STATUTORY INSTRUMENTS

2016 No. 1067

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. 4) Regulations 2016

Made - - - -	*4th November 2016*
Laid before Parliament	*7th November 2016*
Coming into force - -	*28th November 2016*

These Regulations are made by the Treasury and the Commissioners for Her Majesty's Revenue and Customs with the concurrence of the Secretary of State in relation to regulations 4 and 5 and the Department for Communities(**a**) in relation to regulation 5.

The powers exercised by the Treasury are those conferred by sections 3(2), (3), 10(9)(a) and 120(1) of the Social Security Contributions and Benefits Act 1992(**b**) and sections 3(2), (3) and 10(9)(a) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**c**) and now exercisable by them.

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those conferred by paragraphs 6(1) and (2) of Schedule 1 to the Social Security Contributions and Benefits Act 1992(**d**) and paragraphs 6(1) and (2) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**e**) and now exercisable by them.

(**a**) The functions of the Department of Health and Social Services for Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) 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 subsequently renamed the Department for Communities, see section 1(7) of the Department Act (Northern Ireland) 2016 (c. 5 (N.I.)).

(**b**) 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 10(9)(a) was substituted by section 74(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) ("the 2000 Act"), and amended by paragraph 174(12) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) ("ITEPA"), section 120(1) was amended by paragraph 26 of Schedule 3 to the Transfer Act, so that the power to make Regulations became exercisable by the Treasury with the concurrence of the Secretary of State, and by paragraph 70 of Schedule 7 to the Social Security Act 1998 (c. 14) ("the 1998 Act"), paragraph 8 of Schedule 7 to the Transfer Act and section 12(2) of the National Insurance Contributions Act 2014 (c. 7).

(**c**) 1992 c. 7; section 3(2) was amended by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) 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 for Northern Ireland, section 10(9)(a) was substituted by section 78(2) of the 2000 Act and amended by paragraph 195(12) of Schedule 6 to ITEPA..

(**d**) Paragraphs 6(1) and (2) were amended by paragraph 77 of Schedule 7 to the 1998 Act and paragraph 185 of Schedule 6 to ITEPA, paragraph 6(1) was further amended by paragraph 35 of Schedule 3 to the Transfer Act, so that the power to make regulations became exercisable by the Inland Revenue.

(**e**) Paragraphs 6(1) and (2) were amended by paragraphs 58(8) and (9) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and by paragraph 204 of Schedule 6 to ITEPA, paragraph 6(1) was further amended by paragraph 34 of Schedule 3 to the 1999 Order, so that the power to make regulations became exercisable by the Inland Revenue.

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment No. 4) Regulations 2016 and come into force on 28th November 2016.

Amendment of the Social Security (Contributions) Regulations 2001

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

3. In regulation 40(2)(b)(**b**) (prescribed general earnings in respect of which Class 1A contributions not payable), for "4, 5" substitute "4 to 5".

4.—(1) Regulation 114(**c**) (application to employment in connection with continental shelf of Part I of the Act and so much of Part VI of the Act as relates to contributions) is amended as follows.

(2) In paragraph (5)—

(a) in sub-paragraph (c), for "regulation 5(1)(c) of the Merchant Shipping (Safe manning, Hours of Work and Watchkeeping) Regulations 1997" substitute "regulation 46(1)(c) of the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015(**d**)";

(b) for Table 1, substitute—

"**Table 1**

Column (A): capacity in which the continental shelf worker is employed	*Column (B): description of the certificate*
Master or chief mate on a ship of 3000 gross tonnage or more.	A certificate which complies with regulation 6 of the Merchant Shipping Regulations.
Master on a ship of between 500 gross tonnage and 2999 gross tonnage not engaged on near-coastal voyages.	A certificate which complies with regulation 6 of the Merchant Shipping Regulations.
Chief mate on a ship of between 500 gross tonnage and 2999 gross tonnage.	A certificate which complies with regulation 6 of the Merchant Shipping Regulations.
Officer in charge of an engineering watch in a manned engine-room, or designated duty engineer officer in a periodically unmanned engine-room, on a ship powered by main propulsion machinery of 750 kilowatts propulsion power or more.	A certificate which complies with regulation 6 of the Merchant Shipping Regulations.
Chief engineer officer and second engineer officer on a ship powered by main propulsion machinery of between 750 and 3000 kilowatts propulsion power.	A certificate which complies with regulation 6 of the Merchant Shipping Regulations.
Rating forming part of a navigational watch on a ship of 500 gross tonnage or more (who is not under training and whose duties are skilled in nature).	A certificate which complies with regulation 14 of the Merchant Shipping Regulations.
Rating forming part of an engine-room watch or designated to perform duties in a periodically unmanned engine-room on a	A certificate which complies with regulation 15 of the Merchant Shipping Regulations."

(**a**) S.I. 2001/1004.
(**b**) Regulation 40 has been relevantly amended by S.I. 2003/2085.
(**c**) Regulation 114 was amended by S.I. 2014/572.
(**d**) S.I. 2015/782.

ship powered by main propulsion machinery of 750 kilowatts propulsion power or more (who is not under training and whose duties are skilled in nature).

(c) in paragraph (6), for "the Merchant Shipping (Training and Certification) Regulations 1997" substitute "the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015".

5. In paragraph 6 of Part 5 to Schedule 3 (certain non-cash vouchers to be disregarded as payments in kind), after sub-paragraph (d), insert—

"(da) section 323A(**a**) (trivial benefits provided by employers)".

6. In paragraph 3ZB of Part 8 of Schedule 3 (travel for necessary attendance: employment intermediaries)(**b**) after sub-paragraph (6) insert—

"(6A) Sub-paragraph (6B) applies if—

(a) the client or a relevant person provides the employment intermediary (whether before or after the worker begins to provide the services) with a fraudulent document which is intended to constitute evidence that, by virtue of sub-paragraph (3), this paragraph does not or will not apply in relation to the services,

(b) that paragraph is taken not to apply in relation to the services, and

(c) in consequence, the employment intermediary does not under these Regulations deduct and account for an amount that would have been deducted and accounted for if this paragraph had been taken to apply in relation to the services.

(6B) For the purpose of recovering the amount referred to in sub-paragraph (6A)(c) ("the unpaid contributions")—

(a) the worker is to be treated as having an employment with the client or relevant person who provided the document, the duties of which consist of the services, and

(b) the client or relevant person is under these Regulations to account for the unpaid contributions as if they arose in respect of earnings from that employment.

(6C) In sub-paragraphs (6A) and (6B) "relevant person" means a person, other than the client, the worker or a person connected with the employment intermediary, who—

(a) is resident, or has a place of business, in the United Kingdom, and

(b) is party to a contract with the employment intermediary or a person connected with the employment intermediary under or in consequence of which—

(i) the services are provided, or

(ii) the employment intermediary, or a person connected with the employment intermediary makes payments in respect of the services.".

7. After paragraph 29X of Part 3B of Schedule 4 (security for payment of Class 1 contributions: offences)(**c**) insert—

(**a**) Section 323A was inserted into ITEPA by section 13 of the Finance Act 2016 (c. 24).
(**b**) Paragraph 3ZB was inserted by S.I. 2016/352.
(**c**) Paragraph 29X of Part 3B of Schedule 4 was inserted by S.I. 2012/821.

"Part 3C

CERTAIN DEBTS OF COMPANIES UNDER PARAGRAPH 3ZB OF PART 8 OF SCHEDULE 3 (TRAVEL EXPENSES OF WORKERS PROVIDING SERVICES THROUGH EMPLOYMENT INTERMEDIARIES)

Interpretation of Part 3C: "relevant contributions debt" and "relevant date"

29Y.—(1) In this Part "relevant contributions debt", in relation to a company means an amount within any of sub-paragraphs (2) to (5).

(2) An amount within this sub-paragraph is an amount that the company is to account for in accordance with paragraph 3ZB(6A) to (6C) (persons providing fraudulent documents)(**a**).

(3) An amount within this sub-paragraph is an amount which a company is to deduct and pay by virtue of paragraph 3ZB in circumstances where—

(a) a company is an employment intermediary,

(b) on the basis that paragraph 3ZB does not apply by virtue of sub-paragraph (3) of that paragraph the company has not deducted and paid the amount, but

(c) the company has not been provided by any other person with evidence from which it would be reasonable in all the circumstances to conclude that sub-paragraph (3) of that paragraph applied (and the mere assertion by a person that the manner in which the worker provided the services was not subject to (or to the right of) supervision, direction or control by any person is not such evidence).

(4) An amount within this sub-paragraph is an amount that the company is to deduct and pay in accordance with paragraph 3ZB in circumstances where sub-paragraph (4) of that paragraph applies (services provided under arrangements made by intermediaries).

(5) An amount within this sub-paragraph is any interest or penalty in respect of an amount within any of sub-paragraphs (2) to (4) for which the company is liable.

(6) In this paragraph "paragraph 3ZB" means paragraph 3ZB of Part 8 of Schedule 3 to these Regulations.

(7) In this Part "the relevant date" in relation to a relevant contributions debt means the date on which the first payment is due on which contributions are not accounted for.

Interpretation of Part 3C: general

29Z. In this Part—

"company" includes a limited liability partnership;

"director" has the meaning given by section 67 of ITEPA 2003;

"personal liability notice" has the meaning given by paragraph 29Z1(2);

"the specified amount" has the meaning given by paragraph 29Z1(2)(a).

Liability of directors for relevant contributions debts

29Z1.—(1) This paragraph applies in relation to an amount of relevant contributions debt of a company if the company does not deduct that amount by the time by which the company is required to do so.

(2) HMRC may serve a notice ("personal liability notice") on any person who was, on the relevant date, a director of the company—

(**a**) Paragraphs 3ZB(6A) to (6C) are inserted into the Social Security (Contributions) Regulations 2001 by regulation 6 of these Regulations.

(a) specifying the amount of relevant contributions debt in relation to which this paragraph applies ("the specified amount"), and

(b) requiring the director to pay HMRC—

(i) the specified amount, and

(ii) specified interest on that amount.

(3) The interest specified in the personal liability notice—

(a) is to be at the rate applicable under section 178 of the Finance Act 1989(**a**) for the purposes of section 86 of the Taxes Management Act 1970(**b**), and

(b) is to run from the date the notice is served.

(4) A director who is served with a personal liability notice is liable to pay to HMRC the specified amount and the interest specified in the notice within 30 days beginning with the day the notice is served.

(5) If HMRC serve personal liability notices on more than one director of the company in respect of the same amount of relevant contributions debt, the directors are jointly and severally liable to pay to HMRC the specified amount and the interest specified in the notices.

Appeals in relation to personal liability notices

29Z2.—(1) A person who is served with a personal liability notice in relation to an amount of relevant contributions debt of a company may appeal against the notice.

(2) A notice of appeal must—

(a) be given to HMRC within 30 days beginning with the day the personal liability notice is served, and

(b) specify the grounds of the appeal.

(3) The grounds of appeal are—

(a) that all or part of the specified amount does not represent an amount of relevant contributions debt, of the company, to which paragraph 29Z1 applies, or

(b) that the person was not a director of the company on the relevant date.

(4) But a person may not appeal on the ground mentioned in sub-paragraph (3)(a) if it has already been determined, on an appeal by the company, that—

(a) the specified amount is a relevant contributions debt of the company, and

(b) the company did not deduct, account for, or (as the case may be) pay the debt by the time by which the company was required to do so.

(5) Subject to sub-paragraph (6), on an appeal that is notified to the tribunal, the tribunal is to uphold or quash the personal liability notice.

(6) In a case in which the ground of appeal mentioned in sub-paragraph (3)(a) is raised, the tribunal may also reduce or increase the specified amount so that it does represent an amount of relevant contributions debt, of the company, to which paragraph 29Z1 applies.

Withdrawal of personal liability notices

29Z3.—(1) A personal liability notice is withdrawn if the tribunal quashes it.

(2) An officer of Revenue and Customs may withdraw a personal liability notice if the officer considers it appropriate to do so.

(**a**) 1989 c. 26. Relevant amendments to section 178 were made by section 63 and paragraphs 5 and 6 of Schedule 11 to the Finance (No. 2) Act 1992 (c. 48), section 79 and 205 of, and paragraph 30 of Schedule 7 and Schedule 41 to the Finance Act 1996 (c. 8), section 34 and paragraph 13 of Schedule 4 to the Finance Act 1998 (c. 36) and sections 711 and 724(1) of, and paragraphs 156 and 162(a) of Schedule 6 and Schedule 8 to ITEPA.

(**b**) 1970 c. 9.

(3) If a personal liability notice is withdrawn, HMRC must give notice of that fact to the person upon whom the notice was served.

Recovery of sums due under personal liability notice: application of Part 6 of Taxes Management Act 1970

29Z4.—(1) For the purposes of this Part, Part 6 of the Taxes Management Act 1970 (collection and recovery) applies as if—

(a) the personal liability notice were an assessment, and

(b) the specified amount and any interest on that amount under paragraph 29Z1(2)(b)(ii) were income tax charged on the director upon whom the notice is served, and that Part of that Act applies with the modification in paragraph (2) and any other necessary modifications.

(2) Summary proceedings for the recovery of the specified amount, and any interest on that amount under paragraph 29Z1(2)(b)(ii), may be brought in England and Wales or Northern Ireland at any time before the end of the period of 12 months beginning with the day after the day on which personal liability notice is served.

Repayment of surplus amounts

29Z5.—(1) This paragraph applies if—

(a) one or more personal liability notices are served in respect of an amount of relevant contributions debt of a company, and

(b) the amounts paid to HMRC (whether by directors upon whom notices are served or the company) exceed the aggregate of the specified amount and any interest on it under paragraph 29Z1(2)(b)(ii).

(2) HMRC is to repay the difference on a just and equitable basis and without unreasonable delay.

(3) HMRC is to pay interest on any sum repaid.

(4) The interest—

(a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of the Taxes Act, and

(b) is to run from the date the amounts paid to HMRC come to exceed the aggregate mentioned in sub-paragraph (1)(b).".

Edward Troop
Jennie Granger
2nd November 2016 Two of the Commissioners of Her Majesty's Revenue and Customs

Robert Syms
Andrew Griffiths
4th November 2016 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

Richard Harrington
Minister of State
1st November 2016 Department for Work and Pensions

The Department for Communities concurs as indicated in the preamble.
Sealed with the Official Seal of the Department for Communities on 1st November 2016

L.S.

Anne McCleary
1st November 2016 A senior officer of the Department for Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make a number of consequential amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) ("the Contributions Regulations").

The Contributions Regulations set out how to calculate an individual's earnings for the purpose of earnings-related National Insurance contributions ("NICs"). Schedule 3 of the Contributions Regulations provides for certain payments to be disregarded for these purposes. In particular, paragraphs 4A to 4D of Part VIII of Schedule 3 to the Contributions Regulations provide that certain payments of travel, subsistence and accommodation costs and expenses in connection with an employment, some or all of the duties of which are performed overseas, are to be disregarded for this purpose. Regulation 3 amends regulation 40(2)(b) of the Contributions Regulations to ensure that payments of general earnings that are disregarded under these paragraphs additionally do not give rise to any liability to Class 1A NICs on the part of a secondary contributor.

Regulation 4 amends regulation 114(5) and (6) of the Contributions Regulations following the enactment of the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (S.I. 2015/782) ("the Merchant Shipping Regulations"), which update the requirement for certain workers on merchant shipping vessels to hold certificates of competency. Regulation 114(5) provides an exemption from liability to secondary Class 1 NICs in respect of such a worker if they are employed on or in connection with an offshore installation on the UK continental shelf, and their presence on the vessel is necessary to satisfy the requirements for the safe manning of that ship set out in the Merchant Shipping Regulations.

Regulation 5 adds a new sub-paragraph (da) to paragraph 6 of Part 5 of Schedule 3 to the Contributions Regulations, which provides that any payment which is exempted from income tax under section 323A of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) ("ITEPA") will also be disregarded for the purposes of calculating an individual's earnings for NICs. Section 323A was inserted into ITEPA by section 13 of the Finance Act 2016 (c. 24). The section introduces a new statutory exemption from income tax for trivial benefits-in-kind provided by employers to employees.

Regulations 6 and 7 make a number of consequential amendments to the Contributions Regulations. These Regulations are made in consequence of amendments being made to Chapter 2 of Part 5 of the ITEPA and amendments to Part 4 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) ("the PAYE Regulations") by virtue of the Finance Act 2016.

Regulation 6 inserts new sub-paragraphs (6A) to (6C) into paragraph 3ZB of Part 8 of Schedule 3 to the Contributions Regulations to reflect new section 339A(7) to (9) of ITEPA.

In particular, new sub-paragraph (6A) of paragraph 3ZB makes provision for circumstances where a client or a relevant person provides the employment intermediary with a fraudulent document intended to mislead it into thinking that the manner in which the worker provides the service is not subject to the right of supervision, direction or control. In such a case, sub-paragraph (6B) applies.

New sub-paragraph (6B) of paragraph 3ZB provides that where the conditions set out in sub-paragraph (6A) are met, it is the party who provides the fraudulent document who will be liable for the contributions which were not deducted as a consequence of the actions of that person.

New sub-paragraph (6C) of paragraph 3ZB defines "relevant person" for the purposes of sub-paragraphs (6A) and (6B).

Regulation 7 inserts new paragraphs 29Y to 29Z5 into the Contributions Regulations to reflect new provisions inserted into Part 4 of the PAYE Regulations by virtue of the Finance (No. 2) Act 2016. New paragraphs 29Y to 29Z5 make provision in the Contributions Regulations for the recovery from a director or officer of a company of debt owed as a result of paragraph 3ZB of Part 8 of Schedule 3 to the Contributions Regulations not being operated correctly.

In particular, new paragraphs 29Y and 29Z5 define a number of terms for the purposes of Part 3C of Schedule 4 to the Contributions Regulations.

New paragraph 29Z1 provides that where a company has not paid the relevant contributions debt, by the relevant date, then HMRC may serve a personal liability notice on those who were directors of the company on the relevant date in respect of the relevant contributions debt.

New paragraph 29Z2 makes provision in respect of appeals against a personal liability notice served by HMRC under paragraph 29Z1.

New paragraph 29Z3 sets out the circumstances under which a personal liability notice can be withdrawn.

New paragraph 29Z4 provides that Part 6 of the Taxes Management Act 1970 which makes provision as to the collection and recovery of sums due to HMRC applies to personal liability notices.

New paragraph 29Z5 makes provision for cases where the amounts paid to HMRC under a personal liability notice exceed the aggregate of the relevant PAYE debt and the specified interest including payment of interest.

Tax Information and Impact Notes covering the amendments made by regulations 3 (Class 1A exemption for certain travel expenses) and 4 (UK continental shelf workers certification requirements) have been published on the government website at https://www.gov.uk/government/publications/national-insurance-contributions-uk-continental-shelf-workers-secondary-class-1

A Tax Information and Impact Note covering the amendment made by regulation 5 (trivial benefits disregard) was published on the government website at https://www.gov.uk/government/publications/national-insurance-contributions-clarity-for-employers-whose-workers-perform-duties-abroad-class-1a on 9th December 2015 alongside the draft Finance Bill 2016. It remains an accurate summary of the impacts that apply to this instrument.

A Tax Information and Impact Note covering the changes made by regulations 6 and 7 (employment intermediaries and relief for travel and subsistence) was published on 9th December 2015 alongside the draft Finance Bill 2016 and is available on the website at. https://www.gov.uk/government/publications/income-tax-employment-intermediaries-and-relief-for-travel-and-subsistence/income-tax-employment-intermediaries-and-relief-for-travel-and-subsistence. It remains an accurate summary of the impacts that apply to this instrument.

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