

2007 No. 2905

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 9)
Regulations 2007**

<i>Made</i> - - - -	<i>October 2007</i>
<i>Laid before Parliament</i>	<i>9th October 2007</i>
<i>Coming into force</i> - -	<i>30th October 2007</i>

The Treasury make these Regulations in exercise of the powers conferred by sections 3(2) and (3) and 175(4) of the Social Security Contributions and Benefits Act 1992(a) and sections 3(2) and (3), 170 and 171(4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b) and now vested in them.

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 9) Regulations 2007 and shall come into force on 30th October 2007.

(2) In these Regulations—

“the commencement date” means the date on which these Regulations come into force; and

“construction operations” has the meaning given by section 74 of the Finance Act 2004(c).

Amendment of the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004)

2.—(1) The Social Security (Contributions) Regulations 2001(d) shall be amended in accordance with paragraph (2), but subject to the saving in paragraph (3).

(2) In Part 10 of Schedule 3 (miscellaneous sums disregarded in the computation of earnings), paragraph 12 (holiday pay) is revoked.

(a) 1992 c. 4. 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) has been amended by paragraph 29(1) and (4) of Schedule 3 to the Transfer Act.

(b) 1992 c. 7. Section 3 has been amended: the relevant amendment is that made by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671). Section 170 is cited because of the definition of “the Department” (i.e. the Department of Health and Social Services for Northern Ireland). 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) and the Social Security Administration (Northern Ireland) Act 1992 (c. 8) were transferred to the Department for Social Development by Article 8(b) of and Part II of Schedule 6 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481)..There are amendments to section 171 but none is relevant for present purposes.

(c) 2004 c. 12.

(d) S.I. 2001/1004: there are amendments but none is relevant for present purposes.

(3) But paragraph 12 of Part 10 of Schedule 3 shall continue to have effect until the fifth anniversary of the commencement date in the case of holiday pay derived from an employed earner's employment if—

- (a) the secondary contributor in relation to that employment is a person carrying on a business which includes construction operations; and
- (b) the employed earner was personally engaged in such operations at the time that entitlement to that pay accrued.

*A. Commissioner
A. N. Other*

October 2007

Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs.

*A. Minister
Parliamentary Under-Secretary of State,
Department for Work and Pensions.*

October 2007

The Department for Social Development concurs.
The Official Seal of the Department is affixed on the October 2007



A. N. Official
A Senior Officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

Regulation 1 provides for the citation and commencement of the Regulations and defines some terms used in them.

Regulation 2 amends Part 10 of Schedule 3 to the 2001 Regulations by revoking paragraph 12, subject to a saving provision. Paragraph 12 provided for the disregarding of holiday pay, from a fund to which more than one secondary contributor contributed, in the computation of earnings if none of the secondary contributors had management or control of the fund and the person making the payment to the earner was entitled to reimbursement from the fund. The revocation will not apply for five years from the commencement of these Regulations in the case of holiday pay derived from an employed earner's employment where the secondary contributor is a person carrying on construction operations (within the meaning of section 74 of the Finance Act 2004) and the earner was personally engaged in such operations at the time that entitlement to that pay accrued.

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 9)
REGULATIONS 2007
2007 No. 2905**

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.
2. **Description**

This instrument amends the Social Security (Contributions) Regulations 2001 (S.I. 2001 No. 1004). It revokes the disregard for holiday pay in paragraph 12 in Part 10 of Schedule 3 (miscellaneous sums disregarded in the computation of earnings). However, it will continue to have effect until the fifth anniversary of the commencement date of these Regulations in the case of holiday pay derived from an employed earner's employment if the secondary contributor, in relation to that employment, is a person carrying on a business which includes construction operations and the employed earner was personally engaged in such operations at the time that entitlement to that pay accrued. This instrument will come into force on 30 October 2007.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.
4. **Legislative Background**

On 9 October 2007, the Chancellor of the Exchequer announced that the disregard in respect of National Insurance Contributions for holiday pay will be removed immediately for all but the construction sector. The construction sector will be allowed a further five years of the disregard before it is withdrawn completely. The exemption, originally envisaged for use by the construction sector, was introduced in the 1960s to take account of the high mobility and turnover of the labour force in the sector and situations where one employer would have to pay holiday pay which they had not actually funded or had only partially funded. This disregard is now being used by employers outside this sector, with large impacts on Exchequer yield.
5. **Extent**

The amendment like The Social Security Contributions Regulations 2001 (S.I. 2001 No. 1004), applies throughout the United Kingdom.
6. **European Convention on Human Rights**

This instrument is subject to the negative resolution procedure and does not amend primary legislation. Accordingly, no statement of compliance with the European Convention on Human Rights is required.

7. Policy background

- 7.1 Section 3(2) of the Social Security Contributions and Benefit Act 1992 and its Northern Ireland analogue provide that the amount of a person's earnings is to be calculated or estimated in such manner or on such basis as may be prescribed by regulations. Section 3(3) then provides that regulations made for the purposes of section 3(2) may prescribe, that payments of a particular class or description are to be disregarded in the calculation of earnings. Section 170 and 171(4) of the Social Security Contributions and Benefit Act 1992 and its Northern Ireland analogue provide that regulations under (inter alia) section 3 may provide for the making of transitional provisions.
- 7.2 These amendments will make only a small amendment to the Social Security (Contributions) Regulations 2001 which are very large and complex (the printed text ran to around 150 pages in 2001). HM Revenue and Customs has no current plans to consolidate these Regulations. On the last occasion it was a task involving 18 months' work and contributions from four different Government departments.

8. Impact

An impact assessment has been prepared is available on the HMRC website at www.hmrc.gov.uk.

9. Contact

Raj Nayyar
Her Majesty's Revenue and Customs
Room 1E/09
100 Parliament Street
London
SW1A 2BQ
Tel: 0207 147 2521
Fax: 0207 147 2531