

(2) Paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 shall apply (to the extent that it does not otherwise) where an amount is retrospectively treated as earnings by regulations made by virtue of section 4B(2) of that Act.

Amendment of the Social Security (Contributions) Regulations 2001

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

4. In regulation 1(2) (interpretation)—

(a) insert the following definitions at the appropriate places—

“retrospective contributions regulations” means regulations made by virtue of section 4B(2) of the Act and, in relation to an amount of retrospective earnings, “the relevant retrospective contributions regulations” means the regulations which treat that amount as earnings;

“retrospective earnings” means an amount retrospectively treated as earnings by retrospective contributions regulations;

“retrospective contributions”, in relation to an amount of retrospective earnings, means the amount of earnings-related contributions based on those earnings which the employee is liable to pay under section 6(4)(a) of the Act (primary contributions);

(b) omit the definition of “normal rate” and insert it immediately after the definition of “non-contracted out rate”.

5. In regulation 60 (treatment for purpose of contributory benefit of unpaid primary Class 1 contributions) add at the end—

“(3) Where—

(a) an amount is retrospectively treated as earnings by retrospective contributions regulations, and

(b) the primary Class 1 contribution payable in respect of those earnings is not paid, and the failure to pay that contribution is shown to the satisfaction of an officer of the Board not to have been with the consent or connivance of, or attributable to any negligence on the part of the primary contributor,

that contribution shall be treated in accordance with paragraph (1)(a) and (b).”.

6. In regulation 90H (mandatory electronic payment)(b) at the end add—

“(4) This regulation does not apply to a payment of contributions, whether primary or secondary, in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force”.

7. In regulation 90N (mandatory use of electronic communications) at the end add—

“(4) This regulation does not apply to a return in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force”.

8.—(1) Schedule 4 is amended as follows.

(2) In paragraph 1(2) (interpretation) insert the following definition at the appropriate place—

“closed tax year” means any year preceding the current year and cognate expressions shall be construed accordingly;

(3) In paragraph 6 after sub-paragraph (1) insert—

(a) S.I. 2001/1004.

(b) Part 7A (regulations 90A to 90R) of the Social Security (Contributions) Regulations 2001 was inserted by regulations 2 and 23 of S.I. 2004/770 with effect from 6th April 2004.

“(1A) Where a liability to pay retrospective contributions has arisen in respect of an employee, an employer shall amend the relevant deductions working sheet or where necessary prepare one in respect of that employee.”.

(4) In paragraph 7 after sub-paragraph (3) insert—

“(3A) Where an amount has been treated as retrospective earnings paid to or for the benefit of an employee, the employer may deduct the retrospective contributions based on those earnings from any payment of general earnings made by him to that employee—

- (a) after the relevant retrospective contributions regulations come into force, and
- (b) during the same and the following year.

This sub-paragraph is subject to sub-paragraph (5).”.

(5) In paragraph 7(5)—

- (i) after “(3),” insert “(3A),”;
- (ii) in paragraph (b), after “any of those sub-paragraphs” insert “except sub-paragraph (3A)”.

(6) After paragraph 11 insert—

“Payments of earnings-related contributions in respect of retrospective earnings

11A.—(1) This paragraph applies where there are retrospective earnings in respect of which contributions (whether primary or secondary contributions) are payable.

(2) The employer shall pay the contributions referred to in sub-paragraph (1) to Her Majesty’s Revenue and Customs within 14 days [or, if payment is made in respect of the current year by an approved method of electronic communications, 17 days] of the end of the tax month immediately following the tax month in which the relevant retrospective contributions regulations came into force.”

(7) In paragraph 12, for “10 or 11” wherever it appears substitute “10, 11 or 11A”.

(8) In paragraph 17—

- (a) in sub-paragraph (1) after “Subject to” insert “sub-paragraph (4A) and”.
- (b) in sub-paragraph (3)(b) after paragraph (ii) add—

“(iii) a contribution payable in respect of retrospective earnings relating to a tax year which is closed at the time that the relevant retrospective contributions regulations come into force, the 14th day after the end of the tax month immediately following the tax month in which those regulations came into force.”;

- (c) after sub-paragraph (4) insert—

“(4A) Where an employer has not paid contributions in respect of retrospective earnings relating to a closed tax year by the date set out in paragraph 11A, any contribution not so paid shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Act from the reckonable date until payment.”.

(9) In paragraph 19 after “shall be repaid to him” insert “if”.

(10) After paragraph 22(2) insert—

“(2A) Where a liability arises to pay contributions in respect of retrospective earnings relating to a closed tax year, the employer shall render a replacement return, or where necessary prepare one, in respect of the employee for that closed tax year before 20th May following the end of the year in which the relevant retrospective contributions regulations came into force, in accordance with paragraphs (a) to (c) of sub-paragraph (1), setting out the revised earnings and earnings-related contributions.

(2B) The return required by sub-paragraph (2A) shall include a statement and declaration in a form prescribed by Her Majesty’s Revenue and Customs containing a list of all deductions working sheets in accordance with paragraph 6(1A) of this Schedule in respect of that year, and shall also include a certificate showing—

- (a) the total amount of earnings-related contributions originally payable (in accordance with sub-paragraph (2)(a)) in respect of each employee to whom sub-paragraph (2A) applies;
- (b) the total amount of earnings-related contributions originally payable (in accordance with sub-paragraph (2)(b)) in respect of all employees to whom sub-paragraph (2A) applies;
- (c) the total amount of revised earnings-related contributions payable in respect of each of those employees;
- (d) the total amount of revised earnings-related contributions payable in respect of all those employees,
- (e) the difference between the amount certified in paragraph (b) and paragraph (d) of this sub-paragraph in respect of all of those employees;
- (f) in relation to any contracted-out employment the number notified by Her Majesty's Revenue and Customs on the relevant contracting-out certificate as the employer's number."

(11) In paragraph 22(7) at the end add " and (2A)".

(12) After paragraph 31(7) insert—

“(7A) Where a liability arises to pay contributions in respect of retrospective earnings relating to a closed tax year, the employee shall render a replacement return for the closed tax year before 20th May following the end of the year in which the relevant retrospective contributions regulations came into force in accordance with sub-paragraph (7), setting out the revised earnings and earnings-related contributions.

(7B) Where sub-paragraph (7A) applies, the employee shall amend the relevant deductions working sheet or where necessary prepare one in accordance with sub-paragraph (2)".

(13) In paragraph 31(8), for "(6) and (7)" substitute "(6), (7) and (7A)".

*A Commissioner
A N Other*

Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs.

*A Minister
Minister of State,
Department for Work and Pensions*

The Department for Social Development concurs.

Sealed with the Official Seal of the Department for Social Development on the [...] day of [...] 2006.

*A N Official
Senior Officer of the Department for Social Development*

EXPLANATORY NOTE

(This note is not part of the Regulations)