption in respect of the provision of health screening and medical check-ups).” substitute “by virtue of any provision of or under the Income Tax (Earnings and Pensions) Act 2003 which exempts from liability to income tax the provision by employers to employees of health screening and medical check-ups.”.

(2) For the purposes of the amendment made by paragraph (1), disregard any limitation of provision under the 2003 Act by virtue of which an exemption is conditional on the benefit being made available to the employer’s employees generally on similar terms.

Amendment of Schedule 4

8.—(1) Schedule 4 is amended as follows.

(16) Regulation 1 of the Social Security (Contributions) Regulations 2001 provides that the Transfer Act means the Social Security Contributions (Transfer of Functions, etc) Act 1999; regulation 156 of those Regulations provides that a provision of an enactment which applies only to Great Britain shall be construed so far as necessary as including a reference to the corresponding enactment applying in Northern Ireland.

(17) 2008 c. 9.

(18) S.I. 2001/1004. Paragraph 9 was inserted by the Social Security (Contributions) (Amendment No 6) Regulations 2007 (S.I. 2007/2091).

(2) In paragraph 1(2) omit the definition of “HMRC”(19).

(3) In paragraph 15(7) (specified amount of earnings-related contributions payable by the employer) for “paragraph 26(1) and the provisions of paragraph 26” substitute “Schedule 36 to the Finance Act 2008 (information and inspection powers) and the provisions of paragraph 26A”.

(4) For paragraph 26 (inspection of employer’s records) substitute—

“Retention by employer of contribution and election records

26.—(1) An employer must keep and preserve all contribution records which are not required to be sent to HMRC by other provisions in these Regulations for not less than—

- (a) three years after the end of the tax year to which they relate; or
- (b) for documents or records relating to information about the amounts of Class 1A and Class 1B contributions, three years after the end of the year in which a contribution became payable.

(2) The duty under paragraph (1) may be discharged by preserving the contribution records in any form or by any means.

(3) Where an election has been made jointly by the secondary contributor and the employed earner for the purposes of paragraph 3B(1) of Schedule 1 to the Act(20), the records which the secondary contributor is obliged by paragraph 8 to maintain shall be retained by the secondary contributor throughout the period for which the election is in force and for six years after the end of that period.

(4) In this paragraph “contribution records” means wages sheets, deductions working sheets (other than deductions working sheets issued under regulation 35 of the PAYE Regulations(21) (simplified deduction schemes: records)) and other documents or records relating to—

- (a) the calculation of payment of earnings to the employer’s employees or the amount of the earnings-related contributions payable for those earnings;
- (b) the amount of any Class 1A contributions or Class 1B contributions payable by the employer; and
- (c) any information about the amounts of Class 1A and Class 1B contributions.

(5) For the purposes of this paragraph “employer”—

- (a) includes, in relation to a Class 1A contribution, the person liable to pay such a contribution in accordance with section 10ZA of the Act (liability of third party provider of benefits in kind); and
- (b) means, in relation to a Class 1B contribution, the person liable to pay such a contribution in accordance with section 10A of the Act.

Certificate of employer’s liability to pay contributions after inspection of documents

26A.—(1) An officer of Revenue and Customs(22) may, by reference to the information obtained from an inspection of the documents and records produced under Schedule 36 to the Finance Act 2008 (information and inspection powers), and on the occasion of each inspection, prepare a certificate showing—

(19) The definition of “HMRC” was inserted by [S.I. 2007/1056](#).

(20) Regulation 1(2) of [S.I. 2001/1004](#) defines “the Act” as meaning the Social Security Contributions and Benefits Act 1992.

(21) Regulation 1(2) of [S.I. 2001/1004](#) defines “the PAYE Regulations” as meaning the Income Tax (Pay As You Earn) Regulations 2003; this definition was inserted by [S.I. 2004/770](#).

(22) Schedule 1 to the Interpretation Act 1978 (c. 30) defines “officer of Revenue and Customs” as having the meaning in section 2(1) of the Commissioners of Revenue and Customs Act 2005 (c. 11); this definition was inserted in the former Act by section 2(7) of the latter.

- (a) the amount of earnings-related contributions which it appears that the employer is liable to pay to HMRC, excluding any amount deducted by the employer by virtue of the Compensation of Employers Regulations(23) for the years or tax periods covered by the inspection; or
- (b) the amount of any Class 1B contributions which it appears that the employer is liable to pay to HMRC for the years covered by the inspection, or such an amount in addition to an amount referred to in paragraph (a);

together with any amount of earnings-related contributions or Class 1B contributions or a combination of those classes of contributions, which has not been paid to HMRC or, to the best of the officer’s knowledge and belief, to any other person to whom it might lawfully be paid.

(2) The production of a certificate mentioned in sub-paragraph (1) shall, unless the contrary is proved, be sufficient evidence that the employer is liable to pay to HMRC in respect of the years or, as the case may be, tax periods mentioned in the certificate, the amount shown in the certificate as unpaid; and any document purporting to be such a certificate shall be treated as such a certificate until the contrary is proved.

(3) The provisions of paragraph 16 shall apply with any necessary modifications to the amount shown in such a certificate.

(4) For the purposes of this paragraph “employer” has the meaning given by paragraph 26(5).”.

(5) In sub-paragraph (6)(a) of paragraph 29B(24) (relevant contributions debts of managed service companies) for “paragraph 26 (inspection of employer’s records)” substitute “paragraph 26A (certificate of employer’s liability to pay contributions after inspection of documents)”.

(6) In sub-paragraph (7) of paragraph 29D (time limits for issue of transfer notices) for “paragraph 26” substitute “Schedule 36 to the Finance Act 2008”.

(7) After paragraph (4) of paragraph 29F insert—

“(5) For the purposes of sub-paragraph (3) “the reckonable date” has the meaning given by paragraph 17(3)(b)(i).”.

11th March 2009

Dave Watts
Tony Cunningham
Two of the Lords Commissioners of Her
Majesty’s Treasury
Dave Hartnett
Mike Eland

10th March 2009

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

(23) Paragraph 1 of Schedule 4 to [S.I. 2001/1004](#) defines “Compensation of Employers Regulations” as meaning the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations 1994 and the Statutory Sick Pay Percentage Threshold Order 1995.

(24) Paragraphs 29A to 29L were inserted by [S.I. 2007/2068](#).

The Secretary of State concurs.

Signed by authority of the Secretary of State for Work and Pensions

10th March 2009

Rosie Winterton
Minister of State
Department of Work and Pensions

The Department for Social Development concurs.

The Official Seal of the Department is affixed on 10th March 2009



John O'Neill
A 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 (“the SSCR 2001”). The amendments fall into three broad groups: (i) the introduction of a revised penalty regime, (ii) amendments consequential upon the introduction of new Revenue and Customs powers in relation to inspection and to production of documents and (iii) the relaxation of conditions attaching to the relief for health screenings and medical check-ups provided by employers.

Regulation 3, 5 and 6 are about penalties. Regulation 6 inserts new regulations 87A to 87G in the SSCR 2001. Regulation 3 introduces definitions of “HMRC” and “the tribunal” (and regulation 8(2) removes the existing definition of “HMRC”, which applies only for the purposes of Schedule 4) and regulation 5 confines the existing regulation 87 and the associated penalty to situations arising on or before 5th April 2009.

The new regulation 87A makes provision for the requirements to notify the commencement or cessation of payment of Class 2 and Class 3 National Insurance contributions. Regulation 87 provides for a penalty for failure to notify liability for Class 2 contributions. Regulations 87C and 87D are about reductions where the failure to notify is disclosed to HMRC. Regulation 87E makes further provision about reductions. Regulation 87F requires HMRC to serve a notice. Regulation 87G prevents liability to a penalty where there is a criminal conviction.

Regulations 4 and (most of) 8 are about inspection and the production of documents. New Revenue and Customs powers of inspection and to require the production of documents were introduced by Schedule 36 to the Finance Act 2008.

Regulation 8 substitutes new paragraphs 26 and 26A for existing paragraph 26 of Schedule 4 to the SSCR 2001. New paragraph 26 is substantively the same as existing 26(6), (7) and (8), which is about employers’ duty to keep records. These records will constitute “statutory records”, so Schedule 36 to the Finance Act 2008 will provide the power to require their production and to inspect. New paragraph 26A is substantively the same as existing paragraph 26(4) and (5), which is about officers’ powers to issue certificates about employers’ liabilities, but statutory references are updated. The opportunity is taken to modernise the style of both sets of provisions. Regulation 4 makes consequential amendments required as a result of the changes made by regulation 8.

Regulation 7 is about health screenings and medical check-ups. Part 5 of Schedule 3 to the SSCR 2001 provides for certain non-cash vouchers to be disregarded as payments in kind for the purposes of National Insurance contributions. Paragraph 9 of Part 5 disregards non-cash vouchers which can be used only to obtain a health screening or a medical check-up of a kind which is exempt from a charge to income tax by virtue of regulation 7 of the Income Tax (Exemption of Minor Benefits) Regulations 2002 (exemption in respect of the provision of health screening and medical check-ups).

For tax years 2009-10 onwards it is proposed that the income tax exemption for health screenings and medical check-ups will no longer be in the 2002 Regulations, but in section 320B of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”), which will be inserted by the Finance Act 2009. It therefore becomes necessary to draft the disregard in Part 5 of Schedule 3 by reference to provision made in ITEPA 2003.

The exemption as expected to be inserted by the Finance Act 2009 is wider than that presently provided for by the 2002 Regulations, in that it will not be conditional on the benefit being made available to the employer’s employees generally on similar terms. The wider form of the exemption is to be applied now for the purposes of the SSCR 2001. Paragraph (2) of regulation 7

of these regulations provides for the condition to be disregarded during the period for which the tax exemption is still provided by regulations under ITEPA 2003 (i.e. regulation 7 of the 2002 Regulations) and not yet by that Act itself.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private and voluntary sectors is foreseen.

The impact on the costs of business and voluntary sector of the revision to the Class 2 National Insurance contributions penalty was included in the wider full impact assessment entitled “The Impact Assessment of Penalties Reform: The Next Stage” published by HM Revenue and Customs on 27 March 2008 and is available on their website at <http://www.hmrc.gov.uk/ria/> or from the Ministerial Correspondence Unit, HM Revenue and Customs, Yorke House, Castle Meadow, Nottingham NG2 1AB. A copy of the full impact assessment is annexed to the Explanatory Memorandum which is available alongside these Regulations on the OPSI website.