EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 3) REGULATIONS 2014

2014 No.1016

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the SSCR 2001"), in relation to the payment of interest on Class 1 National Insurance Contributions (NICs) arising from Sections 101 and 102 of the Finance Act 2009. This instrument comes into force from 6 May 2014.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument makes reference to a direction made by HMRC under the SSCR 2001 regarding approved methods of electronic communication for the making of payments. The most recent direction was issued on 13 March 2012 and was published on the HMRC website on 16 March 2012. As there is no paper copy of the direction for inspection, the text of the relevant paragraph of that direction (paragraph 5) has been reproduced in a footnote to this instrument for the benefit of those employers who are not able to access the direction through the internet.

4. Legislative context

4.1 Real Time Information (RTI) employers are required by Schedule 4 to the SSCR 2001 to report payments to employees and the deduction of NICs to HMRC each time a payment is made. This is done using a return which is required to contain certain information about the employee's pay and NICs.

4.2 Sections 101 and 102 of the Finance Act 2009 (c. 10) make provision for new rules on interest on sums payable to HMRC (late payment interest) and by HMRC (where an amount has been overpaid). These sections apply to late payments and overpayments of NICs for the tax year 2014-15 and subsequent tax years.

4.3 Under the SSCR 2001 any errors in a return should be corrected by amending the next return the employer is required to submit to HMRC. This instrument amends the SSCR 2001 to make provision for the date of payment where an error in an earlier return results in an overpayment of NICs in a subsequent return.

4.4 The collection of NICs relies on the Pay As You Earn (PAYE) system under which income tax is deducted at source from an employees' pay. Similar

changes are being made by HMRC at this time to the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682).

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Sections 101 and 102 of Finance Act 2009 contain provisions for late payment interest on sums due to HMRC and repayment interest on sums to be paid by HMRC. These provisions come into force on 6 May 2014 and will apply to various taxes and duties by way of an Appointed Day Order.

7.2 These new interest provisions are being applied to employers who are required to pay NICs for tax year 2014-15 and subsequent tax years.

7.3 Section 101 FA 2009 provides for HMRC to charge late payment interest for unpaid NICs from the date on which that amount becomes due and payable. This date is the 19 or 22 of the month following the end of a tax month depending upon how the employer makes payment to HMRC of the tax and NICs due.

7.4 Section 102 of, and Schedule 54 to, FA 2009 provide for HMRC to pay interest on overpaid NICs due for repayment. The start date for repayment interest is the later of the date on which the NICs was paid to HMRC and the date on which the NICs became due and payable.

7.5 As a consequence of an employer correcting an error in an earlier return at a later date which results in an overpayment of NICs, the start date for repayment interest will be the 19 or 22 of the month following the return that corrects the error.

- ***Consolidation***

7.6 There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

HMRC has consulted widely on the impact of employers reporting PAYE in real time. This instrument amends the SSCR 2001 to make provision for a start date from which repayment interest can be calculated in cases where an employer has made a correction to a return during the tax year to which the return relates. It also provides a

due date for NICs where an employer does not report a payment to HMRC. This instrument therefore relates to the payment of repayment interest in accordance with sections 101 and 102 of the Finance Act 2009 and gives effect to previously announced policy. There was no separate consultation on these Regulations.

9. Guidance

Extensive guidance has been published on HMRC's website for employers using RTI and this will be updated to reflect these changes.

10. Impact

10.1 All employers including charities or voluntary bodies are required to report using RTI.

10.2 The impact of RTI on the public sector is the same as for any other employer.

10.3 A Tax Information and Impact Note has not been prepared for this Instrument as it gives effect to previously announced policy.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

The legislation contained within this Statutory Instrument will be monitored and reviewed as appropriate.

13. Contact

Hasan Mustafa at HM Revenue & Customs, Tel: 0207 147 2508 or e-mail: hasan.mustafa@hmrc.gsi.gov.uk can answer any queries regarding the instrument.