

2020 No. 300

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 2)
Regulations 2020**

<i>Made</i>	- - - -	<i>13th March 2020</i>
<i>Laid before Parliament</i>		<i>16th March 2020</i>
<i>Coming into force</i>	- -	<i>6th April 2020</i>

These Regulations are made by the Commissioners for Her Majesty's Revenue and Customs in exercise of the powers conferred by section 175(3) and (4) of, and paragraph 6(1) and (2) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(a) and section 171(3) and (4) of, and paragraph 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, commencement and effect

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 2) Regulations 2020 and come into force on 6th April 2020.

(2) Regulation 40D of the Social Security (Contributions) Regulations 2001(d) (as inserted by regulation 7) has effect in relation to sporting testimonials (within the meaning inserted by regulation 3(c)) which are announced on or after 6th April 2020.

Amendments to the Social Security (Contributions) Regulations 2001

2. The Social Security (Contributions) Regulations 2001 are amended as follows.

3. In regulation 1(2)(e) (citation, commencement and interpretation)—

(a) after the definition of “contributory benefit”, insert—

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- (a) 1992 c. 4. Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). Paragraph 6(1) of Schedule 1 was amended by paragraph 77(8) of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 35(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 and paragraph 185(a) and (b) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1). Paragraph 6(2) was amended by paragraph 77(9) of Schedule 7 to the Social Security Act 1998.
- (b) 1992 c. 7. Paragraph 6(1) of Schedule 1 was amended by paragraph 58(8) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), paragraph 34(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and paragraph 204(a) and (b) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003. Paragraph 6(2) was amended by paragraph 58(9) of Schedule 6 to S.I. 1998/1506 (N.I. 10).
- (c) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that insofar as it is appropriate in consequence of section 5, 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) S.I. 2004/770 inserted the definition of “tax month” into regulation 1(2). There are other amendments to regulation 1(2) but none is relevant.

““controller” means the person who controls the disbursement of any money raised by an independent sporting testimonial committee to or for the benefit of an individual who is or has been employed as a professional sports person;”,

(b) after the definition of “an income-based jobseeker’s allowance”, insert—

““independent sporting testimonial committee” means a committee which acts independently of the secondary contributor in organising a sporting testimonial and making the sporting testimonial payment;”,

(c) after the definition of “serving member of the forces”, insert—

““sporting testimonial” and “sporting testimonial payment” have the meanings given by section 226E of ITEPA 2003(a);”, and

(d) after the definition of “tax month”, insert—

““termination award” means a payment or benefit received by an earner(b), or an earner’s spouse, civil partner, blood relative or dependent, in connection with the termination of the earner’s employment;”,

4. Regulation 40B(c) (exception from liability to pay Class 1A contributions in respect of sporting testimonial payments) is revoked but will continue to have effect in relation to sporting testimonials (within the meaning inserted by regulation 3(c)) which were announced before 6th April 2020.

5. In regulation 71(1)(d) (due date for payment of a Class 1A contribution), before “72(2)”, insert “40C(2), 40D(2),”.

6. In regulation 80(e) (return by employer), after paragraph (4), insert—

“(5) This regulation is subject to regulations 40C(2) and 40D(2).”.

7. At the end of Part 3, insert—

“Special provisions for reporting, payment and collection of Class 1A contributions relating to termination awards

40C.—(1) This regulation applies to a person (“LP”) who is liable to pay Class 1A contributions in respect of a termination award in accordance with section 10(1A) and (3A) of the Act(f).

(2) LP must—

(a) on or before making the termination award, deliver to HMRC(g) the information specified in Schedule 4A(h) (real time returns), and

(b) pay the Class 1A contributions to HMRC within the applicable time limit specified in either paragraph 10(i) (monthly payment of contributions by employer) of Schedule 4 (provisions derived from income tax acts and pay as you earn regulations) or paragraph 11(j) (quarterly payments of contributions by employer) of that Schedule.

(a) Section 122(1) of the Social Security Contributions and Benefits Act 1992 (“the Act”) defines “ITEPA 2003” as the Income Tax Earnings and Pensions Act 2003; section 226E was inserted by paragraph 1 of Schedule 2 to the Finance Act 2016 (c. 24).

(b) Section 122(1) of the Act requires “earner” to be construed in accordance with sections 3, 4 and 112 of the Act.

(c) Regulation 40B was inserted by S.I. 2017/307 and amended by S.I. 2018/120.

(d) Regulation 71(1) was amended by S.I. 2004/770.

(e) Regulation 80 was amended by S.I. 2004/770 and 2012/821.

(f) Regulation 1(2) of S.I. 2001/1004 defines “the Act” as the Social Security Contributions and Benefits Act 1992. Section 10(1A) and (3A) were inserted by section 1(2) and (4) of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019 (c. 23) with effect from 6th April 2020 (S.I. 2020/285).

(g) Regulation 1(2) of S.I. 2001/1004 defines “HMRC” as Her Majesty’s Revenue and Customs.

(h) Schedule 4A was inserted by S.I. 2012/821.

(i) Paragraph 10 was amended by S.I. 2004/770 and 2007/1056; there are other amending instruments but none is relevant.

(j) Paragraph 11 was amended by S.I. 2004/770 and 2007/1056; there are other amending instruments but none is relevant.

(3) Paragraphs 11ZA(a) (payments and recoveries for each tax period by Real Time Information employers: returns), 15(b) (specified amount of earnings-related contributions payable by the employer), 21E(c) (returns under paragraphs 21A and 21D: amendments), 21EA(d) (failure to make a return under paragraph 21A and 21D), 21G(e) (penalty: failure to comply with paragraph 21A or 21D) and 26(f) (retention by employer of contribution and election records) of Schedule 4 apply to LP with the following modifications—

- (a) references to “earnings” are to be read as references to termination awards,
- (b) references to “the employer” are to be read as references to LP, and
- (c) references to “earnings related contributions” are to be read as references to any Class 1A contributions that LP is liable to pay in respect of the termination award.

(4) Paragraphs (2) and (3) do not apply where paragraph (6) applies.

(5) Paragraph (6) applies where—

- (a) a termination award consists of the provision of a benefit which is an asset provided to a person (“P”) by or on behalf of P’s former employer, and
- (b) the asset is made available to P without any transfer of ownership of that asset.

(6) Where this paragraph applies—

- (a) LP must report and pay to HMRC any Class 1A contributions due in respect of the benefit referred to in paragraph (5) for a tax year in accordance with regulations 70(g) (payment of Class 1A contributions) and 71(h) (due date for payment of a Class 1A contribution), and
- (b) regulation 55(i) (repayment of Class 1A contributions) and regulations 74 (employer failing to pay a Class 1A contribution) to 83A(j) (requirement to give security or further security for amounts of Class 1A contributions) apply with regard to the reporting, repayment and payment of interest on such payments.

(7) Where a termination award consists of a cash benefit and one or more other benefits, the Class 1A liability is calculated by applying the threshold provided for in section 403(1) and (4)(k) of ITEPA 2003 against those benefits in the following order—

- (a) the cash benefit,
- (b) any benefit which consists of an asset where ownership has been transferred to P,
- (c) any other benefit which consists of an asset that has been made available to P without any transfer of ownership.

(8) Regulations 72 (Class 1A contribution due on succession to business) and 73(l) (Class 1A contribution due on cessation of business) apply to LP as if LP was the employer referred to in paragraph (1)(a) of each of those regulations.

(a) Paragraph 11ZA was inserted by S.I. 2012/821 and amended by S.I. 2013/622 and 2014/1016.
(b) Paragraph 15 was amended by S.I. 2004/770, 2008/636, 2009/600 and 2012/821.
(c) Paragraph 21E was inserted by S.I. 2012/821 and amended by S.I. 2013/622, 2014/608 and 2015/478.
(d) Paragraph 21EA was inserted by S.I. 2013/622 and amended by S.I. 2013/2301, 2014/2397 and 2015/478.
(e) Paragraph 21G was inserted by S.I. 2014/2397 and amended by S.I. 2015/478 and 2016/352.
(f) Paragraph 26 was substituted by S.I. 2009/600 and amended by S.I. 2013/622 and section 7(3) of the National Insurance Contributions Act 2014 (c. 7).
(g) Regulation 70 was amended by S.I. 2002/2929.
(h) Regulation 71 was amended by S.I. 2004/770.
(i) Regulation 55 was amended by S.I. 2002/2366 and 2004/770.
(j) Relevant amending instruments are S.I. 2009/600 (amended regulation 75), 2004/770 (amended regulation 76), 2010/721 (amended regulation 81) and S.I. 2012/821 (inserted regulation 83A).
(k) Section 403(3) and (4) was amended by section 5(4)(b) and (c) of the Finance (No. 2) Act 2017 (c. 32).
(l) Regulations 72 and 73 were amended by S.I. 2004/770 and 2015/478.

Special provisions for reporting, payment and collection of Class 1A contributions relating to sporting testimonials

40D.—(1) This regulation applies to a controller of a sporting testimonial (“C”) who is liable to pay Class 1A contributions in respect of a sporting testimonial payment in accordance with section 10ZBA(a) of the Act.

(2) C must—

- (a) on or before making a sporting testimonial payment, deliver to HMRC the information specified in Schedule 4A (real time returns), and
- (b) pay the Class 1A contributions to HMRC within the time limit specified in paragraph 10 (monthly payment of contributions by employer) of Schedule 4 (provisions derived from income tax acts and pay as you earn regulations).

(3) Paragraphs 11ZA (payments and recoveries for each tax period by Real Time Information employers: returns), 15 (specified amount of earnings-related contributions payable by the employer), 21E (returns under paragraphs 21A and 21D: amendments), 21EA (returns under paragraphs 21A and 21D), 21G (penalty: failure to comply with paragraph 21A or 21D) and 26 (retention by employer of contribution and election records) of Schedule 4 apply to C with the following modifications—

- (a) references to “earnings” are to be read as references to sporting testimonial payments,
- (b) references to “the employer” are to be read as references to C, and
- (c) references to “earnings related contributions” are to be read as references to any Class 1A contributions that C is liable to pay in respect of sporting testimonial payments.

(4) Paragraphs (2) and (3) do not apply where paragraph (6) applies.

(5) Paragraph (6) applies where—

- (a) a sporting testimonial payment is made in a tax year other than the tax year in which the sporting testimonial took place,
- (b) in the tax year in which the sporting testimonial payment is made, C is no longer making payments and deductions under the PAYE Regulations(b), or
- (c) a sporting testimonial payment consists of a benefit which is the provision of an asset by or on behalf of C, without transfer of ownership of that asset.

(6) Where this paragraph applies C must report and pay to HMRC any Class 1A contributions due in respect of the sporting testimonial payment referred to in paragraph (5) in accordance with regulations 70 (payment of Class 1A contributions), 71 (due date for payment of a Class 1A contribution) and 74 (employer failing to pay a Class 1A contribution) to 83A (requirement to give security or further security for amounts of Class 1A contributions).

(7) Regulations 55 (repayment of Class 1A contributions) and 77 (payment of interest on a repaid Class 1A contribution) apply to any repayments of Class 1A contributions under this regulation unless the overpayment has been recovered by C under paragraph 11ZA(3) of Schedule 4.

(8) Where a sporting testimonial payment consists of a cash benefit and one or more other benefits, the Class 1A liability is calculated by applying the threshold provided for in section 306B(5) and (6)(c) of ITEPA 2003 against those benefits in the following order—

- (a) the cash benefit,

(a) Section 10ZBA was inserted by section 3(4) of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019 with effect from 6th April 2020 (S.I. 2020/285).

(b) Regulation 1(2) of S.I. 2001/1004 defines “the PAYE Regulations” as the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682); that definition was inserted by S.I. 2004/770.

(c) Section 306B was inserted by paragraph 2 of Schedule 2 to the Finance Act 2016.

- (b) any benefit which consists of an asset where ownership has been transferred by or on behalf of C,
- (c) any other benefit which consists of an asset that has been made available for use without any transfer of ownership by or on behalf of C.”.

8. In Schedule 4A, after paragraph 12D(a), insert—

“12E. The amount of Class 1A contributions payable in respect of any sporting testimonial payments.

12F. The amount of Class 1A contributions payable in respect of any termination awards.”.

*Angela MacDonald
Justin Holliday*

13th March 2020

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (“the 2001 Regulations”) in order to implement the provisions of the National Insurance Contributions (Termination and Sporting Testimonials) Act 2019 (c.23). This Act made amendments to the Social Security Contributions and Benefits Act 1992 (c. 4) and the Social Security Contributions and Benefits (Northern Ireland) Act (c. 7) so as to provide that from 6th April 2020 onwards Class 1A contributions are chargeable on:

- termination awards that exceed the £30,000 which count as employment income under section 403 of the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA 2003”) and
- sporting testimonial payments which are treated as taxable earnings under section 226E and section 306B of ITEPA 2003.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 introduces the amendments to the 2001 Regulations.

Regulation 3 inserts new definitions into the 2001 Regulations relating to sporting testimonial payments.

Regulation 4 revokes regulation 40B with savings as it is now replaced by sections 10ZBA of the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Regulations 5 and 6 make amendments to regulations 71 and 80 in consequence of regulation 7.

Regulation 7 inserts new regulations 40C and 40D. These new regulations make special provisions for reporting, paying and collecting Class 1A contributions due on termination awards and sporting testimonial payments.

Regulation 8 inserts two new paragraphs into Schedule 4A which deals with the information that must be provided to HMRC under the Real Time Information (RTI) reporting system regarding termination awards and sporting testimonials. These items must be reported to HMRC under the RTI system with the exception of termination awards and sporting testimonials paid in the circumstances described in regulations 40C(5) and 40D(5).

Tax Impact and Information Notes were published on these measures when the primary legislation was introduced to Parliament and are available at <https://www.gov.uk/government/publications/income-tax-and-national-insurance-contributions->

(a) Paragraph 12D was inserted by S.I. 2013/622.

treatment-of-termination-payments/income-tax-and-national-insurance-contributions-treatment-of-termination-payments and <https://www.gov.uk/government/publications/income-tax-update-to-treatment-of-income-from-sporting-testimonials/income-tax-update-to-treatment-of-income-from-sporting-testimonials>. They remain an accurate summary of the impacts that apply to this instrument.

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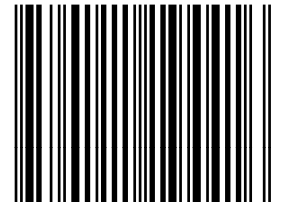
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK202003131032 03/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/300>

ISBN 978-0-11-119441-6



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