

2016 No. 352

SOCIAL SECURITY

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

<i>Made</i> - - - -	<i>11th March 2016</i>
<i>Laid before Parliament</i>	<i>14th March 2016</i>
<i>Coming into force</i> - -	<i>6th April 2016</i>

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(a) 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(b) 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(c) 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

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

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(d) 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(e) (journeys made by members of local authorities etc).”.

4.—(1) Regulation 22(f) (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(g); and
- (c) which is not a payment or reimbursement of relevant motoring expenditure within the meaning of paragraph (3) of regulation 22A(h).

(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

(a) 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.

(b) 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.

(c) 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.

(d) S.I. 2001/1004.

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

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

(g) “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).

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

(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.”.

(5) In paragraphs 3C (travel between linked employments), 4 (travel at start or finish of overseas employment), 4A (travel between employments where duties performed abroad), 4B (travel costs and expenses where duties performed abroad: earner’s travel), 4C (travel costs and expenses where duties performed abroad: visiting spouse’s, civil partner’s or child’s travel), 4D (foreign accommodation and subsistence costs and expenses (overseas employments)) and 5 (travel costs and expenses of non-domiciled employee or the employee’s spouse, civil partner or child where duties performed in the United Kingdom), at the end of each paragraph insert—

“This paragraph is subject to paragraph 1A.”.

(6) After paragraph 8 (car parking facilities) insert—

“Amounts exempted from income tax under section 289A of ITEPA 2003

8A. Any amount which is exempted from income tax under section 289A of ITEPA 2003.”.

(7) In paragraph 9 (specific and distinct payments of, or towards, expenses actually incurred)—

- (a) in sub-paragraph (1)—

- (i) for “these” substitute “there”, and

- (ii) for “qualification” substitute “qualifications”; and
- (b) after sub-paragraph (2) insert—
 - “(3) Sub-paragraph (1) does not authorise the disregard of any amount which—
 - (a) falls within paragraphs (12) or (13) of regulation 22; or
 - (b) is 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).”.
- (8) After paragraph 16 insert—

“Travel expenses of members of local authorities etc

17. A payment to which no liability to income tax arises by virtue of section 295A of ITEPA 2003(a) (travel expenses of members of local authorities etc).”.

- 6.—**(1) Part 10 of Schedule 3 (miscellaneous and supplemental) is amended as follows.
 - (2) In paragraph 10(b) (employee’s liabilities and indemnity insurance), after “employment chargeable to tax under that Act.”, insert “This paragraph is subject to paragraph 1A of Part 8 of this Schedule.”.
 - (3) In paragraph 11 (fees and subscriptions to professional bodies, learned societies etc), after “general earnings of any office or employment.”, insert “This paragraph is subject to paragraph 1A of Part 8 of this Schedule.”.
- 7.—**(1) Schedule 4 (provisions derived from the Income Tax Acts etc) is amended as follows.
 - (2) In paragraph 21G(c) (penalty: failure to comply with paragraph 21A or 21D)—
 - (a) in sub-paragraph 1(b), for “sub-paragraph (2)” substitute “sub-paragraphs (2) and (2A)”; and
 - (b) after sub-paragraph (2) insert—
 - “(2A) Sub-paragraph (2) does not apply to a penalty imposed under paragraph 6D of Schedule 55 to the Finance Act 2009(d) (amount of penalty: real time information for PAYE).”.

PART 2

Abolition of contracting-out: consequential amendments

- 8.** In regulation 1(2) (interpretation), omit the following definitions—
 - (a) “contracted-out employment”;
 - (b) “contracted-out rate”;
 - (c) “COSRS employment”;
 - (d) “non-contracted-out employment”;
 - (e) “non-contracted out rate”;
 - (f) “normal rate”; and
 - (g) “the Pensions Act”(e).
- 9.** In regulation 6 (earnings period for earnings to be aggregated etc), for paragraph (3) substitute—

(a) Section 295A of ITEPA 2003 was inserted by section 29 of the Finance Act (No.2) 2015 (c. 33).
 (b) Paragraph 10 was amended by S.I 2004/770.
 (c) Paragraph 21G was inserted by regulation 3 of S.I. 2014/2397 and amended by regulation 22 of S.I. 2015/478.
 (d) 2009 c. 10. Paragraph 6D of Schedule 55 was inserted by paragraph 6 of Schedule 50 to the Finance Act 2013 (c. 29).
 (e) 1993 c. 48.

“(3) In this regulation “the designated earnings period” means the shorter, or as the case may be the shortest, of the earnings periods in respect of earnings derived from such employments.”.

10. In regulation 11 (prescribed equivalents)—

- (a) in paragraph (1)—
 - (i) in sub-paragraph (a), at the end insert “and”;
 - (ii) omit sub-paragraph (b) and the “and” which precedes it;
- (b) omit paragraph (1A);
- (c) in paragraph (2)—
 - (i) omit “and the upper accrual point”;
 - (ii) in sub-paragraph (a), omit “or the upper accrual point (“the weekly limits”)”; and
 - (iii) in sub-paragraphs (a) to (d)—
 - (aa) for “amounts” in each place where it occurs substitute “amount”;
 - (bb) for “each of the weekly limits” in each place where it occurs substitute “the lower earnings limit”;
 - (cc) for “each result” in each place where it occurs substitute “the result”; and
- (d) omit paragraph (6).

11. In regulation 12 (calculation of earnings-related contributions), for paragraph (1) substitute—

“(1) Subject to paragraphs (3) and (4), primary and secondary Class 1 contributions under section 6 of the Act (liability for Class 1 contributions) shall be calculated to the nearest penny and any amount of a halfpenny or less shall be disregarded.”.

12. In regulation 21 (annual maxima for those with more than one employment), for paragraph (3) substitute—

“(3) For the purpose only of determining the extent of the earner’s liability for contributions under paragraph (2), the amount of a primary Class 1 contribution which is paid at a rate less than 12 per cent because the earner is a married woman who has made an election to pay contributions at the reduced rate as mentioned in regulation 127, shall be treated as equal to the amount of the primary Class 1 contribution which would be payable if the election had not been made.”.

13. In regulation 52A (return of contributions paid in excess of maxima prescribed in regulation 21)—

- (a) in paragraph (3), for “payment of contributions” substitute “contributions actually paid by the earner”;
- (b) in paragraph (5)(c), for “;” substitute “.”;
- (c) omit paragraphs (5)(d) and (e); and
- (d) omit paragraphs (6) to (8).

14. Omit regulation 54 (return of Class 1 contributions paid at the non-contracted out rate instead of at the contracted-out rate).

15. In regulation 100 (annual maximum of Class 4 contributions due under section 15 of the Act), for paragraph (4) substitute—

“(4) For the purpose only of determining the extent of the earner’s liability for contributions under paragraph (3), the amount of a primary Class 1 contribution which would otherwise be payable at the main primary percentage but which is paid at a rate less than 12 per cent because the earner is a married woman who has made an election to pay contributions at the reduced rate as mentioned in regulation 127, shall be treated as equal to

the amount of the primary Class 1 contribution payable at the main primary percentage, which would be so payable if the election had not been made.”.

16. In regulation 120 (earnings periods for mariners and apportionment of earnings), omit paragraph (2)(b)(ii).

17. In regulation 155A (decisions taken by officers of the Inland Revenue etc), omit paragraph (2)(f).

18. In Schedule 4 (provisions derived from the Income Tax Acts etc)—

(a) in paragraph 7 (calculation of deduction)—

(i) omit sub-paragraph (4)(c) and the “or” which follows it; and

(ii) in sub-paragraph (13)(b)—

(aa) in sub-paragraph (iii), for “upper accrual point” substitute “current upper earnings limit”;

(bb) omit sub-paragraph (iiia); and

(cc) omit the words from “The amounts to be recorded under sub-paragraphs (iv) and (v)” to the end;

(b) in paragraph 9(1) (certificate of contributions paid)—

(i) in sub-paragraph (b), omit the words from “, other than earnings from non-contracted-out employment” to the end;

(ii) in sub-paragraph (c)—

(aa) for “upper accrual point” substitute “current upper earnings limit”;

(bb) omit the words from “, other than earnings from non-contracted out employment” to the end; and

(iii) omit sub-paragraph (ca);

(c) in paragraph 12 (payment of earnings-related contributions by employer (further provisions)), omit sub-paragraph (3)(b);

(d) in paragraph 22 (return by employer at end of year)—

(i) in sub-paragraph (1)(c)(i), for “to (iiia)” substitute “to (iii)”;

(ii) omit sub-paragraph (2)(c); and

(iii) in sub-paragraph (2B)—

(aa) in sub-paragraph (e), for “;” substitute “.”; and

(bb) omit sub-paragraph (f); and

(e) in paragraph 24(2) (special return by employer at end of voyage period)—

(i) in sub-paragraph (e), at the end insert “and”;

(ii) for sub-paragraph (f) substitute—

“(f) the total amount of any earnings in respect of which primary Class 1 contributions were payable.”;

(iii) omit sub-paragraph (g).

19. In Schedule 4A (real time returns)—

(i) in paragraph 7, for “to (iiia)” substitute “to (iii)”;

(ii) omit paragraph 12.

PART 3

Savings provisions

20.—(1) Nothing in Part 2 affects the operation of the Social Security (Contributions) Regulations 2001 in relation to rights or obligations arising in connection with tax years beginning before 6th April 2016.

(2) For the purposes of paragraph (1), references to repealed provisions of the Pension Schemes Act 1993 are to be read as though such provisions were still in force.

Charlie Elphicke
George Hollingbery

11th March 2016

Two of the Lords Commissioners of Her Majesty's Treasury

Jennie Granger
Jim Harra

10th March 2016

Two of the Commissioners for Her Majesty's Revenue and Customs

The Secretary of State concurs as indicated in the preamble.
Signed by authority of the Secretary of State for Work and Pensions.

Altmann
Minister of State

10th March 2016

Department for Work and Pensions

The Department for Social Development concurs as indicated in the preamble.
Sealed with the Official Seal of the Department for Social Development on 9th March 2016



Anne McCleary

A senior officer of the Department of Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulations 3 and 5(8) make a couple of amendments to the Contributions Regulations to take into account new provisions in the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA 2003”) inserted by the Finance Act (No.2) 2015 (c. 33). Regulation 3 amends regulation 1(2) of the Contributions Regulations to reflect the extension to the definition of business travel in section 235A of ITEPA 2003. This means that, if certain conditions are met, journeys made by a member of a relevant authority between their home and permanent workplace are treated as business travel. Schedule 3 to the Contributions Regulations provides for certain payments to be disregarded in the calculation of an individual's earnings for the purpose of earnings-related National Insurance contributions. Regulation 5(8) adds a new paragraph 17 to Part 8 of Schedule 3, which provides that any payment which is exempt from income tax under section 295A of ITEPA 2003 will also be disregarded for these purposes. That section introduces an exemption from income tax for payments of expenses made to members of relevant authorities.

Regulations 4, 5(2), 3(a) (6), (7), and 6 make a number of consequential amendments to the Contributions Regulations to reflect the changes made to provisions relating to the taxation of employees' expenses in ITEPA 2003 by the Finance Act 2015 (c.11) (“FA 2015”). A new chapter 7A was inserted into Part 4 of ITEPA 2003 exempting some expenses from income tax which would otherwise be deductible provided that the expenses were not provided pursuant to salary

sacrifice arrangements or unapproved scale rates and that certain conditions were met. The amendments contained in this instrument ensure that the legislation concerning National Insurance contributions will mirror the income tax position.

Regulation 7 amends paragraph 21G of Schedule 4 to the Contributions Regulations to provide that paragraph 21G(2) does not apply to penalties in respect of extended failures under paragraph 6D of Schedule 55 to the Finance Act 2009 (c.10) (defined as a failure to make a return within the period of three months beginning with the day after the original filing date). The amendment provides that, where an employer is liable to a penalty for failing to file a return under regulation 67B or regulation 67D of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682), they may also be liable to a penalty for an extended failure to file an associated return under paragraph 21A or paragraph 21D of Schedule 4 to the Contributions Regulations. The effect of this amendment is to allow Class 1 National Insurance contributions to be included in the calculation of an extended failure penalty.

Paragraphs (3)(b) to (d), and (4) of regulation 5 amend Part 8 and paragraph 3 to the Contributions Regulations to update definitions relating to travel expenses so that they will mirror the tax position following amendments to be made to ITEPA 2003 in the Finance Act 2016. In particular, regulation 5(3) amends paragraph 3 of Part 8 of Schedule 3 to the Contributions Regulations by inserting a definition of the words “ordinary commuting” and “private travel” to reflect the definition given to those words in section 338 of ITEPA 2003. Regulation 5(4) inserts new paragraphs 3ZA and 3ZB to reflect the amendments to be made to sections 339 and 339A of ITEPA 2003.

In particular, sub-paragraph (1) of new paragraph 3ZB sets out that the paragraph will apply to workers who are personally providing services through an intermediary.

Sub-paragraph (2) of new paragraph 3ZB provides that where the paragraph applies each engagement a worker undertakes will be considered a separate employment for the purposes of the travelling expenses rules in paragraphs 3 and 3ZA of Part 8 of Schedule 3 to the Contributions Regulations.

Sub-paragraphs (3) and (5) of new paragraph 3ZB provide for circumstances where the paragraph will not apply.

Sub-paragraph (7) of new paragraph 3ZB provides that in determining whether the paragraph applies where the parties have entered into arrangements in order to ensure that the paragraph does not apply, those arrangements are to be disregarded for the purposes of the paragraph.

Sub-paragraph (8) of new paragraph 3ZB provides for definitions of “arrangements”, “employment intermediary”, “engagement”, “excluded services” and “managed service company”.

Parts 2 and 3 contain consequential amendments to the Contributions Regulations following the abolition of contracted-out employment as provided for in the Pensions Schemes Act 1993 (c. 48) (“the Pensions Schemes Act”). The Contributions Regulations make provision for persons in employment that has been contracted-out of the state second pension and their employers to pay Class 1 National Insurance contributions at a reduced rate, as provided for in the Pension Schemes Act. The Pensions Act 2014 (c. 9) abolished contracted-out employment with effect from 6th April 2016. Part 2 of these Regulations makes consequential amendments to the Contributions Regulations to reflect that abolition, subject to a savings provision contained in Part 3 in relation to rights and obligations arising in connection with tax years prior to 6th April 2016.

A Tax Information and Impact Note covering regulation 3 and 5(8) was published on 10th December 2014 alongside the draft Finance Bill 2015 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

A Tax Information and Impact Note covering the changes made by FA 2015 to the taxation of employees’ business expenses was published on the HMRC website at

<https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins> on 10th December 2014. It remains an accurate summary of the impacts that apply to this instrument.

A Tax Information and Impact Note has not been prepared for regulation 7 as this provision contains no substantive changes to tax policy.

A Tax Information and Impact Note covering the changes made by paragraphs (3)(b) to (d) and (4) of regulation 5 (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/publication/income-tax-employment-intermediaries-and-relief-for-travel-and-subsistence/income-tax-employment-intermediaries-and-relief-for-travel-and-subsistence#detailed-proposal>. It remains an accurate summary of the impacts that apply to this instrument.

A Tax Information and Impact Note covering the amendments made by Part 2 and 3 of this instrument was published on 11th January 2016 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.