

2011 No. 1000

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 4)
Regulations 2011**

<i>Made</i> - - - -	<i>30th March 2011</i>
<i>Laid before Parliament</i>	<i>31st March 2011</i>
<i>Coming into force</i> - -	<i>6th April 2011</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 3(2) and (3) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and sections 3(2) and (3) and 171(3), (4) and (10) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b) and now exercisable by them.

The Secretary of State and the Department for Social Development(c) concur in the making of these Regulations.

Citation, commencement and effect

- 1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 4) Regulations 2011 and come into force on 6th April 2011.
- (2) Regulation 4 shall have effect for employees who joined a scheme before 6th April 2011.
- (3) Regulation 5 shall have effect for employees who join a scheme on or after 6th April 2011.

Amendment of the Social Security (Contributions) Regulations 2001

2. Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001 (certain non-cash vouchers to be disregarded as payments in kind)(d) is amended as follows.
3. After paragraph 6A insert—

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- (a) 1992 c. 4 (“the 1992 Act”). Section 3 has been amended: the relevant amendment is that made by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2: “the Transfer Act”). Section 175(4) was amended by paragraph 29 of Schedule 3 to the Transfer Act. Section 122 of the 1992 Act (as amended by paragraphs 169 and 178 of Schedule 6 to ITEPA 2003) defines “ITEPA 2003” as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1).
 - (b) 1992 c. 7 (“the Northern Ireland Act”). 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 Transfer Order”). Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to the Transfer Order. Section 121 of the Northern Ireland Act (as amended by paragraphs 190 and 199 of Schedule 6 to ITEPA 2003) defines “ITEPA 2003” as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1).
 - (c) The functions of the Department of Health and Social Services for Northern Ireland under the Northern Ireland Act 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. 1999 No. 481).
 - (d) S.I. 2001/1004; relevant amending instruments are S.I. 2005/778 and 2006/883.

“Interpretation – qualifying childcare vouchers

6B. In paragraphs 7 and 7A—

- (a) “care”, “child” and “parental responsibility” have the same meaning as in section 318B of ITEPA 2003(a);
- (b) “chargeable expense” has the meaning given in paragraph 14 of Schedule 2;
- (c) “qualifying child care” has the same meaning as in section 318C of ITEPA 2003;
- (d) “qualifying week” means a tax week in respect of which a qualifying childcare voucher is received;
- (e) “relevant salary sacrifice arrangements” means arrangements (whenever made) under which the employees for whom the vouchers are provided give up the right to receive an amount of general earnings or specific employment income in return for the provision of the vouchers;
- (f) “relevant flexible remuneration arrangements” means arrangements (whenever made) under which the employees for whom the vouchers are provided agree with the employer that they are to be provided with the vouchers rather than receive some other description of employment income;
- (g) “relevant low-paid employees” means any of the employer’s employees who are remunerated by the employer at a rate such that, if the relevant salary sacrifice arrangements or relevant flexible remuneration arrangements applied to them, the rate at which they would then be so remunerated would be likely to be lower than the national minimum wage;
- (h) “scheme” means the manner by which an employer provides qualifying childcare vouchers and an employee is taken to join a scheme or have joined a scheme when the employer has agreed that vouchers will be provided to the employee under the scheme and there is a child falling within Condition A of paragraph 7(7); and
- (i) the administration costs for a voucher means the difference between the cost of provision of a voucher and its face value and the face value is the amount stated on or recorded in the voucher as the value of the provision of care for a child that may be obtained by using it.”.

Qualifying childcare vouchers for employees who joined a scheme before 6th April 2011

4. In paragraph 7 (qualifying childcare vouchers)—

- (a) for sub-paragraph (1) and the heading to the paragraph substitute—

“Qualifying childcare vouchers for employees who joined a scheme before 6th April 2011

7.—(1) A qualifying childcare voucher, where an employee joined a scheme before 6th April 2011, subject to the qualifications in sub-paragraphs (1A), (2) and (5).”;

- (b) after sub-paragraph (1) insert—

“(1A) The employee has not ceased to be employed by the employer nor has there been a continuous period of 52 weeks throughout which vouchers were not being provided for the employee under the scheme.”;

- (c) for sub-paragraph (6) substitute—

“(6) In this paragraph “qualifying childcare voucher” means a non-cash voucher in relation to which Conditions A to C are met.”; and

- (d) after sub-paragraph (6) add—

(a) Sections 318B and 318C of ITEPA 2003 were inserted by paragraph 1 of Schedule 13 to the Finance Act 2004 (c. 12).

“(7) Condition A is that the voucher is provided to enable an employee to obtain care for a child who—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense; or
- (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

(8) Condition B is that the voucher can only be used to obtain qualifying child care.

(9) Condition C is that the vouchers are provided under a scheme that is open—

- (a) to the employer’s employees generally; or
- (b) generally to those at a particular location, subject to sub-paragraph (10).

(10) Where the scheme under which the vouchers are provided involves—

- (a) relevant salary sacrifice arrangements; or
- (b) relevant flexible remuneration arrangements,

Condition C is not prevented from being met by reason only that the scheme is not open to relevant low-paid employees.”.

Qualifying childcare vouchers for employees who join a scheme on or after 6th April 2011

5. After paragraph 7 insert—

“Qualifying childcare vouchers for employees who join a scheme on or after 6th April 2011

7A.—(1) A qualifying childcare voucher, where an employee joins a scheme on or after 6th April 2011, subject to the qualifications in sub-paragraphs (3) and (6).

(2) In this paragraph a “qualifying childcare voucher” means a non-cash voucher in relation to which conditions A to D (see sub-paragraphs (7) to (11)) are met.

(3) Where the chargeable expense of the voucher exceeds the exempt amount, only that amount shall be disregarded by virtue of sub-paragraph (1).

(4) The exempt amount is the amount found by the formula—

$$E \times QW$$

Here—

E is, in the case of an employee the sum of—

- (a) £22, if the relevant earnings amount for the tax year, as estimated in accordance with Condition D, exceeds the higher rate limit for the tax year;
- (b) £28, if the relevant earnings amount for the tax year, as estimated in accordance with Condition D, exceeds the basic rate limit but does not exceed the higher rate limit for the tax year; or
- (c) £55, in any other case; and
- (d) the administration costs for the qualifying childcare voucher;

QW is the number of qualifying weeks—

- (a) for which the earner has been employed by the secondary contributor during the tax year in which the qualifying childcare voucher is provided; and
- (b) for which no other qualifying childcare voucher has been provided by the secondary contributor.

(5) Where an earner has two or more employed earner’s employments, the earnings from which fall to be aggregated in accordance with regulation 14 or 15, the reference to the

secondary contributor in paragraph (b) of the definition of QW is a reference to the secondary contributor in respect of any of those employments.

(6) An earner is only entitled to one exempt amount even if childcare vouchers are provided in respect of more than one child.

(7) Condition A is that the voucher is provided to enable an employee to obtain care for a child who—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee's expense; or
- (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

(8) Condition B is that the voucher can only be used to obtain qualifying child care.

(9) Condition C is that the vouchers are provided under a scheme that is open—

- (a) to the employer's employees generally; or
- (b) generally to those at a particular location, subject to sub-paragraph (10).

(10) Where the scheme under which the vouchers are provided involves—

- (a) relevant salary sacrifice arrangements; or
- (b) relevant flexible remuneration arrangements,

Condition C is not prevented from being met by reason only that the scheme is not open to relevant low-paid employees.

(11) Condition D is that the employer has, at the required time, made an estimate of the employee's relevant earnings amount for the tax year in respect of which the voucher is provided.

(12) In sub-paragraph (11) "the required time", in the case of an employee, means—

- (a) if the employee joins the scheme under which the vouchers are provided at a time during the tax year, that time, and
- (b) otherwise, the beginning of the tax year.

(13) In sub-paragraph (11) the "relevant earnings amount", in the case of an employee provided with vouchers by an employer for any qualifying week in a tax year, and subject to sub-paragraph (14), means—

- (a) the aggregate of—
 - (i) the amount of any relevant earnings (see sub-paragraph (15)) for the tax year from employment by the employer; and
 - (ii) any amounts to be treated under Chapters 2 to 12 of Part 3 of ITEPA 2003(a) as earnings from such employment; less
- (b) the aggregate of any excluded amounts (see sub-paragraph (16)).

(14) But if the employee becomes employed by the employer during the tax year, what would otherwise be the amount of the aggregate mentioned in sub-paragraph (13)(a) is the relevant multiple of that amount; and the relevant multiple is—

$$\frac{365}{RD}$$

where—

RD is the number of days in the period beginning with the day on which the employee becomes employed by the employer and ending with the tax year.

(a) 2003 c. 1.

- (15) In sub-paragraph (13)(a) “relevant earnings” means—
- (a) salary, wages or fees, and
 - (b) any other earnings to which the employee is contractually entitled (without the exercise of discretion by any person).
- (16) For the purposes of sub-paragraph (13)(b) the following are “excluded amounts”—
- (a) contributions under a registered pension scheme allowed under section 193(2) of Finance Act 2004(a) (relief under net pay arrangements) to be deducted by the employer from the employee’s employment income for the tax year;
 - (b) donations for which a deduction is made under section 713 of ITEPA 2003 (payroll giving) in calculating the employee’s net taxable earnings from employment by the employer for the tax year;
 - (c) expenses within Chapter 3 of Part 3 of ITEPA 2003 (expenses payments) which the employer is authorised to exclude from the employee’s taxable earnings for the tax year in accordance with PAYE Regulations;
 - (d) payments in respect of removal expenses to which section 271 of ITEPA 2003(b) applies (as defined in section 272) and which are taxable earnings of the employee from employment by the employer for the tax year;
 - (e) the amount of any allowance under Part 3 of the Income Tax Act 2007(c) to which the employee is shown to be entitled to in the code determined in accordance with PAYE Regulations for use by the employer in respect of the employee for the tax year.”.

*Michael Fabricant
Angela Watkinson*

30th March 2011

Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State concurs.

Steve Webb
Signed by authority of the Secretary of State for Work and Pensions
Minister of State

29th March 2011

Department for Work and Pensions

The Department for Social Development concurs.

Sealed with the Official Seal of the Department for Social Development on 24th March 2011



Anne McCleary
Senior Officer of the Department for Social Development

(a) 2004 c. 12.
(b) 2003 c. 1; section 271 was amended by paragraph 25 of Schedule 7 to the Finance Act 2008 (c. 9).
(c) 2007 c. 3.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (“the principal Regulations”). They come into force on 6th April 2011.

Schedule 3 to the 2001 Regulations allows certain payments to be disregarded in the calculation of earnings for the purpose of establishing liability for earnings-related national insurance contributions and Part 5 in particular provides for certain non-cash vouchers to be disregarded as payments in kind.

Regulation 1 provides for citation, commencement and effect. Regulation 4 has effect from 6th April 2011 for employees who joined a scheme before 6th April 2011 and Regulation 5 has effect from 6th April 2011 for employees who join a scheme on or after 6th April 2011.

Regulation 3 introduces definitions of terms relating to qualifying childcare vouchers which are used in regulations 4 and 5.

Regulation 4 amends paragraph 7 which provides a limited disregard for qualifying childcare vouchers where certain conditions are met. Previously the definition of “qualifying childcare voucher” referred to the definition in the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) which contained Conditions A to C. This regulation inserts Conditions A to C into the principal Regulations, which need to be satisfied for the disregard to be obtained. Condition C requires that childcare vouchers are provided under a scheme which is open to an employer’s employees generally or generally to those at a particular location. Regulation 4 introduces a qualification to Condition C so that where the scheme under which the childcare vouchers are provided involves relevant salary sacrifice arrangements or relevant flexible remuneration arrangements Condition C can still be met and the disregard obtained, even if the scheme is not open to relevant low-paid employees. Definitions of “relevant salary sacrifice arrangements”, “relevant flexible remuneration arrangements” and “relevant low-paid employees” are introduced by Regulation 3. The changes reflect proposed amendments to the tax exemption for qualifying childcare vouchers.

Regulation 5 inserts a new paragraph 7A into Part 5 of Schedule 3 which amends the conditions for the limited disregard for employees obtaining childcare vouchers when they join a scheme on or after 6th April 2011. A similar qualification to Condition C as described above is introduced. Also a new condition, Condition D is introduced. Condition D provides that where employees join a scheme on or after 6th April 2011 the amount of the disregard will be determined on the basis of an estimate of an employee’s relevant earnings. For additional rate taxpayers the maximum weekly amount to be disregarded will be £22, for higher rate taxpayers the disregard will be no more than £28 a week and for basic rate taxpayers the amount will be no more than £55 a week. The amended conditions reflect the proposed treatment for income tax purposes.

Two Tax Information and Impact Notes relating to this instrument were published in December 2010 alongside draft Finance Bill 2011 provisions and are available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. They remain an accurate summary of the impacts that apply to this instrument.

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STATUTORY INSTRUMENTS

2011 No. 1000

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The Social Security (Contributions) (Amendment No. 4)
Regulations 2011

£5.75