This Draft Statutory Instrument has been printed in substitution of the Draft SI of the same title, which was laid on 19th February 2007, and is being issued free of charge to all known recipients of that Draft Statutory Instrument.

Draft Regulations laid before Parliament under section 176(1)(a) of the Social Security Contributions and Benefits Act 1992 and section 172(11A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2007 No. [ ]

SOCIAL SECURITY

The Social Security Contributions (Consequential Provisions) Regulations 2007

Made - - - -

Coming into force - - 6th April 2007

The Treasury make the following Regulations in exercise of the powers conferred on them by sections 4C(1), (2)(a)(b) and (3) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 4C(1), (2)(a) and (b) and (3) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**).

A draft of this instrument has been laid before Parliament in accordance with section 176(1)(a)(**c**) of the former Act and section 172(11A)(**d**) of the latter Act and approved by a resolution of each House of Parliament.

It appears to the Treasury to be expedient to make these Regulations in consequence of provision made by or by virtue of section 4B(2) of both those Acts.

Accordingly, the Treasury, with the concurrence of the Secretary of State for Work and Pensions and the Department for Social Development, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security Contributions (Consequential Provisions) Regulations 2007 and shall come into force on 6th April 2007.

(**a**) 1992 c. 4. Sections 4B and 4C were inserted by section 1(1) of the National Insurance Contributions Act 2006 (c. 10: "the 2006 Act).
(**b**) 1992 c.7. Sections 4B and 4C were inserted by section 2(1) of the 2006 Act.
(**c**) Section 176(1)(a) was amended by paragraphs 2 and 7 of Schedule 7 to the Employment Act 2002.
(**d**) Section 172(11A) was inserted by paragraph 29(5) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and amended by paragraph 6 of Schedule 4 to the Tax Credits Act 2001 (c. 21) and section 2(2)(a) and 4(2) of the 2006 Act.

Application of Paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (and corresponding provision for Northern Ireland)

2.—(1) Paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits Act 1992 shall apply (to the extent that it does not otherwise) where an amount is retrospectively treated as earnings by regulations made by virtue of section 4B(2) of that Act.

(2) Paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 shall apply (to the extent that it does not otherwise) where an amount is retrospectively treated as earnings by regulations made by virtue of section 4B(2) of that Act.

Amendment of the Social Security (Contributions) Regulations 2001

3. The Social Security (Contributions) Regulations 2001(**a**) are amended as follows.

4. In regulation 1(2) (interpretation)—

(a) insert the following definitions at the appropriate places—

""retrospective contributions regulations" means regulations made by virtue of section 4B(2) of the Act and, in relation to an amount of retrospective earnings, "the relevant retrospective contributions regulations" means the regulations which treat that amount as earnings;";

""retrospective earnings" means an amount retrospectively treated as earnings by retrospective contributions regulations;";

""retrospective contributions", in relation to an amount of retrospective earnings, means the amount of earnings-related contributions based on those earnings which the employee is liable to pay under section 6(4)(a) of the Act (primary contributions);";

(b) omit the definition of "normal rate" and insert it immediately after the definition of "non-contracted out rate".

5. In regulation 60 (treatment for purpose of contributory benefit of unpaid primary Class 1 contributions) add at the end—

"(3) Where—

(a) an amount is retrospectively treated as earnings by retrospective contributions regulations, and

(b) the primary Class 1 contribution payable in respect of those earnings is not paid, and the failure to pay that contribution is shown to the satisfaction of an officer of the Board not to have been with the consent or connivance of, or attributable to any negligence on the part of the primary contributor,

that contribution shall be treated in accordance with paragraph (1)(a) and (b).".

6. In regulation 90H (mandatory electronic payment)(**b**) at the end add—

"(4) This regulation does not apply to a payment of contributions, whether primary or secondary, in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force ".

7. In regulation 90N (mandatory use of electronic communications) at the end add—

"(4) This regulation does not apply to a return in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force ".

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

(**a**) S.I. 2001/1004.

(**b**) Part 7A (regulations 90A to 90R) of the Social Security (Contributions) Regulations 2001 was inserted by regulations 2 and 23 of S.I. 2004/770 with effect from 6th April 2004.

(2) In paragraph 1(2) (interpretation) insert the following definitions at the appropriate places—

""closed tax year" means any year preceding the current year and cognate expressions shall be construed accordingly;" and

""HMRC" means Her Majesty's Revenue and Customs;".

(3) In paragraph 6 after sub-paragraph (1) insert—

"(1A) Where a liability to pay retrospective contributions has arisen in respect of an employee, an employer shall amend the relevant deductions working sheet or where necessary prepare one in respect of that employee.".

(4) In paragraph 7—

(a) after sub-paragraph (3) insert—

"(3A) Where an amount has been treated as retrospective earnings paid to or for the benefit of an employee, the employer may deduct the retrospective contributions based on those earnings from any payment of general earnings made by him to that employee—

(a) after the relevant retrospective contributions regulations come into force, and

(b) during the same and the following year.

This sub-paragraph is subject to sub-paragraph (5).".

(b) sub-paragraph (5)—

(i) after "(3)," insert "(3A),";

(ii) in paragraph (b), after "any of those sub-paragraphs" insert "except sub-paragraph (3A)".

(5) In paragraph 10(**a**)—

(a) in sub-paragraph (1) after "Subject to" insert "sub-paragraph (1A) and";

(b) after sub-paragraph (1) insert—

"(1A) This paragraph does not apply in respect of amounts of retrospective earnings.".

(6) In paragraph 11(**b**)—

(a) in sub-paragraph (1) after "Subject to" insert "sub-paragraph (1A) and";

(b) after sub-paragraph (1) insert—

"(1A) This paragraph does not apply in respect of amounts of retrospective earnings.";

(c) in sub-paragraph (4)—

(i) in the definition of "N", after paragraph (a) insert—

"(aa) any amount payable in respect of retrospective earnings;";

(ii) for the definition of "P" substitute—

""P" is the amount which would be payable to HMRC under regulation 68 of the PAYE Regulations but disregarding any amount payable in respect of retrospective employment income (within the meaning of regulation 2 of those Regulations);";

(7) After paragraph 11 insert—

"**Payments of earnings-related contributions in respect of retrospective earnings**

11A.—(1) This paragraph applies where there are retrospective earnings in respect of which contributions (whether primary or secondary contributions) are payable.

(2) The employer shall pay the contributions referred to in sub-paragraph (1) to HMRC within 14 days or, if payment is made in respect of the current year by an approved method

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(**a**) Paragraph 10 has been amended by regulation 32 of S.I. 2004/770.

(**b**) Paragraph 11 has been amended by regulation 16 of S.I. 2003/193, regulation 32 of S.I. 2004/770 and regulation 9 of S.I. 2006/576.

of electronic communications, 17 days of the end of the tax month immediately following the tax month in which the relevant retrospective contributions regulations came into force.".

(8) In paragraph 12, for "10 or 11" wherever it appears substitute "10, 11 or 11A".

(9) In paragraph 17(**a**)—

(a) in sub-paragraph (1) after "Subject to" insert "sub-paragraph (4A) and".

(b) in sub-paragraph (3)(b) after paragraph (ii) add—

"(iii) a contribution payable in respect of retrospective earnings relating to a tax year which is closed at the time that the relevant retrospective contributions regulations come into force, the 14th day after the end of the tax month immediately following the tax month in which those regulations came into force.";

(c) after sub-paragraph (4) insert—

"(4A) Where an employer has not paid contributions in respect of retrospective earnings relating to a closed tax year by the date set out in paragraph 11A, any contribution not so paid shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Act from the reckonable date until payment.".

(10) In paragraph 19 after "shall be repaid to him" insert "if".

(11) In paragraph 22(**b**) for "the Inland Revenue", in each place where it occurs, substitute "HMRC".

(12) After paragraph 22(2) insert—

"(2A) Where a liability arises to pay contributions in respect of retrospective earnings relating to a closed tax year, the employer shall render a replacement return, or where necessary prepare one, in respect of the employee for that closed tax year before 20th May following the end of the year in which the relevant retrospective contributions regulations came into force, in accordance with paragraphs (a) to (c) of sub-paragraph (1), setting out the revised earnings and earnings-related contributions.

(2B) The return required by sub-paragraph (2A) shall include a statement and declaration in a form prescribed by HMRC containing a list of all deductions working sheets in accordance with paragraph 6(1A) of this Schedule in respect of that year, and shall also include a certificate showing—

(a) the total amount of earnings-related contributions originally payable (in accordance with sub-paragraph (2)(a)) in respect of each employee to whom sub-paragraph (2A) applies;

(b) the total amount of earnings-related contributions originally payable (in accordance with sub-paragraph (2)(b)) in respect of all employees to whom sub-paragraph (2A) applies;

(c) the total amount of revised earnings-related contributions payable in respect of each of those employees;

(d) the total amount of revised earnings-related contributions payable in respect of all those employees,

(e) the difference between the amount certified in paragraph (b) and paragraph (d) of this sub-paragraph in respect of all of those employees;

(f) in relation to any contracted-out employment the number notified by HMRC on the relevant contracting-out certificate as the employer's number.".

(13) In paragraph 22(4)—

(a) for "the declaration" substitute "the declarations";

(**a**) Paragraph 17 was amended by regulation 32(9) of S.I. 2004/770.
(**b**) paragraph 22 was relevantly amended by regulation 32(12)(b) of S.I. 2004/770.

(b) for "the certificate" substitute "the certificates"; and

(c) for "sub-paragraph (2)" substitute "sub-paragraphs (2) and (2B)".

(14) In paragraph 22(6) —

(a) for "the return referred to in sub-paragraph (1)" substitute "the returns referred to in sub-paragraphs (1) and (2A)"; and

(b) in paragraph (b) for "the return" substitute "the returns".

(15) In paragraph 22(7) at the end add "and (2A)".

(16) In paragraph 31—

(a) for "the Inland Revenue", wherever it occurs, substitute "HMRC"; and

(b) after sub-paragraph (7) insert—

"(7A) Where a liability arises to pay contributions in respect of retrospective earnings relating to a closed tax year, the employer shall render a replacement return for the closed tax year before 20th May following the end of the year in which the relevant retrospective contributions regulations came into force in accordance with sub-paragraph (7), setting out the revised earnings and earnings-related contributions.

(7B) Where sub-paragraph (7A) applies, the employer shall amend the relevant deductions working sheet or where necessary prepare one in accordance with sub-paragraph (2)".

(c) in sub-paragraph (8), for "(6) and (7)" substitute "(6), (7) and (7A)".

A Commissioner
A N Other
Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs.

A Minister
Minister of State,
Department for Work and Pensions

The Department for Social Development concurs.
Sealed with the Official Seal of the Department for Social Development on the [..] day of [..] 2007.

A N Official
Senior Officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions which are consequential upon the making of the first set of Regulations under section 4B of the Social Security Contributions and Benefits Act 1992(c. 4) and section 4B of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7). These sections were inserted by sections 1(1) and 2(1) of the National Insurance Contributions Act 2006 (c. 10).

Regulation 1 provides for the citation and commencement of these Regulations.

Regulation 2 provides for the application of paragraph 3 of Schedule 1 to each of the 1992 Acts, to the extent it would not otherwise apply, where any amount is retrospectively treated as earnings by virtue of regulations under section 4B of that Act.

Regulation 3 introduces amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004: "the 2001 Regulations") which mirror those made by the Income Tax (Pay As You Earn) (Amendment) Regulations 2007 ("the PAYE amendments").

Regulation 4 inserts a series of definitions used in connection with earnings on which National Insurance contributions become payable retrospectively into regulation 1(2) of the 2001 Regulations.

Regulation 5 amends regulation 60 of the 2001 Regulations so that a failure to pay retrospective contributions which is not with the consent or connivance of the primary contributor or attributable to the primary contributor's negligence does not affect the primary contributor's benefit entitlement.

Regulation 6 amends regulation 90H of the 2001 Regulations to disapply, in relation to contributions due on retrospective earnings in a closed year, the requirement that payment be made electronically.

Regulation 7 amends regulation 90N of the 2001 Regulations to disapply the requirement, in relation to contributions due on retrospective earnings in a closed year, that a return under that regulation be delivered electronically.

Regulation 8 amends Schedule 4 (which contains provisions reflecting the Income Tax (Pay As You Earn) Regulations 2003 (S.I 2003/2682) to provide similar accounting mechanisms in relation to retrospective contributions as are made for retrospective employment income by the PAYE amendments. The opportunity is also being taken to correct several minor typographical errors.

These Regulations do not impose significant additional burdens or costs on employers unless they engage in contrived schemes to avoid income tax and National Insurance contributions on remuneration paid to their employees. Employers who do not engage in such activity will be unaffected.

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