STATUTORY INSTRUMENTS

2016 No. 1145

SOCIAL SECURITY

The Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations 2016

Made - - - -	*24th November 2016*
Laid before Parliament	*28th November 2016*
Coming into force - -	*1st January 2017*

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 22(5), 122, and 175(1), (3) and (4) of, and paragraph 8(1)(d) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(**1**), section 35 of, and paragraph 18 of Schedule 1 to, the Jobseekers Act 1995(**2**), sections 9(1), 10(3), 79(1), (4), (6) and (7) and 84 of the Social Security Act 1998(**3**) and section 24 of, and paragraph 11 of Schedule 2 to, the Welfare Reform Act 2007(**4**), makes the following Regulations.

In accordance with paragraph 8(1A) of Schedule 1 to the Social Security Contributions and Benefits Act 1992, regulation 5 of these Regulations is made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs(**5**).

The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it(**6**).

(**1**) 1992 c.4. Section 22(5) was amended by section 41(4) of, and paragraph 22 of Schedule 2 to, the Jobseekers Act 1995 (c.18) and section 28(1) of, and paragraph 9(1) and (3)(b) of Schedule 3 to, the Welfare Reform Act 2007 (c.5). Section 175(1) and (4) was amended by section 2 of, and paragraph 29 of Schedule 3 to, the Social Security Contributions (Transfers of Functions, etc.) Act 1999 (c.2) ("TOFA 1999"). Paragraph 8 of Schedule 1 was amended by paragraph 39 of Schedule 3 to TOFA 1999 and section 81 of, and paragraph 3 of Schedule 11 to, the Welfare Reform and Pensions Act 1999 (c.30). Section 122 is cited as it defines "prescribe".

(**2**) 1995 c.18. Paragraph 18 of Schedule 1 was amended for certain purposes by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c.5). Section 35 is cited as it defines "prescribed" and "regulations".

(**3**) 1998 c.14. Section 9 was amended by paragraph 1 of Schedule 14 to the Welfare Reform Act 2012 (subject to the savings specified in S.I. 2012/3090). Section 79 was amended by paragraph 13 of Schedule 4 to the Tax Credits Act 2002 (c.21) and S.I. 2008/2833. Section 84 is cited as it defines "prescribe".

(**4**) 2007 c.5. Paragraph 11 of Schedule 2 was amended for certain purposes by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012. Section 24 is cited as it defines "prescribed" and "regulations".

(**5**) The functions of the Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c.11). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference (howsoever expressed) to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(**6**) Section 173(1) of the Social Security Administration Act 1992 (c.5) provides that proposals in respect of regulations which would otherwise be referable to the Social Security Advisory Committee may not be so referred with the agreement of that Committee. These regulations would otherwise be referable by virtue of section 172 of that Act.

Citation and commencement

1. These Regulations may be cited as the Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations 2016 and come into force on 1st January 2017.

Treatment of contribution-based jobseeker's allowance and contributory employment and support allowance

2. A contribution-based jobseeker's allowance and a contributory employment and support allowance are to be treated as benefits for the purposes of making provision under paragraph 8(1)(d) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (power to make provision for contributions paid at one time to be treated as paid at some other time).

Amendment of the Social Security (Credits) Regulations 1975

3.—(1) The Social Security (Credits) Regulations 1975(**7**) are amended as follows.

(2) In regulation 7B(2) (credits for disability element of working tax credit)(**8**)—

(a) after sub-paragraph (a) omit "or"; and

(b) for sub-paragraph (b) substitute—

"(b) a self-employed earner whose profits for the year are below the small profits threshold specified in section 11(4) of the Contributions and Benefits Act(**9**), who would otherwise be liable to pay a Class 2 contribution; or

(c) excepted from liability to pay a Class 2 contribution by virtue of regulation 43 of the Social Security (Contributions) Regulations 2001(**10**).".

(3) In regulation 7C(1) (credits for working tax credit)(**11**)—

(a) after sub-paragraph (a) omit "or"; and

(b) for sub-paragraph (b) substitute—

"(b) a self-employed earner—

(i) whose profits for the year are below the small profits threshold specified in section 11(4) of the Contributions and Benefits Act, who would otherwise be liable to pay a Class 2 contribution; or

(ii) who is excepted from liability to pay a Class 2 contribution by virtue of regulation 43 of the Social Security (Contributions) Regulations 2001,".

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

4.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(**12**) are amended as follows.

(2) In regulation 1(3) (interpretation)—

(a) after the definition of "appeal" insert—

(**7**) S.I. 1975/556.
(**8**) Regulation 7B was inserted by S.I. 1991/2772 and amended by S.I. 1996/2367 and 2003/455.
(**9**) Section 11 was substituted by section 2 of, and paragraph 3 of Schedule 1 to the National Insurance Contributions Act 2015 (c.5) with effect for the tax year 2015-16 and subsequent tax years.
(**10**) S.I. 2001/1004. Regulation 43 was amended by S.I. 2002/2924 and 2015/478.
(**11**) Regulation 7C was inserted by S.I. 1995/2558, relevant amending instruments are S.I. 2000/1483 and 2003/455.
(**12**) S.I. 1999/991, relevant amending instruments are S.I. 1999/1662, 2008/2667 and 2009/659.

""bereavement allowance" means an allowance under section 39B of the Contributions and Benefits Act(**13**);

"bereavement benefit" means—

(a) a bereavement allowance;

(b) a bereavement payment; or

(c) a widowed parent's allowance;

"bereavement payment" means a bereavement payment under section 36 of the Contributions and Benefits Act(**14**);";

(b) in the definition of "the Board", for "of Inland Revenue" substitute "for Her Majesty's Revenue and Customs;";

(c) after the definition of "claimant" insert—

""contribution-based jobseeker's allowance" means a contribution-based jobseeker's allowance under Part 1 of the Jobseekers Act;"; and

(d) after the definition of "the Welfare Reform Act" insert—

""widowed parent's allowance" means an allowance under section 39A of the Contributions and Benefits Act(**15**);".

(3) In regulation 3 (revision of decisions)—

(a) after paragraph (8D) insert—

"(8E) A decision in relation to a claim for a contribution-based jobseeker's allowance or a contributory employment and support allowance may be revised at any time where—

(a) on or after the date of the decision a contribution is treated as paid as set out in regulation 7A of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (treatment of Class 2 contributions paid on or before the due date)(**16**); and

(b) by virtue of the contribution being so treated, the person satisfies the contribution conditions of entitlement listed in column 2 of the table in paragraph (8G) in relation to a contribution-based jobseeker's allowance or a contributory employment and support allowance.

(8F) A decision to award a benefit listed in column 1 of the table in paragraph (8G) may be revised at any time where, on or after the date of the decision—

(a) any of the circumstances set out in paragraph (8H) occur; and

(b) by virtue of the circumstance occurring, the person ceases to satisfy the contribution conditions of entitlement listed in the corresponding entry in column 2 of that table.

(8G) The table referred to in paragraphs (8E) and (8F) is as follows—

(**13**) Section 39B was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 and amended by paragraph 21 of Schedule 24 and paragraph 1 of Schedule 30 to the Civil Partnership Act 2004 (c.33) and S.I. 2014/3229.

(**14**) Section 36 was substituted by section 54 of the Welfare Reform and Pensions Act 1999 and amended by paragraph 16 of Schedule 24 to the Civil Partnership Act 2004 and S.I. 2014/560, 2014/3229 and 2016/408.

(**15**) Section 39A was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 and amended by paragraph 28 of Schedule 3 to the Tax Credits Act 2002, paragraph 20 of Schedule 24(3) and paragraph 1 of Schedule 30 to the Civil Partnership Act 2004, paragraph 3 of Schedule 1 to the Child Benefit Act 2005, section 51 of the Welfare Reform Act 2007 and S.I. 2014/3229.

(**16**) S.I. 2001/769. Regulation 7A is inserted into that instrument by regulation 5(5) of these Regulations.

1. Benefit	*2. Contribution conditions of entitlement*
Contribution-based jobseeker's allowance	the conditions set out in section 2(1)(a) and (b) of the Jobseekers Act(**17**)
Contributory employment and support allowance	the first and second conditions set out in paragraphs 1(1) and 2(1) of Schedule 1 to the Welfare Reform Act(**18**)
Bereavement allowance	the contribution conditions set out in paragraph 5(2) and (3) of Schedule 3 to the Contributions and Benefits Act(**19**)
Widowed parent's allowance	the contribution conditions set out in paragraph 5(2) and (3) of Schedule 3 to the Contributions and Benefits Act
Bereavement payment	the contribution condition specified in paragraph 4(1) of Schedule 3 to the Contributions and Benefits Act(**20**)
Category A or Category B retirement pension under Part II of the Contributions and Benefits Act	the contribution conditions set out in paragraph 5(2) and (3) or, as the case may be, 5A(2) of Schedule 3 to the Contributions and Benefits Act(**21**)
State pension under Part 1 of the Pensions Act 2014	the conditions of entitlement to a state pension in section 2(1)(b) or, as the case may be, 2(2)(b) or 4(1)(b) and (c) of the Pensions Act 2014(**22**)

(8H) The circumstances are—

(a) a Class 2 contribution is repaid to a person in consequence of an amendment or correction of the person's relevant profits under section 9ZA or 9ZB of the Taxes Management Act 1970 (amendment or correction of return by taxpayer or officer of the Board)(**23**); or

(b) a Class 2 contribution is returned to a person under regulation 52 of the Social Security (Contributions) Regulations 2001 (contributions paid in error); or

(**17**) 1995 c.18. Section 2 was amended by paragraph 133 of Schedule 7 to the Social Security Act 1998, paragraph 3 of Schedule 7 to the Welfare Reform and Pensions Act 1999, paragraph 45 of Schedule 1 to the National Insurance Contributions Act 2002 (c.19), section 12 of the Welfare Reform Act 2009 (c.24) and paragraph 35 of Schedule 2 and paragraph 1 of Schedule 14 to the Welfare Reform Act 2012.

(**18**) 2007 c.5. Part 1 of Schedule 1 was amended by section 13 of the Welfare Reform Act 2009.

(**19**) Paragraph 5 of Schedule 3 was amended by paragraph 38 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c.18), section 129 and 135 of, and paragraph 1 of Schedule 7 to, the Pensions Act 1995 (c.26), paragraph 13 of Schedule 8 to the Welfare Reform and Pensions Act 1999, section 40 of the Child Support, Pensions and Social Security Act 2000 (c.19), paragraph 14 of Schedule 1 to the National Insurance Contributions Act 2002, paragraph 9 of Schedule 3 to the Welfare Reform Act 2007, section 3 of the Pensions Act 2007 (c.22) and paragraph 67 of Schedule 12 to the Pensions Act 2014 (c.19).

(**20**) Paragraph 4 of Schedule 3 was amended by paragraph 13 of Schedule 8 to the Welfare Reform and Pensions Act 1999 and paragraph 14 of Schedule 1 to the National Insurance Contributions Act 2002.

(**21**) Paragraph 5A of Schedule 3 was inserted by section 1 of the Pensions Act 2007 and amended by paragraph 67 of Schedule 12 to the Pensions Act 2014.

(**22**) 2014 c.19.

(**23**) 1970 c.9. Section 9ZA was inserted by paragraph 2(2) of Schedule 29 to the Finance Act 2001 (c.9) and amended by section 91(2) of the Finance Act 2007 (c.11). Section 9ZB was inserted by paragraph 2(2) of Schedule 29 to the Finance Act 2001 and amended by section 119(1) of the Finance Act 2008 (c.9).

(c) a Class 1 or Class 2 contribution paid by a person to Her Majesty's Revenue and Customs under section 223 of the Finance Act 2014 (accelerated payment in respect of notice given while tax enquiry is in progress)(**24**) is repaid to the person.

(8I) A decision to award a benefit specified in paragraph (8K) may be revised at any time where, on or after the date of the decision—

(a) any of the circumstances set out in paragraph (8H) occur; and

(b) by virtue of the circumstances occurring, the decision was more advantageous to the claimant than it would otherwise have been.

(8J) A decision to award a benefit specified in paragraph (8K), or a decision that that benefit is not payable, may be revised at any time where, on or after the date of the decision, a contribution is treated as paid by the relevant day by virtue of regulation 7(1) of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (treatment for the purpose of any contributory benefit of contributions paid under certain provisions relating to the payment and collection of contributions)(**25**).

(8K) The benefits specified in this paragraph are—

(a) a bereavement benefit;

(b) a Category A or Category B retirement pension under Part II of the Contributions and Benefits Act;

(c) a state pension under Part 1 of the Pensions Act 2014."; and

(b) after paragraph (11) insert—

"(12) In this regulation—

"relevant day" has the meaning given in regulation 7(3)(b) of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001;

"relevant profits" has the meaning given in section 11(3) of the Contributions and Benefits Act;".

(4) After regulation 6(2)(s) (supersession of decisions)(**26**), insert—

"(sa) is a decision where on or after the date on which the decision was made, a late contribution is treated as paid by virtue of regulation 4 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 for the purposes of entitlement to—

(i) a bereavement benefit;

(ii) a Category A or Category B retirement pension under Part II of the Contributions and Benefits Act; or

(iii) a state pension under Part 1 of the Pensions Act 2014;".

(5) At the end of regulation 7 (date from which a decision superseded under section 10 takes effect) insert—

"(43) Where the decision is superseded in accordance with regulation 6(2)(sa), the superseding decision shall take effect from the date on which the contributions are treated as paid in accordance with regulation 4(7) of the Social Security (Crediting and Treatment

(**24**) 2014 c.26. Section 223 was amended by paragraph 6 of Schedule 18 to the Finance Act 2015 (c.11).
(**25**) The heading to regulation 7 is amended by regulation 5(4) of these Regulations.
(**26**) Sub-paragraph (s) was inserted by S.I. 2008/2667.