

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENT) REGULATIONS 2015

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

2. Purpose of the instrument

2.1 This instrument makes consequential amendments to various statutory instruments relating to Class 2 National Insurance Contributions (“NICs”) following the coming into force of the National Insurance Contributions Act 2015 (“the 2015 Act”).

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

3.1 None

4. Legislative Context

4.1 The regulations are being made as a consequence of the changes made in Schedule 1 to the 2015 Act that relate to the payment and collection of Class 2 NICs. Consequential amendments are made to:

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

the Income Support (General) Regulations 1987 (S.I.1987/1067)

the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (S.I. 1992/1815)

the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207)

the Social Security Benefit (Computation of Earnings) Regulations 1996 (S.I. 1996/2745)

the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (S.I. 2001/155)

the Housing Benefit Regulations 2006 (S.I. 2006/213)

the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214)

the Employment and Support Allowance Regulations 2008 (S.I. 2008/794)

the Universal Credit Regulations 2013 (S.I. 2013/376)

the Jobseeker’s Allowance Regulations 2013 (S.I. 2013/378), and

the Employment and Support Allowance Regulations 2013 (S.I. 2013/379)

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

7. Policy background

What is being done and why

7.1 The Chancellor announced at Budget 2014 that the mechanism for collecting Class 2 NICs would be changing from 2015 to 2016 onwards. This aim of this change was to enable the self-employed to pay their Class 2 NICs through Self-Assessment (SA) alongside income tax and Class 4 NICs.

7.2 This change followed a recommendation by the Office of Tax Simplification in their 2012 Review of Small Business that the Government review the National Insurance processes for the self-employed. HMRC subsequently consulted on this proposal in 2013 and received strong support for the proposal to bring the collection mechanism of Class 2 NICs into SA.

7.2 The aim of this change is to simplify the collection of Class 2 NICs to make it more simple and straight-forward for the self-employed to pay Class 2 NICs, reducing the administrative burdens on them and the Government. The change will take effect from the 2015 to 2016 tax year onwards.

7.3 The structure of Class 2 will change from the existing liability that arises in respect of each week, or partial week, of self-employment to an annual liability which is triggered by reference to a self-employed earner's Class 4 profits (rather than earnings) and which is then calculated by reference to the number of weeks, or part weeks, of self-employment in the tax year. The 2015 Act also introduces a threshold – the small profits threshold (SPT) - below which no liability exists

7.4 Consequential changes are required to regulations arising from the proposed reforms. These changes will update references in accordance with the 2015 Act and ensure that the mechanisms for payment of Class 2 NICs remain in place for those not paying via SA.

7.5 Part 1 of the instrument provides for changes to be made to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) which deals with the payment and collection of Class 2 NICs.

7.6 Regulation 3 provides a new definition of “due date” in regulation 1(2). Under the 2015 Act, liability for Class 2 NICs is moving from a weekly liability irrespective of earnings to an annual liability linked to trade profits chargeable to income tax in respect of which Class 4 NICs are payable .. As collection of Class 2 NICs will now be through SA we needed to align the due date for Class 2 with the due date in SA for Class 4 NICs and income tax and amend the definition so that the original due date for Class 1 and Class 3 NICs is not disturbed.

7.7 Regulations 4, 5, 6, 7, 9, 12, 13, 16 and 17 make minor technical changes to the regulations.

7.8 Regulation 8 inserts new regulation 87AA. This introduces the new requirements to notify HMRC of commencement of cessation of self-employment for tax years for which Class 2 NICs will now be collected through SA.

7.9 Regulation 10 inserts new regulation 89A due to the consequential changes to regulation 89. Class 2 NICs are currently collected by direct debit in arrears. Now that Class 2 collection is moving into SA, this regulation is required to allow HMRC to collect the payments in respect of the 2014-2015 year up to the end of July 2015.

7.10 Regulation 11 inserts new regulation 90ZA to deal with the exception cases for Maternity Allowance (MA) so that qualifying women (including their spouse or civil partner) can pay Class 2 NICs before their liability is established (on filing their SA return) to ensure the changes to due date of payment do not adversely impact this group.

7.11 Regulations 14 and 15 insert new regulations 148B and 148C. These consequential regulations deal specifically with a special group of self-employed earners who are liable to pay Class 2 NICs by virtue of EU Regulations but do not carry on a trade, profession or vocation, the profits of which (if any) would be chargeable to income tax under Chapter 2 of Part 2 of the Income Tax (Trading and Other Income) Act 2005, and are therefore not liable to pay Class 4 NICs or income tax and not required to file an SA return. These regulations provide for the treatment of overseas profits to be treated as if they were relevant profits under the Act and allows them to pay Class 2 NICs when they establish their liability and entitles them to pay when their profits do not reach the SPT. It also requires those liable to retain such records necessary to calculate relevant profits and to ensure that they are available to HMRC.

8. Consultation outcome

8.1 HMRC consulted on this change in 2013 and received strong support to change the collection mechanism for Class 2 NICs. The Government’s [summary of responses](#) can be viewed on GOV.UK.

9. Guidance

9.1 HMRC and Department for Work and Pensions (DWP) have already started to communicate with the self-employed and small businesses to inform them of this change, what it means for them and the timetable for any action they may need to take. HMRC has also engaged with a number of stakeholder groups and representative organisations to ensure the self-employed and those that act for them are made aware of this change.

9.2 Associated guidance both in paper format and online will be updated including information and guidance on GOV.UK

10. Impact

10.1 This change impacts the self-employed and small businesses who will now be able to pay their Class 2 NICs alongside income tax and Class 4 NICs, through one process.

10.2 There is a small impact on pregnant women who wish to claim Maternity Allowance (MA) and an exception process has been developed by HMRC and DWP so that there is no monetary disadvantage to those wishing to claim MA.

10.3 This change does not impact the amount of Class 2 NICs a self-employed person may have to pay.

10.4 There is a small number of people who do not have to report their income through the self-employed section of the SA process. HMRC will retain a process to allow these groups to continue paying Class 2 NICs under the new arrangements.

10.5 A [Tax Information and Impact Note](#) was published on 17 July 2014 about the impact of the changes to Class 2 NICs arising from these reforms. It remains an accurate assessment of the impact of these changes.

11. Regulating small business

11.1 This change applies to self-employed people. They will have to cancel their direct debit agreements with their bank, if they pay by direct debit currently, and include their Class 2 NICs in their SA return. They will have the option to make regular payments towards their tax and NI under SA using HMRC's Budget Payment Plan facility.

11.2 The self-employed will no longer have to apply for a deferment of their Class 2 National Insurance, on the basis they will pay sufficient Class 1 National Insurance.

11.3 This change sees the abolition of the Small Earnings Exception (SEE) certificate. The SEE threshold is replaced by the SPT and those that have profits below the SPT will not be liable for Class 2 NICs. Therefore, no exception to liability will be necessary – formally the SEE process. Those with no profits or profits below the SPT will continue to

have the option to pay Class 2 NICs on a voluntary basis in order to protect their contributory benefit entitlement.

12. Monitoring and review

12.1 The success criteria will be measured by a reduction in administration for the self-employed who no longer have to apply for a SEE certificate or request deferment of Class 2 NICs.

12.2 HMRC anticipate a reduction in customer contact volumes as a result of this change.

13. Contact

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