
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (“the Principal Regulations”).

Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) was inserted by Schedule 2 to the Finance Act 2011. Subject to a number of conditions, it provides for an income tax charge where rewards, recognition or loans in respect of an employee’s employment are provided through a third party. For that purpose the value of relevant steps taken by persons other than an employee’s employer, and in some limited cases by the employer themselves, count as employment income. “Relevant step” is defined in section 554A(2) of ITEPA 2003.

Regulations 22 and 22A of the Principal Regulations specify amounts that are to be treated as earnings for the purposes of National Insurance contributions because they would not otherwise be earnings. Regulation 3 of these Regulations adds regulation 22B for the same purpose, covering amounts which count as employment income of an employee by virtue of Part 7A of ITEPA 2003 subject to the exception in paragraph (3).

New regulation 22B of the Principal Regulations is subject to regulation 1(2) of these Regulations. This provides that regulation 22B does not apply in relation to amounts which count as employment income under Chapter 2 of Part 7A of ITEPA 2003 only because of the special commencement provisions for that Part in paragraphs 53 and 54 of Schedule 2 to the Finance Act 2011.

Schedule 3 to the Principal Regulations allows certain payments to be disregarded in the calculation of earnings for the purpose of establishing liability for earnings-related national insurance contributions.

Part 5 of the Schedule provides for certain non-cash vouchers to be disregarded as payments in kind.

The Social Security (Contributions) (Amendment No. 4) Regulations 2011 amended the Principal Regulations by introducing a reduction in the disregard for qualifying childcare vouchers for higher earners. In particular it introduced a new condition (Condition D) which provided that where employees joined a scheme on or after 6th April 2011 the amount of the disregard would be determined on the basis of an estimate of an employee’s relevant earnings.

Regulations 4 and 5(a) amend paragraphs 7 and 7A respectively of Schedule 3 so as to make clear which provisions apply in circumstances where an employee stops working for an employer but is subsequently re-employed by the employer or where there has been a break in receipt of vouchers by the employee for a continuous period of 52 weeks.

Regulation 5(b) substitutes a new definition of “relevant earnings” (in addition to salary, wages or fees) and regulation 5(c) amends the meaning of “excluded amounts”. These amendments reflect recent changes to the related tax exemption for employer supported childcare. Relevant earnings are earnings which are taken into account by an employer when estimating an employee’s income for the purposes of obtaining the relevant disregard and excluded amounts are amounts which are not taken into account.

Regulation 6 of these Regulations amends Part 6 of Schedule 3 to the Principal Regulations in consequence of amendments made to the Finance Act 2004.

Regulation 7 of these Regulations inserts a new paragraph 2A into Part 10 of Schedule 3 to the Principal Regulations. This provides that payments which represent or arise or derive from amounts which have already been treated as earnings under new regulation 22B are to be disregarded in

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the calculation of an employee's earnings for the purposes of section 3 of the Social Security Contributions and Benefits Act 1992. The value of this disregard is capped by paragraphs (2) and (3) at the amount treated as earnings under new regulation 22B.

A Tax Information and Impact Note covering regulations 1(2), 3 and 7 of this instrument was published on 23rd March 2011 alongside the Budget and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

Two Tax Information and Impact Notes relating to regulation 4 and 5 of this instrument were published in December 2010 alongside draft Finance Bill 2011 provisions with a further update in March 2011 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.

A Tax Information and Impact Note has not been prepared for regulation 6 of this Instrument as it contains no substantive changes to tax policy.