

REVISION AND SUPERSESSION – EFFECTS OF CHANGES TO COLLECTION OF CLASS 2 NATIONAL INSURANCE

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INTRODUCTION

1. This memo provides guidance on the changes introduced by The Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) (Northern Ireland) Regulations 2016 (SR 409/2016) (“the Regulations”). The changes come into effect on 1.1.17¹.

¹ Social Security (Credits, and Crediting and Treatment of Contributions) (Consequential and Miscellaneous Amendments) Regulations (NI) 2016, reg 1

BACKGROUND

2. As a consequence of the reform of the method of collection and payment of Class 2 National Insurance contributions¹, the deadline for the payment of Class 2 National Insurance contributions from the 2015/16 tax year onwards is now 31st January of the following calendar year: for example, Class 2 National Insurance contributions due in the 2015/2016 tax year are due to be paid by 31.1.17. This means the deadline for paying these contributions no longer coincides with the start of the benefit year, so it is possible that a claim may be made for a contributory benefit where entitlement relies on as yet unpaid contributions. This is likely to have a particular impact on claims for contribution-based Employment and Support Allowance and contribution-based Jobseeker’s Allowance.

Note: Class 2 National Insurance contributions are only relevant in contribution-based Jobseeker's Allowance claims from share fishermen and volunteer development workers.

1 The National Insurance Contributions Act 2015

Example

A claim to Employment and Support Allowance is made on 21.1.17 in respect of a period of limited capability for work which started on 14.1.17. The claimant started self employment in June 2015. Entitlement to contribution-based Employment and Support Allowance relies on satisfaction of the contribution conditions in the tax years 2014/15 and 2015/2016. At the point of claim the claimant had not filed his self assessment return for 2015/2016 – he has until 31.1.17 to do so. Consequently his Class 2 National Insurance contributions liability has not been established and so no Class 2 National Insurance contributions have been paid. The claim to Employment and Support Allowance is therefore disallowed.

3. In order to address this the Regulations provide for payments of Class 2 National Insurance contributions which are made by 31st January to be treated as having been made at an earlier date, in appropriate cases, to ensure that claimants are not disadvantaged by the changes. In such cases a decision to disallow claims to contribution-based Employment and Support Allowance and contribution-based Jobseeker's Allowance may be revised in the claimant's favour.
4. Similarly, where a decision on Retirement Pension, State Pension or Bereavement Benefit is made on a claim from a self-employed person before the contributions for the relevant benefit year have been paid, and the person pays Class 2 National Insurance contributions for that tax year by the due date, the decision to award the benefit may be revised or superseded if the payment of the contributions means that the benefit should be paid at a higher rate or that the benefit is now payable.
5. The Regulations also provide for cases where benefit has been awarded and the National Insurance contributions upon which an award of benefit was based are repaid or refunded to the contributor. In these cases the decision to award benefit may be revised to reduce the amount of benefit payable or to disallow benefit.

REVISION OF DECISION: CONTRIBUTIONS PAID BY DUE DATE

6. A decision on a claim to contribution-based Jobseeker's Allowance or contribution-based Employment and Support Allowance may be revised¹ at any time where
 1. on or after the date of the decision a contribution that is paid after the due date is treated as paid by the due date for the purpose of entitlement to the benefit by Regulations **and**

2. as a result, the person now satisfies the contribution conditions.

1 SS & CS (D&A) Regs (NI), reg 3(8D); 2 Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (NI) 2001, reg 7A

Example

A claim to Employment and Support Allowance is made on 21.1.18 in respect of a period of limited capability for work starting on 14.1.18. Entitlement relies on satisfaction of the contribution conditions for the tax years 2015/2016 and 2016/2017. The claimant started self employment in April 2016. At the point of claim he has not filed his self assessment for 2016/2017. His Class 2 liability has not yet been established and no Class 2 National Insurance contributions have been paid. His claim to Employment and Support Allowance is disallowed. The Department is subsequently notified that the claimant has paid his Class 2 National Insurance contributions for 2016/2017 on 31.1.18. These National Insurance contributions are treated as having been paid before 14.1.18 and the original decision to disallow Employment and Support Allowance is revised in the claimant's favour.

7. Decisions to award or to decide that
 1. Bereavement Benefit
 2. Category A or Category B Retirement Pension **or**
 3. State Pension

is not payable may be revised¹ at any time where on or after the date of the decision a late paid contribution is treated as paid for the purpose of entitlement to the benefits by Regulations² and as a result the person is now entitled to the benefit.

1 SS & CS (D&A) Regs (NI), reg 3(8I) & reg 3(8J); 2 Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regs (NI) 2001, reg 7(1)

REVISION OF DECISION: CONTRIBUTIONS ARE REFUNDED

8. A decision to award
 1. contribution-based Jobseeker's Allowance
 2. contribution-based Employment and Support Allowance
 3. Bereavement Allowance
 4. Widowed Parents Allowance
 5. Bereavement Payment
 6. Category A or Category B Retirement Pension **or**

7. State Pension

may be revised¹ at any time where contributions are repaid or returned to the contributor² who is in receipt of a contributory benefit, where this means the person no longer satisfies the contribution conditions of entitlement to the benefit.

1 SS & CS (D&A) Regs (NI), reg 3(8E); 2 reg 3(8G)

Example

Contribution-based Employment and Support Allowance is awarded in January 2018 to a claimant who is self-employed. The award was based on Class 2 National Insurance contributions paid in respect of 2015/16 and 2016/17 Relevant Income Tax Years (RITYs). Class 2 National Insurance contributions for 2016/17 were paid on the basis of profits declared on a self assessment return filed on 31 January 2018. In March 2018 Her Majesty's Revenue and Customs adjusts the declared profits for 2016/17 to a figure below which no liability for Class 2 National Insurance contributions actually arose. Her Majesty's Revenue and Customs informs the claimant of this. The claimant pursues and accepts a refund of National Insurance contributions. These National Insurance contributions are removed from the claimant's National Insurance record. As a consequence of this the claimant ceases to satisfy the contribution conditions for contribution-based Employment and Support Allowance. The decision to award contribution-based Employment and Support Allowance is revised so as to disallow the award.

9. A decision to award

1. Bereavement Benefit
2. Category A or Category B Retirement Pension **or**
3. State Pension

may be revised¹ at any time where on or after the date of the decision contributions are returned to the contributor² and, as a result, the original decision was more advantageous to the claimant than it would otherwise have been.

1 SS & CS (D&A) Regs (NI), reg 3(8H); reg 3(8J); 2 reg 3(8G)

SUPERSESION

10. Decisions to award

1. Bereavement Benefit
2. Category A or Category B Retirement Pension **or**
3. State Pension

may be superseded¹ where on or after the date the decision was made a late contribution is treated as paid by Regulations² and as a result the person is now entitled to the benefit at a higher rate.

1 SS & CS (D&A) Regs (NI), reg 6(2)(s); 2 Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regs (NI) 2001, reg 4

11. The effective date¹ of the supersession is the date on which the contributions are treated as paid for the purpose of entitlement to the benefit.

1 SS & CS (D&A) Regs,(NI) reg 7(40); Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regs (NI) 2001, reg 4(7)

Example

A claim to State Pension is made on 21.1.17. The decision to award State Pension is made on 3.2.17. State Pension is awarded on the basis of the contribution record at the date of claim. The record is not complete and the award is less than 100% State Pension. On 27.3.17 the claimant pays the missing contributions to give him a 100% contribution record. The decision of 3.2.17 is superseded effective from 27.3.17, the date on which the late contributions are paid.

ANNOTATIONS

The number of this memo (DMG Memo Vol 3/95, 4/137, 8/82, 10/71 & 12/22) should be noted against the following DMG paragraphs:

03240, 21051, 41022, 63007, 63017, 63091, 74103, 75026.

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