

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CATEGORISATION OF EARNERS) (AMENDMENT)
REGULATIONS 2012

2012 No. 816

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument disapplies the Social Security (Categorisation of Earners) 1978 (SI 1978/1689) and the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978 (SR 1978 No. 401) to lecturers, teachers, instructors or those in a similar capacity employed at an educational establishment.

3. Matters of special interest to the Select Committee on Statutory Instruments

None.

4. Legislative Context

4.1 This instrument amends the Social Security (Categorisation of Earners) 1978 (SI 1978/1689) and the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978 (SR 1978 No. 401) to the effect that from 6 April 2012 they will not apply to lecturers, teachers, instructors or those in a similar capacity employed at an educational establishment.

4.2 The amendments are made to:
Regulation 1(2) and the definition of an educational establishment
For SI 1978/1689; Schedule 1, Part 1, paragraph 4 and Schedule 3, paragraph 6.
For SR 1978 No. 401; Schedule 1, Part 1, paragraph 4 and Schedule 3, paragraph 5.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

• *What is being done and why*

7.1 This instrument revokes parts of the Social Security (Categorisation of Earners) 1978 (SI 1978/1689) and the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978 (SR 1978 No. 401) (“the Regulations”) relating to lecturers, teachers, instructors or those in a similar capacity employed at an educational establishment.

The Regulations in relation to lecturers etc. deem self-employed earners as employed earners for the purpose of National Insurance contributions (NICs) notwithstanding that the employment is not under a contract of service (employment). Where the Regulations are applicable the individual concerned will pay Class 1 NICs. Their income tax is paid under Self-Assessment (SA), together with their Class 4 NICs liability under SA. The person providing the education is responsible for employers' secondary Class 1 NICs.

The original purpose of the Regulations was concerned primarily with providing earnings-related contributory benefit entitlement protection for self-employed teachers engaged on an ad hoc basis.

Due to changes in the labour market since the 1970s and the diverse engagement practices existing today, the majority of teachers etc. working on an ad-hoc basis are working under what are in essence employment terms and Class 1 National Insurance will be payable irrespective of the Regulations.

Given that the Regulations are no longer meeting their original policy intention, allied to which there are practical difficulties and burdens concerned with administering the application of the Regulations, HMRC concluded that revoke is the most appropriate option and consulted on revoking the Regulations.

- ***Consolidation***

7.2 Not applicable

8. Consultation outcome

HMRC consulted on revoke from 7 October 2011 to 6 January 2012. 90%, of the responses, including all the individuals delivering academic education, supported revoke.

The summary of responses document to the consultation is available via the HMRC website: <http://www.hmrc.gov.uk/consultations/>

9. Guidance

As the relevant parts of the Regulations will be revoked it will not be necessary to have guidance moving forward. A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

10. Impact

10.1 The impact on business is positive, as the Regulations will no longer need to be considered when placing and engaging teachers, lecturers etc. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector in terms of the education sector will similarly be positive as the Regulations will no longer need to be considered.

10.3 No Impact Assessment has been prepared for this order.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

Not applicable. The instrument revokes parts of the Regulations.

13. Contact

Philip Hogan at HM Revenue and Customs (telephone number: 020 7147 2480)
email: Philip.Hogan@hmrc.gsi.gov.uk can answer any queries regarding the instrument.