
STATUTORY INSTRUMENTS

2002 No. 2366

**The Social Security (Contributions)
(Amendment No. 3) Regulations 2002**

Amendment of the principal Regulations

3. Amend the principal Regulations in accordance with regulations 4 to 18.

4.—(1) Amend regulation 3 as follows.

(2) For paragraphs (1) and (2) substitute—

“3.—(1) If any part of earnings paid to or for the benefit of an earner is normally paid, or is treated under regulation 7 as paid, at regular intervals, the earnings period in respect of those earnings shall be the period found in accordance with the following Table, subject to paragraphs (2) to (6).

Earnings Periods

<i>Case</i>	<i>Applicable earnings period</i>
Earnings paid at an interval of 7 days or more.	The length of the interval.
Earnings paid at intervals of different lengths, each of which is 7 days or more.	The length of the shorter or shortest of those intervals.
Earnings paid at one or more intervals of less than 7 days.	A week.
Earnings paid at one or more intervals of less than 7 days and at one or more intervals of more than 7 days.	A week.

(2) In any year, the earnings period for the earnings mentioned in paragraph (1) shall only be that found by the Table in that paragraph if the period in which the earnings are paid is one of a succession of periods and—

- (a) the periods are the same length;
- (b) the first period begins on the first day of the year; and
- (c) the subsequent periods begin immediately after the end of the preceding period.

For the purpose of this paragraph, if all the periods in the succession mentioned above, apart from the last in the year in question, are the same length, the last period in the year shall be treated as if it were the same length as the others.

This paragraph is subject to the following qualification.

(2A) Paragraph (2B) applies if it appears to an officer of the Board that—

- (a) it is the employer’s practice to pay the greater part of the earnings referred to in paragraph (2) at intervals of greater length than the shorter or shortest of the earnings periods produced by the application of that paragraph; and
- (b) that practice is likely to continue.

(2B) If this paragraph applies the officer may, and if requested to do so by the earner or the secondary contributor shall, decide whether to give a notice to the earner and the secondary contributor specifying the longer or longest of the earnings periods produced by the application of paragraph (2) to be the earnings period applicable to those earnings.

(2C) A notice under paragraph (2B) shall—

- (a) be given to both the earner and the secondary contributor; and
- (b) specify the date from which the change of earnings period is to take effect.

The date specified shall not be earlier than that on which the notice is given.

(2D) A notice given under paragraph (2B) shall have effect until an officer of the Board decides (either of his own motion or on an application by the earner or the secondary contributor) that the practice to which it relates has ceased.

If an officer of the Board decides that a notice is to cease to have effect, he shall notify the earner and the secondary contributor accordingly.”.

(3) In paragraph (3) for “paragraph (2)” substitute “paragraph (2B)” and for “paragraph (1)(b)” substitute “paragraph (2)”.

(4) Omit paragraph (4).

5. For regulation 30 substitute—

“Abnormal pay practices

30.—(1) If an officer of the Board is satisfied that—

- (a) a secondary contributor has followed or is following a practice in the payment of earnings which is abnormal for the employment in question (“an abnormal pay practice”); and
- (b) by reason of that practice the liability for earnings-related contributions is or has been avoided or reduced,

paragraph (2) applies.

(2) If this paragraph applies the officer may, and if requested to do so by the earner or the secondary contributor shall, decide any question relating to a person’s earnings-related contributions as if the secondary contributor had not followed an abnormal pay practice, but had followed a practice normal for the employment in question.

(3) A decision under this regulation shall not apply to contributions based on payments made more than one year before the beginning of the year in which that decision is given.”.

6. For regulation 31 substitute—

“Practices avoiding or reducing liability for contributions

31.—(1) If an officer of the Board is satisfied that—

- (a) a practice exists as to the making of irregular or unequal payments of earnings; and
- (b) by reason of the practice the liability for earnings-related contributions is avoided or reduced,

he may, and if requested to do so by either the earner or the secondary contributor shall, decide whether to issue a direction to secure that the same contributions are payable as would be payable if the practice were not followed.

- (2) A direction under paragraph (1)—
 - (a) shall specify the date from which it is to have effect, which shall not be earlier than that on which it is given;
 - (b) shall have effect until—
 - (i) the direction is superseded by the giving of a further direction, or
 - (ii) an officer of the Board is satisfied that the practice has ceased, or has ceased to have the effect mentioned in paragraph (1)(b); and
 - (c) shall be given to the earner and the secondary contributor concerned.

This is subject to the qualification in paragraph (3).

(3) A direction under paragraph (1) need not be given to an earner if the officer of the Board is for any reason unable to ascertain his identity or whereabouts.

(4) This regulation does not limit the operation of regulation 30.”.

7. For regulation 50 substitute—

“50.—(1) If—

- (a) a person (“the contributor”)—
 - (i) was entitled to pay a Class 3 contribution under regulation 48, 146(2)(b) or 147; and
 - (ii) failed to pay that contribution in the appropriate period specified for its payment; and
- (b) the condition in paragraph (2) is satisfied,

the contributor may pay the contribution within such further period as an officer of the Board may direct.

- (2) The condition is that an officer of the Board is satisfied that—
 - (a) the failure to pay is attributable to the contributor’s ignorance or error; and
 - (b) that ignorance or error was not the result of the contributor’s failure to exercise due care and diligence.”.

8. For regulation 52 substitute—

“52.—(1) This regulation applies if—

- (a) a contribution other than a Class 4 contribution has been paid in error; or
- (b) there has been a payment of contributions in excess of the amount specified in regulation 21.

This regulation is subject to the provisions of regulations 51 and 57.

- (2) If this regulation applies, an application may be made to the Board for the return of—
 - (a) the contribution paid in error; or
 - (b) so much of the payment of contributions as exceeds the amount specified in regulation 21.
- (3) An application under paragraph (2) shall be made to the Board—

- (a) in writing or in such form and by such means of electronic communications as are approved; and
- (b) in the case of a contribution paid in error, within the time permitted by paragraph (11).

(4) On the making of an application under paragraph (2), the Board shall return the contribution paid in error, or so much of the payment in question as exceeds the amount specified in regulation 21.

This is subject to paragraphs (5) and (6).

(5) Paragraph (4) does not require the return of a contribution or a payment unless the amount to be returned exceeds—

- (a) in the case of Class 1A and Class 1B contributions, 50 pence; or
- (b) in the case of—
 - (i) Class 1 contributions; or
 - (ii) Class 2 contributions paid in excess of the amount prescribed in regulation 21; one fifteenth of a contribution at the primary percentage payable on earnings at the upper earnings limit in respect of primary Class 1 contributions prescribed in regulation 10 for the last or only year in respect of which the contributions were paid.

(6) Paragraph (4) does not require the return of a primary Class 1 contribution to which regulation 3 of the Social Security (Additional Pension) (Contributions Paid in Error) Regulations 1996⁽¹⁾ (purposes for which primary Class 1 contributions paid in error are to be treated as properly paid) applies.

(7) If an application under paragraph (2) has been made for the return of contributions paid in excess of the amount prescribed in regulation 21, the contributions shall be returned in the following order—

- (a) primary Class 1 contributions at the reduced rate;
- (b) Class 2 contributions;
- (c) primary Class 1 contributions at the primary percentage;
- (d) any amount of primary Class 1 contributions reduced in accordance with section 41 (1) and (1A) of the Pensions Act⁽²⁾ in respect of COSRS employment;
- (e) any amount of primary Class 1 contributions reduced in accordance with section 42A(1) and (2) of the Pensions Act in respect of COMPS employment.

(8) In the case of contributions falling within paragraph (7)(d) or (e), the amount to be returned is—

- (a) if the amount paid at the contracted-out rate equals or exceeds 53 times the amount payable on earnings at the upper earnings limit for the year in question, the sum of—
 - (i) the amount, calculated at the primary percentage specified in section 8(2) of the Act, payable on earnings at the lower earnings limit for that year; and
 - (ii) the amount paid at the contracted-out rate (if any); and

⁽¹⁾ S.I. 1996/1245.

⁽²⁾ 1993 c. 48. Section 41 was amended by section 137(2) of the Pensions Act 1995 (c. 26). Subsection (1) was substituted by paragraph 127 of Schedule 7 to the Social Security Act 1998 and amended by paragraph 6(2) of Part 2 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c. 30) (“the Welfare Reform Act”). Subsection (1A) was substituted by paragraph 6(3) of Part 2 of Schedule 9 to the Welfare Reform Act.

- (b) if the amount paid at the contracted-out rate is less than 53 times the amount payable on earnings at the upper earnings limit for the year in question, or if no amount has been paid at the contracted-out rate, the amount paid at the normal rate.

(9) If—

- (a) an application has been made under paragraph (2) for the return of contributions in excess of the amount specified in regulation 21; and
- (b) the Board have been given notice under section 44(1) of the Pensions Act,

the contributions shall be returned in the order specified in paragraph (7), except that the contributions specified in sub-paragraph (c) shall be returned after those in sub-paragraphs (d) and (e).

(10) Contributions paid by a secondary contributor on behalf of any person in error, or in excess of the amount specified in regulation 21—

- (a) if they are not recovered by the secondary contributor from that person, may be returned to the secondary contributor; and
- (b) if they are recovered by the secondary contributor from that person may be returned either to that person, or, with that person’s consent given in writing or by such means of electronic communications as may be approved, to the secondary contributor.

(11) An application for the return of any contribution paid in error shall be made within the period of six years from the end of the year in which the contribution was due to be paid.

This is subject to the following qualification.

If the application is made after the end of that period, an officer of the Board shall admit it if satisfied that—

- (a) the person making the application had reasonable excuse for not making the application within that period; and
- (b) the application was made without unreasonable delay after the excuse had ceased.

(12) In this regulation “error” means, and means only, an error which—

- (a) is made at the time of the payment; and
- (b) relates to some past or present matter.”.

9. In regulation 54(3) for the words from “was issued” to the end substitute—
“was issued.

This is subject to the following qualification.

If the application is made after the end of that period, an officer of the Board shall admit it if satisfied that—

- (a) the secondary contributor had reasonable excuse for not making the application within that period; and
- (b) the application was made without unreasonable delay after the excuse had ceased.”.

10. In regulation 55(3)—

- (a) after “referred to in that paragraph” insert “(“the applicant”); and
- (b) for the words from “was paid” to the end substitute—
“was due to be paid.

This is subject to the following qualification.

If the application is made after the end of that period, an officer of the Board shall admit it if satisfied that—

- (a) the applicant had reasonable excuse for not making the application within that period; and
- (b) the application was made without unreasonable delay after the excuse had ceased.”.

11. In regulation 60(1) for “of the Board” substitute “of an officer of the Board”.

12. For regulation 61 substitute—

“**61.**—(1) If a person who was entitled, but not liable, to pay a Class 2 contribution (“the contributor”) fails to pay that contribution within the period within which it may be paid, and the condition in paragraph (2) is satisfied, the contribution may be paid within such further period as an officer of the Board may direct.

(2) The condition is that an officer of the Board is satisfied that—

- (a) the failure was attributable to the contributor’s ignorance or error; and
- (b) that ignorance or error was not the result of the contributor’s failure to exercise due care and diligence.”.

13. In paragraphs (2)(a), (3) and (4)(c) of regulation 65 (Class 2 and Class 3 contributions paid late through ignorance or error) for “to the satisfaction of the Board” substitute “to the satisfaction of an officer of the Board”.

14. In regulation 101(b) omit the words from “in circumstances in which” to the end of the paragraph.

15. In regulation 102—

- (a) in paragraph (1) for “by the earner” substitute “to the earner”; and
- (b) for paragraph (2) substitute—

“(2) It is a condition of repayment under this regulation that the earner makes an application for the repayment—

- (a) in such form and manner as the Board may determine; and
- (b) in the case of contributions falling within paragraph (b) of regulation 101, within the time prescribed in paragraph (3).”.

16. In regulation 110(3)—

- (a) after “special Class 4 contribution” insert “(“the applicant”)”; and
- (b) for the words from “was paid” to the end substitute—

“was due to be paid.

This is subject to the following qualification.

If the application is made after the end of that period, an officer of the Board shall admit it if satisfied that—

- (a) the applicant had reasonable excuse for not making the application within that period; and
- (b) the application was made without unreasonable delay after the excuse had ceased.”.

17. In regulation 149(2)(b) for “outsider Great Britain” substitute “outside the United Kingdom”.

18. After regulation 155 insert—

“Decisions taken by officers of the Inland Revenue in respect of contributions which are prescribed for the purposes of section 8(1)(m) of the Transfer Act

155A.—(1) For the purposes of section 8(1)(m) of the Transfer Act(3) the decisions specified in paragraphs (2) to (5) are prescribed.

(2) The decisions specified in this paragraph are—

- (a) whether a notice should be given under regulation 3(2B) and, if so, the terms of such a notice;
- (b) whether a notice given under regulation 3(2B) should cease to have effect;
- (c) whether a direction should be given under regulation 31 and, if so, the terms of the direction;
- (d) whether the condition in regulation 50(2) is satisfied;
- (e) whether a late application under regulation 52(11) for the refund of a contribution should be admitted;
- (f) whether a late application under regulation 54(3) for the return of a Class 1 contribution paid at the wrong rate should be admitted;
- (g) whether a late application under regulation 55(3) for the repayment of a Class 1A contribution should be admitted;
- (h) whether, in a case where the secondary contributor has failed to pay a primary Class 1 contribution on behalf of the primary contributor, that failure was with the consent or connivance of the primary contributor or attributable to any negligence on the part of the primary contributor, as mentioned in regulation 60;
- (i) whether the condition in regulation 61(2) is satisfied;
- (j) whether, in the case of a Class 2 contribution remaining unpaid by the due date, the reason for the non-payment is the contributor’s ignorance or error, and, if so, whether that ignorance or error was due to his failure to exercise due care and diligence, as mentioned in regulation 65(2);
- (k) whether the reason for a contributor’s failure to pay a Class 3 contribution within the period prescribed for its payment is his ignorance or error, and, if so, whether that ignorance or error was due to his failure to exercise due care and diligence, as mentioned in regulation 65(3);
- (l) whether the reason for a contributor’s failure to pay a Class 3 contribution falling to be computed under section 13(6) of the Act and which remains unpaid after the end of the second year following the contribution year, is his ignorance or error and if so whether that ignorance or error was due to his failure to exercise due care and diligence, as mentioned in regulation 65(4); and
- (m) whether a late application under regulation 110(3) for the return of a special Class 4 contribution should be admitted.

(3) The decisions specified in this paragraph are—

- (a) whether a contribution (other than a Class 4 contribution) has been paid in error as mentioned in regulation 52(1)(a); and
- (b) whether there has been a payment of contributions in excess of the amount specified in regulation 21, as mentioned in regulation 52(1)(b),

to the extent that they are not decisions falling within section 8(1)(c) or (d) (decisions as to liability and entitlement to pay contributions) of the Transfer Act.

(3) Regulation 156(3) of the principal Regulations provides for the construction, in relation to Northern Ireland, of references in the principal Regulations to enactments applicable only to Great Britain.

- (4) The decisions specified in this paragraph are—
- (a) whether the delay in making payment of a contribution, payable by an employer on behalf of an insured person, was neither with the consent or connivance of the insured person nor attributable to any negligence on the part of the insured person, as mentioned in regulation 23 of the National Insurance (Contributions) Regulations 1969(4);
 - (b) whether, in the case of a contribution paid after the due date, the failure to pay the contribution before that time was attributable to ignorance or error on the part of the insured person, and, if so, whether that ignorance or error was due to the failure on the part of the insured person to exercise due care and diligence, as mentioned in regulation 24 of those Regulations; and
 - (c) whether the failure to pay a contribution to which regulation 32 of those Regulations applies within the prescribed period was attributable to ignorance or error on the part of the person entitled to pay it and, if so, whether that ignorance or error was due to the failure of the person entitled to pay the contribution to exercise due care and diligence.
- (5) The decisions specified in this paragraph are—
- (a) whether the delay in making payment of a primary Class 1 contribution which is payable on a primary contributor's behalf by a secondary contributor was neither with the consent or connivance of the primary contributor nor attributable to any negligence on the part of the primary contributor, as mentioned in regulation 5 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(5) (treatment for the purpose of any contributory benefit of late paid primary Class 1 contributions where there was no consent, connivance or negligence by the primary contributor); and
 - (b) whether, in the case of a contribution paid by or in respect of a person after the due date, the failure to pay the contribution before that time was attributable to ignorance or error on the part of that person or the person making the payment and if so whether that ignorance or error was due to the failure on the part of such person to exercise due care and diligence, as mentioned in regulation 6 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 under the Act paid late through ignorance or error).”.

(4) *S.I. 1969/1696*. The 1969 Regulations were revoked in 1979 by *S.I. 1979/591* subject to savings contained in regulation 130(2) of, and Part 2 of Schedule 4 to, that instrument. By virtue of regulation 157(4) of the principal Regulations, the revocation of *S.I. 1979/591* by regulation 157(1) of the principal Regulations does not preclude the continued operation of those savings. The functions of the Secretary of State under regulations 23, 24 and 32 of the 1969 Regulations as saved were transferred to the Board by virtue of Schedule 2 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

(5) *S.I. 2001/769*. These Regulations apply only to Great Britain: the corresponding enactment applying in Northern Ireland is *S.R. 2001 No. 102*. As to the construction of references in the principal Regulations to legislation applying only in Great Britain to Northern Ireland, see footnote (a) on page 7.