STATUTORY INSTRUMENTS

2016 No. 352

SOCIAL SECURITY

The Social Security (Contributions) (Amendment) (No. 2) Regulations 2016

Made - - - -	*11th March 2016*
Laid before Parliament	*14th March 2016*
Coming into force - -	*6th April 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 and the Department for Social Development(**1**) in relation to regulations 3, 4, 5, 6, 9 and 16.

The powers exercised by the Treasury are those conferred by sections 3(2) and (3), 4(6), 5(4), 19(1) and (2), 122(6A), 175(3) and (4) and paragraphs 7B(1), (2) and 8(1)(m) of Schedule 1 to the Social Security Contributions and Benefits Act 1992(**2**) and sections 3(2) and (3), 4(6), 5(4), 19(1) and (2), 121(6A), 171(3), (4) and (10) and paragraphs 7B(1), (2) and 8(1)(m) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**3**) and now exercisable by them.

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those conferred by paragraphs 3(3), 4(a), 6(1) and (2) of Schedule 1 to the Social Security Contributions

(**1**) 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).

(**2**) 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 4(6) was amended by section 74 of the Child Support, Pensions and Social Security Act 2000 (c.19) ("the 2000 Act") and paragraph 172 of Part 7 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) ("ITEPA 2003"). Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c. 30) ("the 1999 Act"). Section 19(1) was amended by paragraph 5 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19) ("the 2002 Act"). Subsection (6A) was inserted into section 122 by section 3(4)(b) of the National Insurance Contributions Act 2008 (c.16). Section 175(4) was amended by paragraph 29 of Schedule 3 to the Transfer Act. Paragraph 7B was inserted by the Social Security Act 1998 (c.14) and relevantly amended by paragraph 38 of Schedule 3 to the Transfer Act, section 76 of the 2000 Act and paragraph 185 of Schedule 6 to ITEPA 2003.

(**3**) 1992 c. 7; Section 3(2) was amended by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) 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 for Social Development. Section 4(6) was amended by section 78(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19) and also by paragraph 193(4) of Schedule 6 to ITEPA 2003. Section 5 was substituted by paragraph 1 of Schedule 10 to the 1999 Act. Section 19(1) was amended by paragraph 24 of Schedule 1 to the 2002 Act. Section 121(6A) was inserted by section 102(4)(b) of the Pensions (No.2) Act (Northern Ireland) 2008 (c. 13). Section 171 was relevantly amended by paragraph 4 of Schedule 4 to the Tax Credits Act 2002 (c. 21) and paragraph 28 of Schedule 3 to the 1999 Order. Paragraph 7B was inserted by Article 54 of Part 3 of the Social Security (Northern Ireland) Order 1998/1506 (N.I. 10) ("the 1998 Order"), and was relevantly amended by paragraph 5(2) of Schedule 8 to the 1999 Order, section 80 of the 2000 Act and paragraph 204 of Schedule 6 to ITEPA 2003.

and Benefits Act 1992(**4**) and paragraphs 3(3), 4(a), 6(1) and (2) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**5**) and now exercisable by them(**6**).

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment) (No. 2) Regulations 2016 and come into force on 6th April 2016.

2. The Social Security (Contributions) Regulations 2001(**7**) are amended by Parts 1 and 2 of these Regulations.

PART 1

Miscellaneous amendments of the Social Security (Contributions) Regulations 2001

3. In regulation 1(2) (interpretation), in the definition of "business travel", at the end insert "and includes journeys which are treated as business travel by section 235A of ITEPA 2003(**8**) (journeys made by members of local authorities etc).".

4.—(1) Regulation 22(**9**) (amounts to be treated as earnings) is amended as follows.

(2) In paragraph (1) for "(2) to (11)" substitute "(2) to (13)".

(3) After paragraph (11) insert—

"(12) The amount specified in this paragraph is any amount—

(a) paid or reimbursed to an employed earner in respect of expenses;

(b) provided pursuant to relevant salary sacrifice arrangements within the meaning of section 289A(5) of ITEPA 2003(**10**); and

(c) which is not a payment or reimbursement of relevant motoring expenditure within the meaning of paragraph (3) of regulation 22A(**11**).

(**4**) Paragraph 3(3) was amended by section 55 of the Social Security Act 1998 (c. 14) and section 1 of the National Insurance Contributions and Statutory Payments Act 2004 (c. 3) ("the 2004 Act"). Paragraph 4(a) was amended by paragraph 34 of Schedule 3 to the Transfer Act, so that the power to make regulations became exercisable by the Inland Revenue, and by paragraph 16 of Schedule 1 to the Transfer Act. Paragraphs 6(1) and (2) were amended by paragraph 77 of Schedule 7 to the Social Security Act 1998 (c. 14) and paragraph 185 of Schedule 6 to ITEPA 2003. 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.

(**5**) Paragraph 3(3) was amended by Article 52 of the 1998 Order and section 2 of the 2004 Act. Paragraph 4(a) was amended by paragraph 33 of Schedule 3 to the 1999 Order, so that the power to make regulations became exercisable by the Inland Revenue, and by paragraph 19 of Schedule 1 to the 1999 Order. Paragraph 6(1) and (2) were amended by paragraphs 58(8) and (9) of Schedule 6 to the 1998 Order and by paragraph 204 of Schedule 6 to ITEPA 2003. 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.

(**6**) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference in an enactment, however expressed, to the Commissioners of Inland Revenue is to be treated as a reference to the Commissioners for Her Majesty's Revenue and Customs.

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

(**8**) Section 235A of ITEPA 2003 was inserted by section 29 of the Finance Act (No.2) 2015 (c. 33).

(**9**) Regulation 22 was amended by S.I.s 2003/2085, 2007/1057 and 2013/1907.

(**10**) "ITEPA 2003" is defined as the Income Tax (Earnings and Pensions) Act 2003 (c.1) by section 122 of the Social Security Contributions and Benefits Act 1992. Sections 289A to 289E were inserted into ITEPA 2003 by section 11 of the Finance Act 2015 (c. 11).

(**11**) Regulation 22A was inserted into S.I. 2001/1004 by S.I 2002/307.

(13) The amount specified in this paragraph is any amount paid or reimbursed to an employed earner in respect of expenses which is calculated according to a set rate rather than by reference to the actual amount incurred in respect of the expenses where such a rate is not—

(a) contained in regulations made by the Commissioners for Her Majesty's Revenue and Customs under section 289A(6)(a); or

(b) approved under section 289B of ITEPA 2003.".

5.—(1) Part 8 of Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions) is amended as follows.

(2) After paragraph 1 (travelling, relocation and incidental expenses disregarded) insert—

"**1A.** For the purposes of this paragraph none of the following amounts are to be disregarded in the calculation of an employed earner's earnings—

(a) any amount paid or reimbursed pursuant to relevant salary sacrifice arrangements as provided for in section 289A(5);

(b) any amount paid or reimbursed to an employed earner which falls within regulation 22(13); and

(c) any amount paid to an employed earner in respect of anticipated expenses that have yet to be incurred (whether or not such expenses are actually incurred after the payment is made).".

(3) In paragraph 3 (travelling expenses–general)—

(a) after "pay as the holder of that office of employment" insert "but this paragraph is subject to paragraph 1A";

(b) before sub-paragraph (a), insert—

"(za) "ordinary commuting" means travel between—

(i) the employee's home and a permanent workplace; or

(ii) a place that is not a workplace and a permanent workplace;

(zb) "private travel" means travel between—

(i) the employee's home and a place that is not a workplace; or

(ii) two places neither of which is a workplace;";

(c) for sub-paragraph (a) substitute—

"(a) "travel expenses" means amounts necessarily expended on travelling in the performance of the duties of the office or employment or other expenses of travelling which are attributable to the necessary attendance at any place of the holder of the office or employment in the performance of the duties of the office or employment and are not expenses of—

(i) ordinary commuting;

(ii) travel between any two places that is for practical purposes substantially ordinary commuting;

(iii) travel between any two places that is for practical purposes substantially private travel; or

(iv) private travel.", and

(d) omit sub-paragraph (b).

(4) After paragraph 3 insert—

"**Meaning of "workplace" and "permanent workplace"**

3ZA.—(1) For the purposes of paragraph 3—

(a) "workplace", in relation to an employment, means a place at which the employee's attendance is necessary in the performance of the duties of the employment,

(b) "permanent workplace", in relation to an employment, means a place which—

(i) the employee regularly attends in the performance of the duties of the employment, and

(ii) is not a temporary workplace.

This is subject to sub-paragraphs (3) to (7).

(2) In sub-paragraph (1)(b) "temporary workplace", in relation to an employment, means a place which the employee attends in the performance of the duties of the employment—

(a) for the purpose of performing a task of limited duration, or

(b) for some other temporary purpose.

This is subject to sub-paragraphs (3) and (4).

(3) A place which the employee regularly attends in the performance of the duties of the employment is treated as a permanent workplace and not a temporary workplace if—

(a) it forms the base from which those duties are performed, or

(b) the tasks to be carried out in the performance of those duties are allocated there.

(4) A place is not regarded as a temporary workplace if the employee's attendance is—

(a) in the course of a period of continuous work at that place—

(i) lasting more than 24 months, or

(ii) comprising all or almost all of the period for which the employee is likely to hold the employment, or

(b) at a time when it is reasonable to assume that it will be in the course of such a period.

(5) For the purposes of sub-paragraph (4), a period is a period of continuous work at a place if over the period the duties of the employment are performed to a significant extent at the place.

(6) An actual or contemplated modification of the place at which duties are performed is to be disregarded for the purpose of sub-paragraphs (4) and (5) if it does not, or would not, have any substantial effect on the employee's journey, or expenses of travelling, to and from the place where they are performed.

(7) An employee is treated as having a permanent workplace consisting of an area if—

(a) the duties of the employment are defined by reference to an area (whether or not they also require attendance at places outside it),

(b) in the performance of those duties the employee attends different places within the area,

(c) none of the places the employee attends in the performance of those duties is a permanent workplace, and

(d) the area would be a permanent workplace if sub-paragraphs (1)(b), (2), (4), (5) and (6) referred to the area where they refer to a place.

Travel for necessary attendance: employment intermediaries

3ZB.—(1) This paragraph applies where an individual ("the worker")—

(a) personally provides services (which are not excluded services) to another person ("the client"), and

(b) the services are provided not under a contract directly between the client or a person connected with the client and the worker but under arrangements involving an employment intermediary.

This is subject to the following provisions of this paragraph.

(2) Where this paragraph applies, each engagement is for the purposes of paragraphs 3 and 3ZA to be regarded as a separate employment.

(3) This paragraph does not apply if it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person.

(4) Sub-paragraph (3) does not apply in relation to an engagement if—

(a) Chapter 8 of Part 2 of ITEPA 2003 applies in relation to the engagement,

(b) the conditions in section 51, 52 or 53 of that Act are met in relation to the employment intermediary, and

(c) the employment intermediary is not a managed service company.

(5) This paragraph does not apply in relation to an engagement if—

(a) Chapter 8 of Part 2 of ITEPA 2003 does not apply in relation to the engagement merely because the circumstances in section 49(1)(c) of ITEPA 2003 are not met,

(b) assuming those circumstances were met, the conditions in section 51, 52 or 53 of that Act would be met in relation to the employment intermediary, and

(c) the employment intermediary is not a managed service company.

(6) In determining for the purposes of sub-paragraphs (4) to (5) whether the conditions in section 51, 52 or 53 of ITEPA 2003 are or would be met in relation to the employment intermediary—

(a) in section 50(1)(b) of that Act, disregard the words "that is not employment income", and

(b) read references to the intermediary as references to the employment intermediary.

(7) In determining whether this paragraph applies, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that this paragraph does not to any extent apply.

(8) In this paragraph—

"arrangements" includes any such scheme, transaction or series of transactions, agreement or understanding, whether or not enforceable, and any associated operations;

"employment intermediary" means a person, other than the worker or the client, who carries on a business (whether or not with a view to profit and whether or not in conjunction with any other business) of supplying labour;

"engagement" means any such provision of services as is mentioned in sub-paragraph (1)(a);

"excluded services" means services provided wholly in the client's home;

"managed service company" means a company which—

(a) is a managed service company within the meaning given by section 61B of ITEPA 2003, or

(b) would be such a company disregarding subsection (1)(c) of that section.".