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.

DRAFT STATUTORY INSTRUMENTS

2007 No. [ ]

SOCIAL SECURITY

PENSIONS

TERMS AND CONDITIONS OF EMPLOYMENT

The Social Security, Occupational Pension Schemes and Statutory Payments (Consequential Provisions) Regulations 2007

Made - - - -	*2007*
Coming into force - -	*6th April 2007*

These Regulations are made in exercise of the powers conferred on the Treasury by sections 4C(1) to (6) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(**a**) and sections 4C(1) to (6) 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) of the former Act(**c**) and section 172(11A) of the latter Act(**d**) 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(**e**).

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

(**a**) 1992 c. 4; section 4C was inserted by section 1(1) of the National Insurance Contributions Act 2006 (c. 10).
(**b**) 1992 c. 7; section 4C was inserted by section 2(1) of the National Insurance Contributions Act 2006.
(**c**) Section 176(1)(a) was relevantly amended by section 1(2) of the National Insurance Contributions Act 2006.
(**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 relevantly amended by section 2(2) of the National Insurance Contributions Act 2006.
(**e**) Section 4B (in each Act) was inserted by sections 1(1) and 2(1) of the National Insurance Contributions Act 2006 respectively.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Social Security, Occupational Pension Schemes and Statutory Payments (Consequential Provisions) Regulations 2007 and shall come into force on 6th April 2007.

(2) These Regulations have effect from 2nd December 2004.

Amendment of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001

2.—(1) The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(**a**) are amended as follows.

(2) In regulation 1(2), in the definition of "due date", before "means" insert "(subject to regulation 4(11))".

(3) In regulation 4 at the end add—

"(11) Where an amount is retrospectively treated as earnings ("retrospective earnings") by regulations made by virtue of section 4B(2) of the Act, the "due date" for earnings-related contributions in respect of those earnings is the date given by paragraph 11A of Schedule 4 to the Social Security (Contributions) Regulations 2001, for the purposes of this regulation and regulations 5 and 5A."

(4) After regulation 5 insert—

"Treatment for the purpose of any contributory benefit of duly paid primary Class 1 contributions in respect of retrospective earnings

5A. Where a primary Class 1 contribution payable in respect of retrospective earnings is paid by the due date, it shall be treated—

(a) for the purposes of the first contribution condition of entitlement to a contribution-based jobseeker's allowance or short-term incapacity benefit, as paid on the day on which payment is made of the retrospective earnings in respect of which the contribution is payable; and

(b) for any other purpose relating to entitlement to any contributory benefit, as paid on the due date.".

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996

3.—(1) The Occupational Pension Schemes (Contracting-out) Regulations 1996(**b**) are amended as follows.

(2) In regulation 1(2)—

(a) in the definition of "earnings period" for "1979" substitute "2001";

(b) in the definition of "emoluments" for "the Contributions and Benefits Act" substitute "Parts 1 to 5 of the Contributions and Benefits Act, including any amount retrospectively treated as earnings ("retrospective earnings") by retrospective contributions regulations;";

(c) add at the appropriate place the following definition—

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

(3) In regulation 31 after paragraph (5) insert—

(**a**) S.I. 2001/769.
(**b**) S.I. 1996/1172.

"(5A) In the case of retrospective earnings (see the definition of "emoluments") the employer may recover the minimum payments relating to those earnings from any payment of emoluments to that earner made after the relevant retrospective contributions regulations come into force and during the same tax year.

(5B) Any amount deducted under paragraphs (5) and (5A) may be in addition to, but shall not exceed, any amount deducted from the same payment of emoluments under paragraphs (3) or (4)."

(4) In regulation 32 after paragraph (1) insert—

"(1A) In the case of retrospective earnings, the employer shall make to the trustees of the scheme any additional minimum payments which fall to be made by him, within 14 days of the end of the income tax month in which the relevant retrospective contributions regulations come into force."

Amendment of the Statutory Maternity Pay (General) Regulations 1986

4.—(1) The Statutory Maternity Pay (General) Regulations 1986(**a**) are amended as follows.

(2) In regulation 20(2)(a)(**b**) for the words "from the computation" to "1979" substitute "or disregarded in the calculation of a person's earnings under regulation 25, 27 or 123 of, or Schedule 3 to, the Social Security (Contributions) Regulations 2001".

(3) In regulation 20(4)(**c**) before sub-paragraph (a) insert—

"(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Contributions and Benefits Act;".

(4) In regulation 21B(b)(**d**) for the words from "receiving" to the end substitute—

"—

(i) receiving a pay increase referred to in regulation 21(7), or

(ii) being treated as having been paid retrospective earnings under regulation 20(4)(za),".

Amendment of the Statutory Sick Pay (General) Regulations 1982

5.—(1) The Statutory Sick Pay (General) Regulations 1982(**e**) are amended as follows.

(2) In regulation 17(2)(a)(**f**) for the words "from the computation" to "1979" substitute "or disregarded in the calculation of a person's earnings under regulation 25, 27 or 123 of, or Schedule 3 to, the Social Security (Contributions) Regulations 2001".

(3) In regulation 17(3)(**g**) before sub-paragraph (a) insert—

"(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Contributions and Benefits Act;".

Amendment of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002

6.—(1) The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002(**h**) are amended as follows.

(**a**) S.I 1986/1960.
(**b**) Regulation 20(2) was substituted by regulation 12 of S.I. 1999/567, and is prospectively amended by paragraph 54 of Schedule 8 to S.I. 2006/1031.
(**c**) Regulation 20(4) was relevantly amended by regulation 5(a) of S.I. 2002/2690.
(**d**) Regulation 21B was substituted by regulation 4 of S.I. 2005/729.
(**e**) S.I. 1982/894.
(**f**) Regulation 17(2) was substituted by regulation 13 of S.I. 1999/567, and is prospectively amended by paragraph 51 of Schedule 8 to S.I. 2006/1031.
(**g**) Regulation 17(3) was relevantly amended by regulation 14(a) of S.I. 2002/2690.
(**h**) S.I. 2002/2822; there are no relevant amendments.

(2) In regulation 39(3) before sub-paragraph (a) insert—

"(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Act;".

Amendment of the Social Security (Maternity Allowance) (Earnings) Regulations 2000

7.—(1) The Social Security (Maternity Allowance) (Earnings) Regulations 2000(**a**) are amended as follows.

(2) In regulation 1(2) (interpretation) for the definition of "the Contributions Regulations" substitute—

"the Contributions Regulations" means the Social Security (Contributions) Regulations 2001;".

(3) In regulation 2—

(a) in paragraph (1) before sub-paragraph (a) insert—

"(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Contributions and Benefits Act,"; and

(b) in paragraph (2) for "19, 19A or 19B of" substitute "25, 27 or 123 of, or Schedule 3 to,".

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996

8.—(1) The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(**b**) are amended as follows.

(2) In regulation 1(2)—

(a) in the definition of "earnings period" for "1979" substitute "2001";

(b) in the definition of "emoluments" for "the Contributions and Benefits Act" substitute "Parts 1 to 5 of the Contributions and Benefits Act, including any amount retrospectively treated as earnings ("retrospective earnings") by retrospective contributions regulations;";

(c) add at the appropriate place the following definition—

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

(3) In regulation 31 after paragraph (5) insert—

"(5A) In the case of retrospective earnings (see the definition of "emoluments") the employer may recover the minimum payments relating to those earnings from any payment of emoluments to that earner made after the relevant retrospective contributions regulations come into force and during the same tax year.

(5B) Any amount deducted under paragraphs (5) and (5A) may be in addition to, but shall not exceed, any amount deducted from the same payment of emoluments under paragraphs (3) or (4)."

(4) In regulation 32 after paragraph (1) insert—

"(1A) In the case of retrospective earnings, the employer shall make to the trustees of the scheme any additional minimum payments which fall to be made by him, within 14 days of the end of the income tax month in which the relevant retrospective contributions regulations come into force."

(**a**) S.I. 2000/688; there are no relevant amendments.
(**b**) S.R. 1996 No. 493.

Amendment of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001

9.—(1) The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001(**a**) are amended as follows.

(2) In regulation 1(2), in the definition of "due date", before "means" insert "(subject to regulation 4(11))".

(3) In regulation 4 at the end add—

"(11) Where an amount is retrospectively treated as earnings ("retrospective earnings") by regulations made by virtue of section 4B(2) of the Act, the "due date" for earnings-related contributions based on those earnings is the date given by paragraph 11A of Schedule 4 to the Social Security (Contributions) Regulations 2001, for the purposes of this regulation and regulations 5 and 5A."

(4) After regulation 5 insert—

"Treatment for the purpose of any contributory benefit of duly paid primary Class 1 contributions in respect of retrospective earnings

5A. Where a primary Class 1 contribution payable in respect of retrospective earnings is paid by the due date, it shall be treated—

(a) for the purposes of the first contribution condition of entitlement to a contribution-based jobseeker's allowance or short-term incapacity benefit, as paid on the day on which payment is made of the retrospective earnings in respect of which the contribution is payable; and

(b) for any other purpose relating to entitlement to any contributory benefit, as paid on the due date."

Amendment of the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987

10.—(1) The Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987(**b**) are amended as follows.

(2) In regulation 20(2)(**c**) for sub-paragraph (a) substitute—

"(a) excluded or disregarded in the calculation of a person's earnings under regulation 25, 27 or 123 of, or Schedule 3 to, the Social Security (Contributions) Regulations 2001; or".

(3) In regulation 20(4)(**d**) before sub-paragraph (a) insert—

"(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Contributions and Benefits Act;".

(4) In regulation 21B(b)(**e**) for the words from "receiving" to the end substitute—

"—

(i) receiving a pay increase referred to in regulation 21(7), or

(ii) being treated as having been paid retrospective earnings under regulation 20(4)(za),".

(**a**) S.R. 2001 No. 102.
(**b**) S.R. 1987 No. 30.
(**c**) Regulation 20(2) was substituted by regulation 12 of S.R. 1999 No. 117.
(**d**) Regulation 20(4) was relevantly amended by regulation 2(3)(a) of S.R. 2002 No. 359.
(**e**) Regulation 21B was substituted by regulation 2(4) of S.R. 2005 No. 134.

Amendment of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982

11.—(1) The Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(**a**) are amended as follows.

(2) In regulation 17(2)(**b**) for sub-paragraph (a) substitute—

"(a) excluded or disregarded in the calculation of a person's earnings under regulation 25, 27 or 123 of, or Schedule 3 to, the Social Security (Contributions) Regulations 2001; or".

(3) In regulation 17(3)(**c**) before sub-paragraph (a) insert—

"(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Contributions and Benefits Act;".

Amendment of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002

12.—(1) The Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002(**d**) are amended as follows.

(2) In regulation 39(3) before sub-paragraph (a) insert—

"(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Act;".

Amendment of the Social Security (Maternity Allowance) (Earnings) Regulations (Northern Ireland) 2000

13.—(1) The Social Security (Maternity Allowance) (Earnings) Regulations (Northern Ireland) 2000(**e**) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1) before sub-paragraph (a) insert—

"(za) any amount retrospectively treated as earnings by regulations made by virtue of section 4B(2) of the Contributions and Benefits Act,"; and

(b) in paragraph (2) for "19, 19A" to the end substitute "25, 27 or 123 of, or Schedule 3 to, the Social Security (Contributions) Regulations 2001 (payments to be disregarded)".

Modifications to other contributions legislation (contributory benefits, statutory payments etc.)

14.—(1) In this regulation—

"relevant legislation" means legislation relating to purposes mentioned in section 4C(2)(b) to (e) of the Social Security Contributions and Benefits Act 1992 ("the Act") or section 4C(2)(b) to (e) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("the Northern Ireland Act");

"retrospective contributions regulations" means regulations made by virtue of section 4B(2) of the Act or of the Northern Ireland Act, as the case may be and, in relation to an amount retrospectively treated as earnings, "the relevant retrospective contributions regulations" means the regulations which treated that amount as earnings;

"the relevant time" means the time before the relevant retrospective contributions regulations are made; and

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(**a**) S.R. 1982 No. 263.
(**b**) Regulation 17(2) was substituted by regulation 11 of S.R. 1999 No. 117.
(**c**) Regulation 17(3) was relevantly amended by regulation 4(a) of S.R. 2002 No. 359.
(**d**) S.R. 2002 No. 378; there are no relevant amendments.
(**e**) S.R. 2000 No. 104; there are no relevant amendments.

"the revised earnings" means the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time as determined after applying the relevant retrospective contributions regulations.

(2) References in any relevant legislation, or any provision made under any such legislation, which relate to—

(a) the earnings in respect of the employment, paid to or for the benefit of the earner at the relevant time, or

(b) the amount of such earnings so paid at that time,

are to be read, to the extent they would not otherwise be and in so far as they so relate, as references which relate to the revised earnings or, as the case may be, the amount of those earnings.

(3) Any matter which, at the time when the relevant retrospective contributions regulations are made, has been determined for the purposes of any relevant legislation, or any provision made under any such legislation, wholly or partly by reference to—

(a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or

(b) the amount of such earnings so paid at that time,

is to be re-determined (to the extent it would not otherwise be) as it would have been determined at the time of the original determination if it had been determined wholly or partly, as the case may be, by reference to the revised earnings or the amount of those earnings.

Name

2006 Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs.

Minister of State, Department of Work and Pensions

The Department for Social Development concurs.

Senior Officer of the Department for Social Development

The Department for Employment and Learning concurs.

Senior Officer of the Department for Employment and Learning

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to social security benefits which is consequent upon the making of regulations under section 4B of the Social Security Contributions and Benefits Act 1992 (c. 4) and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7). Those sections were inserted by sections 1 and 2 respectively of the National Insurance Contributions Act 2006.

Authority for the retrospective provision made by these Regulations is contained in section 4C(4) of each of the 1992 Acts (also inserted by sections 1 and 2 of the 2006 Act).

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

Regulations 2 to 7 make amendments to the Occupational Pension Schemes (Contracting-out) Regulations 1996, (S.I. 1996/1172).

Regulation 2 amends the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (S.I. 2001/769), adding a new definition of "the due date" where contributions are charged by retrospective contributions regulations, and adding a new regulation 5A which treats retrospective contributions paid by that date as paid at the time when the earnings to which they relate were actually paid.

Regulation 3 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996, (S.I. 1996/1172), to provide for the recovery by an employer of an employee's additional pension contribution in respect of retrospective earnings and for the payment by an employer to the trustees of an occupational scheme of additional employer's contributions on those earnings.

Regulations 4 to 7 amend the Statutory Maternity Pay (General) Regulations 1986 (S.I. 1986/1960), the Statutory Sick Pay (General) Regulations 1982 (S.I 1982/894), the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (S.I 2002/2822), and the Social Security (Maternity Allowance) (Earnings) Regulations 2000 (S.I. 2000/688). In each case the effect is to provide for retrospective earnings to be taken into account in computing an employee's entitlement to relevant earnings-related benefit.

Regulations 8 to 13 make provision corresponding to regulations 2 to 7 but in relation to Northern Ireland.

Regulation 14 provides for the modification of any reference to earnings, in relation to times before retrospective contributions regulations are made and to which those regulations relate so that they are to be treated as references to the amounts of earnings re-computed in line with the regulations, and for the consequent redetermination of any matter which is referable to the amount of the employee's earnings.

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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