

2018 No. 120

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment) Regulations
2018**

<i>Made</i> - - - -	<i>31st January 2018</i>
<i>Laid before Parliament</i>	<i>1st February 2018</i>
<i>Coming into force</i> - -	<i>6th April 2018</i>

These Regulations are made by the Treasury in exercise of the powers conferred by sections 3(2) and (3), 4(6), 10(9)(a) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and sections 3(2) and (3), 4(6), 10(9)(a) and 171(3), (4) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b) and now exercisable by them.

The Secretary of State and the Department for Communities concur in the making of regulations 3 to 7 of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment) Regulations 2018 and come into force on 6th April 2018.

2. The Social Security (Contributions) Regulations 2001(c) are amended by Parts 1 to 3 of these Regulations.

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- (a) 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”), so that the power to make regulations became exercisable by the Treasury with the concurrence of the Secretary of State. Section 4(6) was substituted by section 74(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19) (“CSPSSA 2000”) and amended by paragraph 172(4) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA 2003”). Section 10(9)(a) was substituted by section 74(2) of CSPSSA 2000 and amended by paragraph 174(12) of Schedule 6 to ITEPA 2003. Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Transfer Act.
- (b) 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 1999 Order”), so that the power to make regulations became exercisable by the Treasury with the concurrence of the Department of Health and Social Services. Section 4(6) was substituted by section 78(3) of CSPSSA 2000 and amended by paragraph 193(4) of Schedule 6 to ITEPA 2003. Section 10(9)(a) was substituted by section 78(2) of CSPSSA 2000 and amended by paragraph 195(12) of Schedule 6 to ITEPA 2003. Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to the 1999 Order. The functions of the Department of Health and Social Services under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (“SSCB(NI)A 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. (NI) 1999 No. 481). The Department for Social Development was renamed as the Department for Communities by section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.)) and section 1(12) of that Act provided for existing functions to apply.
- (c) S.I. 2001/1004. Relevant amending instruments are S.I. 2002/307, 2004/770, 2005/778, 2006/883, 2011/1000, 2011/2700, 2013/622, 2016/352 and 2017/307.

PART 1

Optional remuneration arrangements: consequential amendments

3. In regulation 1 (citation, commencement and interpretation), after the definition of “official computer system” insert—

““optional remuneration arrangements” has the meaning given in section 69A of ITEPA 2003(a);”.

4. In regulation 22A (amounts to be treated as earnings in connection with the use of qualifying vehicles other than cycles), after paragraph (2) insert—

“(2A) But the amount in paragraph (2) is taken to be RME (without the subtraction of QA) so far as the aggregate of relevant motoring expenditure is paid pursuant to optional remuneration arrangements.”.

5.—(1) Schedule 2 (calculation of earnings for the purposes of earnings-related contributions in particular cases) is amended as follows.

(2) After paragraph 14(1) insert—

“(1A) This paragraph is subject to paragraph 14A (valuation of non-cash vouchers provided under optional remuneration arrangements).”.

(3) After paragraph 14 insert—

“Valuation of non-cash vouchers provided under optional remuneration arrangements

14A.—(1) This paragraph applies for calculating the amount of earnings comprised in any payment by way of a non-cash voucher which falls to be taken into account in calculating an employed earner’s earnings, if this is made pursuant to optional remuneration arrangements.

(2) The amount of earnings is the relevant amount.

(3) To find the relevant amount, first determine which (if any) is the greater of—

(a) the chargeable expense (without taking account of the qualification in paragraph 14(3)); or

(b) the amount foregone.

(4) If the amount in sub-paragraph (3)(a) is greater than or equal to the amount foregone, the “relevant amount” is the chargeable expense (taking account of the qualification in paragraph 14(3)).

(5) Otherwise, “the relevant amount” is the difference between—

(a) the amount foregone; and

(b) any part of the chargeable expense that the employed earner makes good to the person incurring it.

(6) For the purposes of sub-paragraphs (3) to (5), assume that the amount in sub-paragraph (3)(a) is zero if the condition in sub-paragraph (7) is met.

(7) The condition is that the payment would be exempt from income tax but for section 228A(1) of ITEPA 2003(b).

(8) In this paragraph—

(a) “chargeable expense” has the meaning given in paragraph 14; and

(a) “ITEPA 2003” is defined as the Income Tax (Earnings and Pensions) Act 2003 by section 122(1) of the Social Security Contributions and Benefits Act 1992 and section 121(1) of the SSCB(NI)A 1992. These definitions were inserted by paragraphs 178 and 199 of Schedule 6 to ITEPA 2003 respectively. Section 69A was inserted by paragraph 1 of Schedule 2 to the Finance Act 2017 (c. 10) (“FA 2017”).

(b) Section 228A was inserted by paragraph 49 of Schedule 2 to FA 2017.

- (b) “amount foregone” means the amount foregone with respect to the benefit of the non-cash voucher for the purposes of the benefits code as mentioned in section 69B of ITEPA 2003(a).

(9) Where a payment by way of a non-cash voucher is made partly pursuant to optional remuneration arrangements and partly otherwise than pursuant to such arrangements, these Regulations are to apply with any modifications (including provision for just and reasonable apportionments) that may be required for ensuring that it is treated—

- (a) in accordance with this paragraph so far as it is made pursuant to optional remuneration arrangements; and
- (b) in accordance with any other treatment that is applicable so far as it is made otherwise than pursuant to such arrangements.”.

6.—(1) Part 8 of Schedule 3 (travelling, relocation and other expenses and allowances of the employment) is amended as follows.

(2) Renumber paragraphs 7 and 7A as paragraphs 7(1) and 7A(1) respectively.

(3) After paragraph 7(1) insert—

“(2) Sub-paragraph (1) does not apply so far as the payment is made pursuant to optional remuneration arrangements.”.

(4) After paragraph 7A(1) insert—

“(2) Sub-paragraph (1) does not apply so far as the payment of relevant motoring expenditure within the meaning of regulation 22A(3) is made pursuant to optional remuneration arrangements.”.

(5) For paragraph 9(2) substitute—

“(2) Sub-paragraph (1) does not authorise the disregard of any amount by way of relevant motoring expenditure, within the meaning of paragraph (3) of regulation 22A—

- (a) in excess of that permitted by the formula in paragraph (4) of that regulation; or
- (b) so far as it is paid pursuant to optional remuneration arrangements.”.

PART 2

Qualifying childcare vouchers: consequential amendments

7.—(1) Part 5 of Schedule 3 (certain non-cash vouchers to be disregarded as payments in kind) is amended as follows.

(2) In paragraph 6B, after sub-paragraph (b) insert—

“(ba) “eligible employee” has the meaning given in section 270AA of ITEPA 2003(b);”.

(3) In paragraph 7—

- (a) in the heading and in sub-paragraph (9)(a), before “employees” insert “eligible”; and
- (b) in sub-paragraph (1), before the first use of “employee” insert “eligible”.

(4) In paragraph 7A—

- (a) in the heading and in sub-paragraph (9)(a), before “employees” insert “eligible”; and
- (b) in sub-paragraph (1), before the first use of “employee” insert “eligible”.

(a) Section 69B was inserted by paragraph 1 of Schedule 2 to FA 2017.

(b) Section 270AA was inserted by section 63(4) of the Childcare Payments Act 2014 (c. 28).

PART 3

Sporting testimonial payments

8.—(1) Regulation 40B (exception from liability to pay Class 1A contributions for tax year 2017-18 in respect of sporting testimonial payments) is amended as follows.

- (2) In the heading omit “for tax year 2017-18”.
- (3) In paragraph (1) after “for the tax year 2017-18” insert “and subsequent tax years”.
- (4) In paragraph (2) omit “for the tax year 2017-18”.

Mark Spencer
David Rutley

31st January 2018

Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State concurs as indicated in the preamble.
Signed by authority of the Secretary of State for Work and Pensions.

Guy Opperman
Parliamentary Under-Secretary of State
Department for Work and Pensions

30th January 2018

The Department for Communities concurs as indicated in the preamble.
Sealed with the Official Seal of the Department for Communities on



Denis McMahon

30th January 2018

A senior officer of the Department for Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Part 1 of these Regulations makes consequential amendments to the Contributions Regulations as a result of changes to the income tax treatment of benefits in kind provided under optional remuneration arrangements (“OpRAs”) in Finance Act 2017 (c. 10) (“FA 2017”). OpRAs are a contractual arrangement between an employee and an employer, commonly known as salary sacrifice, under which an employee agrees to sacrifice a portion of cash pay in return for the provision of a benefit.

Regulations 4 and 6 amend regulation 22A and paragraphs 7, 7A and 9 of Part 8 of Schedule 3 to disapply a number of disregards from liability to Class 1 National Insurance contributions (“NICs”) for payments of certain types of motoring expenses, where these payments are made under an OpRA.

Regulation 5 inserts new paragraph 14A into Schedule 2 to the Contributions Regulations, which sets out an alternative method for calculating the amount of earnings comprised in a non-cash voucher for Class 1 NICs purposes if this voucher is provided under an OpRA. It specifies that the amount of earnings is whichever is the higher in value of (i) the expense incurred in connection with the provision of the voucher, or (ii) the cash pay that the employee has sacrificed in return for the voucher. New paragraph 14A(7) specifies that the amount of earnings is the cash pay sacrificed if the voucher would have been exempt from income tax but for section 228A(1) of the

Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA”), which disappplies most income tax exemptions applicable to benefits in kind if these are provided under an OpRA.

Part 2 of these Regulations makes consequential amendments to paragraphs 6, 7 and 7A of Part 5 of Schedule 3 to the Contributions Regulations to limit the scope of two disregards from liability to Class 1 NICs for payments to an employee of qualifying vouchers to obtain childcare. The amendments limit these disregards to payments of childcare vouchers made for the benefit of an “eligible employee”, as this term is defined in section 270AA of ITEPA. This mirrors changes to the corresponding income tax exemption for childcare vouchers introduced by section 63 of the Childcare Payments Act 2014 (c. 28).

Part 3 amends regulation 40B of the Contributions Regulations so that the exemption from liability to pay Class 1A NICs in respect of sporting testimonial payments provided by that regulation for the tax year 2017-18 will continue to apply in subsequent tax years.

A Tax Information and Impact Note covering the changes made by FA 2017 to the treatment of OpRAs was published on 5th December 2016 and is available at <https://www.gov.uk/government/publications/income-tax-limitation-of-salary-sacrifice>. It remains an accurate summary of the impacts that apply to Part 1 of this instrument.

A full Impact Assessment of the effect that the Childcare Payments Bill and consequential National Insurance legislation would have on the costs of business and the voluntary sector was published on 10th June 2014 alongside the draft of the Bill and was updated on 20th November 2014. An updated Impact Assessment was made on 30th March 2017 and is available at <http://www.legislation.gov.uk/ukpga/2014/28/impacts>. The original Impact Assessments are available at <https://www.gov.uk/government/publications/tax-free-childcare-impact-assessment>. The updated Impact Assessment remains an accurate summary of the impacts that apply to Part 2 of this instrument.

A Tax Information and Impact Note covering the amendments made by Part 3 was published at <https://www.gov.uk/government/publications/income-tax-update-to-treatment-of-income-from-sporting-testimonials/income-tax-update-to-treatment-of-income-from-sporting-testimonials> on 16th March 2016 and updated on 9th November 2017. It remains an accurate summary of the impacts that apply to this Part.

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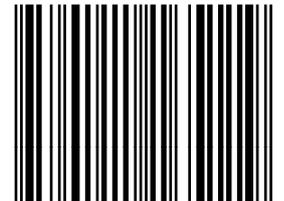
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