

[This S.I. consolidates S.I. 1979/591 and subsequent amending regulations. S.I.s 2001/45, 313 and 596, which came into force on the same day as this S.I. and amended S.I. 1979/591, have not been reproduced in this volume as they were revoked on the same date and the provisions they amended in S.I. 1979/591 are now consolidated in this S.I.]

## 2001 No. 1004

### SOCIAL SECURITY

#### The Social Security (Contributions) Regulations 2001

*Made* - - - - - *15th March 2001*

*Laid before Parliament* *15th March 2001*

*Coming into force in accordance with regulation 1*

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The Treasury, with the concurrence of the Secretary of State for Social Security and the Department for Social Development in so far as required **(a)**, in exercise of the powers set out in column (1) of Part I of Schedule 1 to these Regulations and the Commissioners of Inland Revenue, in exercise of the powers set out in column (1) of Part II of that Schedule 1 (in both cases as amended in particular by the provisions set out in column (2) of that Schedule), and of all other powers enabling them in that behalf, for the purpose only of consolidating the Regulations revoked by this instrument **(b)**, hereby make the following Regulations—

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**(a)** See sections 3(2) and (5), 4(5) and (6), 116, 117, 118, 119 and 120 of the Social Security Contributions and Benefits Act 1992 (c. 4) (“the Act”) as amended respectively by paragraphs 3, 4, 22, 23, 24, 25 and 26 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer Act”). 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).

**(b)** See section 176(2)(b) of the Act.



# PART 1

## GENERAL

### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Contributions) Regulations 2001 and shall come into force on 6th April 2001 immediately after—

- (a) the Social Security (Contributions) (Amendment No. 2) Regulations 2001(a);
- (b) the Social Security (Contributions) (Amendment No. 2) (Northern Ireland) Regulations 2001(b);
- (c) the Social Security (Contributions) (Amendment No. 3) Regulations 2001(c);
- (d) the Social Security (Contributions) (Amendment No. 3) (Northern Ireland) Regulations 2001(d);
- (e) the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(e); and
- (f) the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001(f).

(2) In these Regulations, unless the context otherwise requires—

▶<sup>1</sup>“the acquired gender” has the same meaning as it has in the Gender Recognition Act 2004(g);◀

“the Act” means the Social Security Contributions and Benefits Act 1992(h);

“the Administration Act” means the Social Security Administration Act 1992(i);

“aggregation” means the aggregating and treating as a single payment under paragraph 1(1) of Schedule 1 to the Act (Class 1 contributions; more than one employment) of two or more payments or earnings and “aggregated” shall be construed accordingly;

“apportionment” means the apportioning under paragraph 1(7) of Schedule 1 to the Act to one or more employers of a single payment of earnings made to or for the benefit of an employed earner in respect of two or more employments, or, as the case may be, the apportioning under paragraph 1(8) of that Schedule of contribution liability between two or more employers in respect of earnings which have been aggregated under paragraph 1(1)(b) of that Schedule, and in either case “apportioning” and “apportioned” shall be construed accordingly;

▶<sup>2</sup>“approved method of electronic communications” in relation to the delivery of information or the making of a payment in accordance with a provision of these Regulations, means a method of electronic communications which has been approved, by specific or general directions issued by the Board, for the delivery of information of that kind or the making of a payment of that kind under that provision;◀

“the Board” means the Commissioners of Inland Revenue, and subject to section 4A of the Inland Revenue Regulation Act 1890(j), includes any officer or servant of theirs;

▶<sup>2</sup>“business travel” has the meaning given in section 236(1) of ITEPA 2003(k);◀

▶<sup>2</sup>“cash voucher” has the meaning given to it in section 75 of ITEPA 2003;◀

▶<sup>3</sup>◀

<sup>1</sup>Defn. of “the acquired gender” inserted by reg. 3(2) of S.I. 2005/778 as from 6.4.05.

<sup>2</sup>Defn. of “approved method of electronic communications” inserted & defns. of “business travel” & “cash voucher” substituted by regs. 3(a)-(c) of S.I. 2004/770 as from 6.4.04.

<sup>3</sup>Defn. of “the Commissioner” deleted by reg. 164(a) of S.I. 2008/2683 as from 3.11.08.

(a) S.I. 2001/313.

(b) S.I. 2001/314.

(c) S.I. 2001/596.

(d) S.I. 2001/597.

(e) S.I. 2001/769.

(f) S.R. 2001 No. 102.

(g) S.I. 2004 c. 7.

(h) 1992 c. 4.

(i) 1992 c. 5.

(j) 53 & 53 Vict. c. 21. Section 4A was inserted by paragraph 11(1) and (2) of Schedule 20 to the Finance Act 1969 (c. 32).

(k) i.e. the Income Tax (Earning and Pensions) Act 2003 (c. 1) *see* section 122(1) of the 1992 Act as amended by paragraph 199 of Schedule 6 to ITEPA 2003.

## Reg. 1

“company” means a company within the meaning of section 735 of the Companies Act 1985(a) or a body corporate to which, by virtue of section 718 of that Act, any provision of that Act applies;

▶<sup>1</sup>◀

<sup>1</sup>Defn. of “COMPS employment” omitted, words in sub-para. (a) of defn. of “contracted-out rate” substituted and sub-para. (b) omitted by reg. 3(a) & (b) of S.I. 2012/817 as from 6.4.12.

*Defn. of “COMPS employment” omitted by reg. 3 of 2012/817 but kept in force for saving provisions identified in reg. 11 of 2012/817.*

“COMPS employment” means employment in respect of which minimum payments are made to a money purchase pension scheme contracted out under section 9(3) of the Pensions Act(b);

“conditional interest in shares” means an interest which is conditional for the purposes of ▶<sup>2</sup>Chapter 2 of Part 7 of ITEPA 2003 as originally enacted(b);◀

“contracted-out employment” has the same meaning as in section 8(1) of the Pensions Act(c);

“contracted-out rate” means, in relation to Class 1 contributions payable in respect of earnings paid to or for the benefit of an earner who is in—

- (a) COSRS employment, the reduced amount for the time being applying in accordance with section 41(1) to (1B)(d) of the Pensions Act (which specifies the percentage reduction of primary and secondary Class 1 contribution in respect of that part of an employed earner’s earnings which exceed the current lower earnings limit, but not the current ▶<sup>1</sup>upper accrual point◀, in respect of members of a COSRS);

(b) ▶<sup>1</sup>◀

“contribution week” means a period of seven days beginning with midnight between Saturday and Sunday;

“contribution year” shall be construed in accordance with section 12(1) or (as the case requires) section 13(5) of the Act (late paid Class 2 or Class 3 contributions);

▶<sup>3</sup>“a contribution-based jobseeker’s allowance” means an allowance under the Jobseekers Act 1995 as amended by the provisions of Part 1 of Schedule 14 to the Welfare Reform Act 2012 that remove references to an income-based allowance, and a contribution-based allowance under the Jobseekers Act 1995 as that Act has effect apart from those provisions;◀

“contributory benefit” includes a contribution-based jobseeker’s allowance but not an income-based jobseeker’s allowance;

▶<sup>4</sup>◀

“COSRS employment” means employment which qualifies an earner for a pension provided by a salary related scheme contracted out under section 9(2) of the Pensions Act(e);

“director” means—

- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body;
- (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person; and
- (c) any person in accordance with whose directions or instructions the company’s directors as defined in paragraphs (a) and (b) above are accustomed to act;

<sup>2</sup>Words substituted in defn. of “conditional interest in shares” by reg. 3(d) of S.I. 2004/770 as from 6.4.04.

<sup>3</sup>Defn. of “contribution-based jobseeker’s allowance” substituted by reg. 72 of S.I. 2013/630 as from 29.4.13.

<sup>4</sup>Defn. of “convertible shares” omitted by reg. 4(a) of S.I. 2003/2085 as from 1.9.03.

(a) 1985 c. 6. Section 718 was amended by paragraph 9 of Schedule 8 to S.I. 1996/2827.

(b) Chapter 2 Part 7 of ITEPA 2003 was substituted by paragraph 199 of Schedule 6 to ITEPA 2003.

(c) Section 8(1) was amended by section 136(2) of, and paragraph 21 of Schedule 5 to the Pensions Act 1995 and paragraph 34 of Schedule 1 to the Transfer Act.

(d) Section 41(1) was amended by paragraph 127 of Schedule 7 to the Social Security Act 1998 (c. 14). It was further amended by paragraph 6(2), and subsections (1A) and (1B) were substituted by paragraph 6(3) of Part II of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c. 30) (“the Welfare Reform Act”).

(e) Section 9(2) was substituted by section 136(3) of the Pensions Act 1995.

and for this purpose a person is not to be treated as such a person by reason only that the directors act on advice given by him in his professional capacity; “due date” in Part 6 means in relation to any contribution which a person is—

- (a) liable to pay, the date by which payment falls to be made;
- (b) entitled but not liable to pay, the date 42 days after the end of the year in respect of which it is paid;

“earnings period” means the period referred to in regulation 2;

“earnings-related contributions” means contributions payable under the Act in respect of earnings paid to or for the benefit of an earner in respect of employed earner’s employment;

“electronic communications” includes any communications by means of a telecommunications system (within the meaning of the Telecommunications Act 1984(a), and a means of electronic communications, or a form of such communication, is approved if it is for the time being approved by the Board;

▶<sup>1</sup>“full gender recognition certificate” means a certificate issued under section 4 of the Gender Recognition Act 2004;◀

▶<sup>2</sup>“HMRC” means Her Majesty’s Revenue and Customs; and◀

“an income-based jobseeker’s allowance” has the same meaning as in the Jobseekers Act 1995;

▶<sup>3</sup>◀

“national insurance number” means the national insurance number allocated within the meaning of regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001;

▶<sup>3</sup>“non-cash voucher” has the meaning given to it in section 84 of ITEPA 2003;◀

“non-contracted-out employment” means employed earner’s employment which is not contracted-out employment;

“non-contracted-out rate” means, in relation to Class 1 contributions payable in respect of earnings paid to or for the benefit of an earner in non-contracted-out employment, ▶<sup>4</sup>the main primary percentage for the time being specified in section 8(2)(a) of the Act(b)◀;

“normal rate” means the amount of a Class 1 contribution which would be payable in respect of earnings paid to or for the benefit of an employed earner in any week if the employment were not contracted-out employment;

▶<sup>3</sup>“official computer system” means a computer system maintained by or on behalf of the Board;

▶<sup>5</sup>“official error” means, for the purposes of regulations 50B and 61A, an error—

- (a) made by an officer of the Department for Work and Pensions or an officer of Revenue and Customs acting as such which no person outside the Department for Work and Pensions or Her Majesty’s Revenue and Customs caused or to which no person outside the Department for Work and Pensions or Her Majesty’s Revenue and Customs materially contributed, or
- (b) made by a person employed by a service provider and to which no person who was not so employed materially contributed,

but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of ▶<sup>6</sup>the Upper Tribunal◀ or the court;◀

▶<sup>3</sup>“the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(c);◀

“the Pensions Act” means the Pension Schemes Act 1993(d);

“profits or gains” for the purposes of Part 8 means profits or gains which, subject to the provisions of Schedule 2 to the Act, are chargeable to income tax under Case I or Case II of Schedule D;

<sup>1</sup>Defn. of “full gender recognition certificate” inserted by reg. 3(3) of S.I. 2005/778 as from 6.4.05.

<sup>2</sup>Defn. of “HMRC” inserted by reg. 3 of S.I. 2009/600 as from 1.4.09.

<sup>3</sup>Defns. of “income tax month” and “month” omitted, “non-cash voucher” substituted, “official computer system” & “the PAYE Regulations” inserted by regs. 3(e)-(g) of S.I. 2004/770 as from 6.4.04.

<sup>4</sup>Words in defn. of “non-contracted-out rate” substituted by reg. 3 of S.I. 2003/193 as from 6.4.03.

<sup>5</sup>Defn. of “official error” inserted by reg. 3(3) of S.I. 2007/2520 as from 1.10.07.

<sup>6</sup>Words substituted in defn. of “official error” in reg. 1(2) by art. 164(b) of S.I. 2008/2683 as from 3.11.08.

(a) 1984 (c. 12).

(b) Section 8 of the Benefits Act and section 8 of the Northern Ireland Benefits Act are substituted for the tax year commencing on 6th April 2003 and subsequent tax years by section 1(1) and (2) respectively of the Contributions Act. As to the construction of references in the principal Regulations to enactments applying only to Great Britain in the application of those Regulations in Northern Ireland, see regulation 156(3) of those Regulations.

(c) S.I. 2003/2682.

(d) 1993 c. 48.

**Reg. 1**

<sup>1</sup>Words in defn. of “readily convertible asset” substituted, defns. of “restricted securities” & “securities” inserted by regs. 4(b)-(d) of S.I. 2003/2085 as from 1.9.03.

<sup>2</sup>Defn. of “registered pension scheme” inserted by reg. 3 of S.I. 2006/576 as from 6.4.06.

<sup>3</sup>Defn. of “relevant employment income” inserted by reg. 3 of S.I. 2004/2096 as from 1.9.04.

<sup>4</sup>Defns. of “retrospective contributions ...”, “retrospective earnings” & retrospective contributions” inserted by reg. 4(a) of S.I. 2007/1056 as from 6.4.07.

<sup>5</sup>Defns. of “Schedule E” omitted & “tax month” inserted by regs. 3(h)-(i) of S.I. 2004/770 as from 6.4.04.

<sup>6</sup>Words substituted in defn. of “secondary contributor” by reg. 5 of S.I. 2007/2070 as from 6.8.07.

<sup>7</sup>Defn. of “service provider” inserted by reg. 2(4) of S.I. 2007/2520 as from 1.10.07.

<sup>8</sup>Defn. of “tribunal” inserted by reg. 3 of S.I. 2009/600 as from 1.4.09.

“readily convertible asset” has the meaning given in ►<sup>1</sup>section 702 of ITEPA 2003(a) as amended by the Finance Act 2003;◄

►<sup>2</sup>“registered pension scheme” has the meaning given in section 150(2) of the Finance Act 2004(b);◄

“regular interval” for the purposes of regulations 3, 4 and 7 includes only such interval as is in accordance with an express or implied agreement between the employed earner and the secondary contributor as to the intervals at which payments of earnings normally fall to be made, being intervals of substantially equal length;

►<sup>3</sup>“relevant employment income” has the meaning given in paragraph 3B(1A) of Schedule 1 to the Act(c);◄

►<sup>4</sup>“restricted securities” and “restricted interest in securities” have the meanings given in sections 423 and 424 of ITEPA 2003(d) as substituted by the Finance Act 2003;◄

“retirement benefits scheme” has the meaning given in section 611 of the Taxes Act(e);

►<sup>4</sup>“retrospective contributions regulations” means regulations made by virtue of section 4B(2) of the Act and, in relation to an amount of retrospective earnings, “the relevant retrospective contributions regulations” means the regulations which treat that amount as earnings;

“retrospective earnings” means an amount retrospectively treated as earnings by retrospective contributions regulations;

“retrospective contributions”, in relation to an amount of retrospective earnings, means the amount of earnings-related contributions based on those earnings which the employee is liable to pay under section 6(4)(a) of the Act (primary contributions);◄

►<sup>5</sup>◄

“secondary contributor” means the person who, in respect of earnings from employed earner’s employment, is liable to pay ►<sup>6</sup>a secondary Class 1 contribution◄ under section 6(4)(b) of the Act (liability for Class 1 contributions)(f);

►<sup>1</sup>“securities” and “securities option” have the meaning given by section 420 of ITEPA 2003(g) as substituted by the Finance Act 2003;◄

►<sup>7</sup>“service provider” means, for the purposes of the definition of “official error”, a person providing services to the Secretary of State for Work and Pensions or to Her Majesty’s Revenue and Customs;◄

“serving member of the forces” means a person, other than one mentioned in Part 2 of Schedule 6, who, being over the age of 16, is a member of any establishment or organisation specified in Part I of that Schedule (being a member who gives full pay service) but does not include any such person while absent on desertion;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(h);

►<sup>5</sup>“tax month” has the meaning given in paragraph 1(2) of Schedule 4;◄

“training” means full-time training at a course approved by the Board;

“the Transfer Act” means the Social Security Contributions (Transfer of Functions, etc.) Act 1999;

►<sup>8</sup>“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal(i);◄

(a) Section 702 is amended by paragraph 15 of Schedule 22 to the Finance Act 2003 (c. 14). Schedule 22 to that Act is referred below as “Schedule 22”. The definition of “ITEPA 2003” was inserted into section 122(1) of the 1992 Act by paragraph 178, and into section 121(1) of the 1992 Northern Ireland Act by paragraph 199, of Schedule 6 to ITEPA 2003.

(b) 2004 c. 12.

(c) Paragraph 3B(1A) of Schedule 1 to the Benefits Act was inserted by section 3(3)(b) of the National Insurance Contributions and Statutory Payments Act 2004.

(d) Sections 423 and 424 are substituted by paragraph 3(1) of Schedule 22.

(e) Section 611 is to be amended from a date to be appointed under section 79 of the Finance Act 1999.

(f) Section 6 was substituted by paragraph 2 of Part I of Schedule 9 to the Welfare Reform Act.

(g) Section 420 is substituted by paragraph 2(1) of Schedule 22.

(h) 1988 c. 1.

(i) See Chapter 2 Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

“week” means tax week, except in relation to Case C of Part 9, where “week” and “weekly” have the meanings given in regulation 115;

“the Welfare Reform Act” means the Welfare Reform and Pensions Act 1999(a);

“year” means tax year;

“year of assessment” has the meaning given to it in section 832(1) of the Taxes Act.

(3) For the purposes of regulations 52, 57, 67 and 116, references to “contributions”, “Class 1 contributions” and “earnings-related contributions” shall, unless the context otherwise requires, include any amount paid on account of earnings-related contributions in accordance with regulation 8(6).

(4) Where, by any provision of these Regulations—

- (a) any notice or other document is required to be given or sent to the Board, that notice or document shall be treated as having been given or sent on the day that it is received by the Board; and
- (b) any notice or other document is required to be given or sent by the Board to any person, that notice or document shall, if sent by post to that person’s last known address, be treated as having been given or sent on the day that it was posted.

(5) Unless the context otherwise requires—

- (a) any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations;
- (b) any reference in these Regulations to a numbered Part or Schedule is to the Part of, or Schedule to, these Regulations bearing that number;
- (c) any reference in a regulation or a Schedule to a numbered paragraph is a reference to the paragraph bearing that number in that regulation or Schedule;
- (d) any reference in a paragraph of a regulation or a Schedule to a numbered or lettered sub-paragraph is a reference to the sub-paragraph bearing that number or letter in that paragraph; and
- (e) any reference in a sub-paragraph to a numbered head is a reference to the head in that sub-paragraph bearing that number.

## PART 2

### ASSESSMENT OF EARNINGS RELATED CONTRIBUTIONS

#### Earnings periods

2. Except where regulation 8 applies, the amount, if any, of earnings-related contributions payable or, where section 6A of the Act(b) applies, treated as having been paid, in respect of earnings paid to or for the benefit of an earner in respect of an employed earner’s employment shall, subject to regulations 7 and 12 to 19, be assessed on the amount of such earnings paid, or treated as paid, in the earnings period specified in regulation 3, 4, 5, 6, or 9.

#### Earnings period for earnings normally paid or treated as paid at regular intervals

▶<sup>1</sup>3.—(1) If any part of earnings paid to or for the benefit of an earner is normally paid, or is treated under regulation 7 as paid, at regular intervals, the earnings period in respect of those earnings shall be the period found in accordance with the following Table, subject to paragraphs (2) to (6).

<sup>1</sup>Regs. 3(1) & (2) substituted by reg. 4 of S.I. 2002/2366 as from 8.10.02.

(a) 1999 c. 30.

(b) Section 6A was inserted by paragraph 3 of Part I of Schedule 9 to the Welfare Reform Act.

## Reg. 3

## Earnings Periods

<i>Case</i>	<i>Applicable earnings period</i>
Earnings paid at an interval of 7 days or more.	The length of the interval.
Earnings paid at intervals of different lengths, each of which is 7 days or more.	The length of the shorter or shortest of those intervals.
Earnings paid at one or more intervals of less than 7 days.	A week.
Earnings paid at one or more intervals of less than 7 days and at one or more intervals of more than 7 days.	A week.

(2) In any year, the earnings period for the earnings mentioned in paragraph (1) shall only be that found by the Table in that paragraph if the period in which the earnings are paid is one of a succession of periods and—

- (a) the periods are the same length;
- (b) the first period begins on the first day of the year; and
- (c) the subsequent periods begin immediately after the end of the preceding period.

For the purpose of this paragraph, if all the periods in the succession mentioned above, apart from the last in the year in question, are the same length, the last period in the year shall be treated as if it were the same length as the others.

This paragraph is subject to the following qualification.

(2A) Paragraph (2B) applies if it appears to an officer of the Board that—

- (a) it is the employer's practice to pay the greater part of the earnings referred to in paragraph (2) at intervals of greater length than the shorter or shortest of the earnings periods produced by the application of that paragraph; and
- (b) the practice is likely to continue.

(2B) If this paragraph applies the officer may, and if requested to do so by the earner or the secondary contributor shall, decide whether to give a notice to the earner and the secondary contributor specifying the longer or longest of the earnings periods produced by the application of paragraph (2) to be the earnings period applicable to those earnings.

(2C) A notice under paragraph (2B) shall—

- (a) be given to both the earner and the secondary contributor; and
- (b) specify the date from which the change of earnings period is to take effect.

The date specified shall not be earlier than that on which the notice is given.

(2D) A notice given under paragraph (2B) shall have effect until an officer of the Board decides (either of his own motion or on an application by the earner or the secondary contributor) that the practice to which it relates has ceased.

If an officer of the Board decides that a notice is to cease to have effect, he shall notify the earner and the secondary contributor accordingly.◀

<sup>1</sup>Words substituted in reg. 3(3) by reg. 4(3) of S.I. 2002/2366 as from 8.10.02.

(3) If the length of the earnings period determined in accordance with ▶<sup>1</sup>paragraph (2B)◀ is a year, then notwithstanding ▶<sup>1</sup>paragraph (2)◀, where the change in the length of the earnings period takes effect during the course of a year, the length of the earnings period in respect of any earnings in that year which are paid or treated as paid on or



after the change shall be the number of weeks remaining in that year commencing with the week in which the change takes effect.

(4) ►<sup>1</sup>◄

(5) Where—

- (a) the employment in respect of which the earnings are paid has ended;
- (b) the employment in respect of which the earnings are paid was one in which, during its continuance, earnings were paid or treated under regulation 7 as paid at a regular interval; and
- (c) after the end of the employment, a payment of earnings is made which satisfies either or both of the conditions specified in paragraph (6),

<sup>1</sup>Reg. 3(4) omitted by reg. 4(4) of S.I. 2002/2366 as from 8.10.02.

the earnings period in respect of such payment of earnings shall, notwithstanding regulation 7, be the week in which the payment is made.

(6) The conditions referred to in paragraph (5) are that the payment is—

- (a) by way of addition to a payment made before the end of the employment; and
- (b) not in respect of a regular interval.

#### **Earnings period for earnings normally paid otherwise than at regular intervals and not treated as paid at regular intervals**

4. Subject to regulation 3(5) or regulation 5, where earnings are paid to or for the benefit of an earner in respect of an employed earner's employment, but no part of those earnings is normally paid or treated under regulation 7 as paid at regular intervals, the earnings period in respect of those earnings shall be a period of one of the following lengths—

- (a) the length of the period of that part of the employment for which the earnings are paid or a week, whichever is the longer; or
- (b) where it is not reasonably practicable to determine that period under paragraph (a)—
  - (i) the length of the period from the date on which the last payment of earnings, before the payment in question, was paid during the employment in respect of the employment (or, if there has been no such payment, from the date on which the employment began) to the date of the payment in question, unless the period so calculated would be of a length less than that of a week, in which case the earnings period shall be a week, or
  - (ii) where the payment is made before the employment begins or after it ends, a week.

#### **Earnings period for sums deemed to be earnings by virtue of regulations made under section 112 of the Act**

5. Where any sum or amount is deemed to be earnings by virtue of any regulations made under section 112 of the Act (sums to be earnings for the purposes of Part I to V of the Act)(a)—

- (a) the earnings period in respect of any payment of those earnings shall be the length of the protected period (as referred to in section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992(b)) or, as the case may be, that part of it in respect of which the sum is paid, or a week whichever is the longer;
- (b) contributions paid in respect of such earnings shall, if the employed earner so requests—
  - (i) if the period to which the payment of earnings relates falls wholly in a year other than the year in which they are paid, be treated as paid in

(a) Section 112 was amended by paragraph 51(4) of Schedule 1 to the Employment Rights Act 1996 (c. 18) and paragraph 21 of Schedule 3 to the Transfer Act.

(b) 1992 c. 52. Section 189(4) was amended by regulation 4(3) of S.I. 1995/2587.

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respect of the year in which the period to which the payment of earnings relates falls, or

- (ii) if the period to which the payment of earnings relates falls partly in the year in which they are paid and partly in one or more other years, be treated as paid proportionately in respect of each of the years in which the period to which the payment of earnings relates falls, or
- (iii) if the period to which the payment of earnings relates falls wholly in two or more years other than the year in which they are paid, be treated as paid proportionately in respect of each of the years in which the period to which the payment of earnings relates falls.

**Earnings period for earnings to be aggregated where the earnings periods for those earnings otherwise would be of different lengths**

**6.**—(1) Paragraphs (2) and (3) apply where—

- (a) earnings paid in respect of two or more employed earner's employments fall to be aggregated; and
- (b) the earnings periods in respect of those earnings are, by virtue of regulation 3, 4 or 5, of different lengths.

(2) In a case to which this regulation applies, where (but for its provisions) the earnings period in respect of earnings derived from any of the employments is of a different length from the designated earnings period, the earnings period in respect of any payment of those earnings shall be the designated earnings period.

▶<sup>1</sup>(3) In this regulation “the designated earnings period” means—

- (a) where the earnings are derived from employments which include any contracted-out employment and any non-contracted-out employment, the earnings period in respect of earnings derived from the contracted-out employment or, if there is more than one such employment, the shorter, or as the case may be the shortest, of the earnings periods in respect of earnings derived from such employments; and
- (b) in any other case, the shorter, or as the case may be the shortest, of the earnings periods in respect of the earnings derived from such employments.◀

<sup>1</sup>Reg. 6(3) substituted by reg. 4 of S.I. 2012/817 as from 6.4.12.

### Treatment of earnings paid otherwise than at regular intervals

7.—(1) Subject to regulation 3(5) and paragraphs (2) and (3), for the purposes of assessing earnings-related contributions—

- (a) if on any occasion a payment of earnings which would normally fall to be made at regular interval is made otherwise than at the regular interval, it shall be treated as if it were a payment made at that regular interval;
- (b) if payments of earnings are made at irregular intervals which secure that one and only one payment is made in each of a succession of periods consisting of the same number of days, weeks or calendar months, those payments shall be treated as if they were payments made at the regular interval of one of those periods of days, weeks or, as the case may be, calendar months;
- (c) if payments of earnings, other than those specified in sub-paragraph (b), are made in respect of regular intervals, but otherwise than at regular intervals, each such payment shall be treated as made at the regular interval in respect of which it is due.

(2) Where under paragraph (1) a payment of earnings is treated as made at a regular interval, it shall for the purposes of assessment under these regulations of earnings-related contributions also be treated as paid—

- (a) in a case falling within paragraph (1)(a), on the date on which it would normally have fallen to be made;
- (b) in any other case, on the last day of the regular interval at which it is treated as paid.

(3) Paragraphs (1) and (2) shall not apply to a payment of earnings made in one year where by virtue of those paragraphs that payment would be treated as made in another year.

(4) Notwithstanding regulation 15, a payment to which paragraph (3) applies (“the relevant payment”) shall not be aggregated with any other earnings unless—

- (a) other earnings to which paragraphs (1) to (2) do not apply by virtue only of paragraph (3) are paid in the earnings period in which the relevant payment falls; and
- (b) those other earnings would have been aggregated with the relevant payment had paragraph (3) not applied.

(5) A relevant payment shall be aggregated only with the other earnings specified in paragraph (4).

### Earnings periods for directors

8.—(1) Where a person is, or is appointed, or ceases to be a director of a company during any year the amount, if any, of earnings-related contributions payable in respect of earnings paid to or for the benefit of that person in respect of any employed earner’s

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employment with that company shall, subject to regulations 12 and 14 to 17, be assessed on the amount of all such earnings paid (whether or not paid weekly) in the earnings periods specified in paragraphs (2) to (5).

(2) Where on one or more than one occasion a person is appointed a director of a company during the course of a year the earnings period in respect of such earnings as are paid in so much of the year as remains in the period commencing with the week in which he is appointed or, as the case may be, first appointed shall be the number of weeks in that period.

(3) Where a person is a director of a company at the beginning of a year the earnings period in respect of such earnings shall be that year, whether or not he remains such a director throughout that year.

(4) Where the earnings paid in respect of two or more employed earner's employments fall to be aggregated and the earnings periods in respect of those earnings would be of different lengths, then—

- (a) if those periods are determined only by paragraphs (1) to (3); or
- (b) if the length of one or more of those periods is determined by those paragraphs and the length of one or more of the others is determined by any other provision of these Regulations,

the earnings period in respect of all those earnings shall be the period determined by those paragraphs or, where there is more than one such period, the longer or longest period so determined.

(5) Where a person is no longer a director of a company and, in any year after that in which he ceased to be a director of that company, he is paid earnings in respect of any period during which he was such a director, then—

- (a) notwithstanding regulation 15, those earnings shall not be aggregated with any other earnings with which they would otherwise fall to be aggregated; and
- (b) the earnings period in respect of those earnings shall be the year in which they are paid.

(6) Without prejudice to the paragraphs (1) to (5), a director and any company employing him may pay on account of any earnings-related contributions that may become payable by them such amounts as would be payable by way of such contributions if those paragraphs did not apply.

<sup>1</sup>Paras. (7) inserted in reg. 8 by reg. 4 of S.I. 2005/778 as from 6.4.05.

►<sup>1</sup>(7) If a full gender recognition certificate is issued under the Gender Recognition Act 2004 to a person aged at least 60 but not more than 64—

- (a) whose gender before its issue was female; and
- (b) whose acquired gender is male;

the periods in the year of issue respectively falling before and after its issue shall be treated, for the purpose of computing liability for primary Class 1 contributions, as separate earnings periods.◀

<sup>2</sup>Words inserted in heading to reg. 9 by reg. 4 of S.I. 2003/193 as from 6.4.03.

<sup>3</sup>Words in heading to reg. 9 substituted by reg. 3(2) of S.I. 2015/175 as from 5.3.15.

**Earnings period for statutory maternity pay►<sup>2</sup>, ►<sup>3</sup>statutory paternity pay◀, statutory adopton pay►<sup>3</sup>, statutory shared parental pay◀◀ and statutory sick pay paid by the Board**

**9.—(1)** In this regulation the expression “week”—

- (a) in paragraph (2)(a); and
- (b) in paragraph (2)(b) where it first occurs,

has the same meaning as in section 171(1) of the Act.

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▶<sup>1</sup>(2) If the Board make a payment of statutory maternity pay, ▶<sup>2</sup>statutory paternity pay▶<sup>3</sup>, statutory shared parental pay◀ or statutory adoption pay(a) under regulations made under the relevant provision—

- (a) that payment of statutory maternity pay, ▶<sup>2</sup>statutory paternity pay◀ or statutory adoption pay (as the case may be) shall not be aggregated with any other earnings; and
- (b) the earnings period in respect of that payment for any week shall be a week.

(2A) In paragraph (2) “the relevant provision” means—

- (a) in relation to statutory maternity pay, section 164(9)(b)(b),
- ▶<sup>2</sup>(b) in relation to ▶<sup>3</sup>◀ statutory paternity pay, section 171ZD(3)◀
- (ba) ▶<sup>3</sup>◀,
- (c) in relation to statutory adoption pay, section 171ZM(3)(c), ▶<sup>3</sup>and
- ▶<sup>3</sup>(d) in relation to statutory shared parental pay, section 171ZX(3)(d),◀

of the Act (liability to make payments of the relevant statutory pay to be that of the Board).◀

(3) If the Board make a payment of statutory sick pay under regulations made under section 151(6)(e) of the Act (circumstances in which the Board are liable to pay statutory sick pay), the earnings period for that payment shall be—

- (a) a period of the same length as the period in respect of which the payment is made, or
- (b) a week,

whichever is the longer.

### Earnings limits and thresholds

**10.** For the purposes of ▶<sup>4</sup> section 5(1) and 9A◀ of the Act (earnings limits and thresholds to be specified for each tax year in respect of Class 1 contributions), for the tax year which begins on 6th April ▶<sup>5</sup>2015◀—

- (a) the lower earnings limit (for primary Class 1 contributions) shall be ▶<sup>5</sup>£112◀;
- (b) the upper earnings limit (for primary Class 1 contributions) shall be ▶<sup>5</sup>£815◀;
- (c) the primary threshold (for primary Class 1 contributions) shall be ▶<sup>5</sup>£155◀; ▶<sup>4</sup>◀
- (d) the secondary threshold (for secondary Class 1 contributions) shall be ▶<sup>5</sup>£156◀▶<sup>4</sup>; and
- (e) the upper secondary threshold for secondary Class 1 contributions in relation to the Under 21 group (for the upper limit of the age-related secondary percentage) shall be £815◀.

### Prescribed equivalents

**11.** —(1) The prescribed equivalents of the lower and upper earnings limits and the primary and secondary thresholds, for the purposes of—

- (a) sections 6(1), 6A(1), 8(1), and 9(1) of the Act (which provide liability for Class 1 contributions, notional payment of primary Class 1 contribution where earnings are not less than the lower earnings limit, the calculation of primary Class 1 contributions and the calculation of secondary Class 1 contributions respectively)(f); ▶<sup>6</sup>◀

(a) Statutory paternity pay and statutory adoption pay are payable in Great Britain under Parts 12ZA and 12ZB of the Benefits Act, inserted by sections 2 and 4 respectively of the Employment Act 2002 (c. 22), and in Northern Ireland under Parts XIIZA and XIIZB of the Northern Ireland Benefits Act, inserted by Articles 5 and 6 respectively of the Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)).

(b) Section 164(9)(b) was amended by paragraph 12(2) of Schedule 1 to the Transfer Act.

(c) Section 171ZM was inserted by section 4 of the Employment Act 2002.

(d) Section 171ZX(3) was inserted by section 119 of the Children and Families Act 2014 (c. 6).

(e) Section 151 was amended by paragraph 34 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 14) and paragraph 9 of Schedule 1 to the Transfer Act.

(f) Sections 6, 8 and 9 were substituted, and section 6A inserted, by paragraphs 2 to 5 of Part I of Schedule 9 to the Welfare Reform Act.

<sup>1</sup>Para. (2) substituted with (2) & (2A) by reg. 4 of S.I. 2003/193 as from 6.4.03.

<sup>2</sup>Words in reg. 9(2), (2)(a) and para. (2A)(b) substituted by reg. 3(3) & (4) of S.I. 2010/2450 as from 14.11.10.

<sup>3</sup>Words in reg. 9(2) and (2A) substituted, omitted and inserted by reg. 3(3) & (4) of S.I. 2015/175 as from 5.3.15.

<sup>4</sup>Words substituted in reg. 10, 10(c) omitted, reg. 10(e) & preceding word inserted by reg. 3(a), (f) & (h) of S.I. 2015/577 as from 6.4.15.

<sup>5</sup>Date and amounts in reg. 10 & 10(a)-(d) substituted by reg. 3(a)-(e) of S.I. 2015/577 as from 6.4.15.

<sup>6</sup>Word in para. 11(1)(a) omitted by reg. 3(2) of S.I. 2009/111 as from 6.4.09.

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<sup>1</sup>Regs. 11(1)(aa), (1A) & (2A) inserted & paras. (1)(b), (2) & (2)(a) substituted by reg. 3(2)-(5) of S.I. 2009/111 as from 6.4.09.

- ▶<sup>1</sup>(aa) section 22 of the Act (earnings factors)(a); and◀
- ▶<sup>1</sup>(b) sections 41(1) (reduced rates of Class 1 contributions), 42A(1) (reduced rates of Class 1 contributions and rebates) and 45(1) (amount of minimum contributions) of the Pensions Act(b),◀

shall be determined in accordance with paragraphs (2) to (5).

▶<sup>1</sup>(1A) The prescribed equivalents of the upper accrual point(c) for the purposes of—

- (a) section 22 of the Act (earnings factors); and
- (b) sections 41(1) (reduced rates of Class 1 contributions), 42A(1) (reduced rates of Class 1 contributions and rebates) and 45(1) (amount of minimum contributions) of the Pensions Act,

shall be determined in accordance with paragraphs (2), (4) and (5).◀

▶<sup>1</sup>(2) Subject to paragraphs (4) and (5), the prescribed equivalents of the lower earnings limit and the upper accrual point shall be—

- (a) where the earnings period is a multiple of a week, the amounts calculated by multiplying the lower earnings limit or the upper accrual point (“the weekly limits”) by the corresponding multiple;◀
- (b) where the earnings period is a month, the amounts calculated by multiplying each of the weekly limits by 4 1/3;
- (c) where the earnings period is a multiple of a month, the amounts calculated by multiplying each of the weekly limits by 4 1/3 and multiplying each result by the corresponding multiple;
- (d) in any other case, the amounts calculated by dividing each of the weekly limits by 7 and multiplying each result by the number of days in the earnings period concerned.

▶<sup>1</sup>(2A) Subject to paragraphs (4) and (5), the prescribed equivalents of the upper earnings limit shall be—

- (a) where the earnings period is a month, ▶<sup>2</sup>£3,532◀;
- (b) where the earnings period is a year, ▶<sup>2</sup>£42,385◀;
- (c) where the earnings period is a multiple of a week, the amount calculated by dividing the figure in sub-paragraph (b) by 52 and multiplying the result by the corresponding multiple;
- (d) where the earnings period is a multiple of a month, the amount calculated by dividing the figure in sub-paragraph (b) by 12 and multiplying the result by the corresponding multiple;
- (e) in any other case, the amount calculated by dividing the figure in sub-paragraph (b) by 365 and multiplying the result by the number of days in the earnings period concerned.◀

<sup>2</sup>Amounts substituted in reg. 11(2A)(a)-(b), (3)(a)-(b) by reg. 4(a) & (b) of S.I. 2015/577 as from 6.4.15.

(3) Subject to paragraphs (4) and (5), ▶<sup>3</sup>the prescribed equivalents of the primary threshold◀ shall be—

- (a) where the earnings period is a month, ▶<sup>2</sup>£672◀;
- (b) where the earnings period is a year, ▶<sup>2</sup>£8,060◀;

(a) Section 22 of the Social Security Contributions and Benefits Act 1992 was amended by the Pensions Act 2007 (c. 22) to refer to the upper accrual point. Section 22 was then amended by section 3(2) of the National Insurance Contributions Act 2008 (c. 16) to introduce the upper accrual point for the tax year 2009-10 and subsequent years and also by paragraph 2 of Schedule 1 to that Act to include a reference to “the prescribed equivalent”.

(b) Section 41(1) of the Pension Schemes Act 1993 (c. 48) (“the 1993 Act”) was amended by paragraph 37 to Schedule 1 to the Pensions Act 2007. Section 41, 42A and 45 of the 1993 Act were amended by paragraphs 10, 11 and 12 of Schedule 1 to the National Insurance Contributions Act 2008 to refer to the upper accrual point.

(c) The term “upper accrual point” is defined in section 122 of the Social Security Contributions and Benefits Act 1992. This term was introduced by section 12 of the Pensions Act 2007 and the definition of upper accrual point was amended by section 3(4) of the National Insurance Contributions Act 2008.

<sup>3</sup>Words substituted in reg. 11(3) by reg. 4 of S.I. 2011/940 as from 6.4.11.

- (c) where the earnings period is a multiple of a week, the amount calculated by dividing the figure in sub-paragraph (b) by 52 and multiplying the result by the corresponding multiple;
- (d) where the earnings period is a multiple of a month, the amount calculated by dividing the figure in sub-paragraph (b) by 12 and multiplying the result by the corresponding multiple;
- (e) in any other case, the amount calculated by dividing the figure in sub-paragraph (b) by 365 and multiplying the result by the number of days in the earnings period concerned.

►<sup>1</sup>(3A) Subject to paragraphs (4) and (5), the prescribed equivalents of the secondary threshold shall be—

- (a) where the earnings period is a month, ►<sup>2</sup>£676◄;
- (b) where the earnings period is a year, ►<sup>2</sup>£8,112◄;
- (c) where the earnings period is a multiple of a week, the amount calculated by dividing the figure in sub-paragraph (b) by 52 and multiplying the result by the corresponding multiple;
- (d) where the earnings period is a multiple of a month, the amount calculated by dividing the figure in sub-paragraph (b) by 12 and multiplying the result by the corresponding multiple;
- (e) in any other case, the amount calculated by dividing the figure in sub-paragraph (b) by 365 and multiplying the result by the number of days in the earnings period concerned.◄

<sup>1</sup>Reg. 11(3A) inserted & words substituted in reg. 11(4) & (5) & by reg. 4(1)-(6) of S.I. 2011/940 as from 6.4.11.  
<sup>2</sup>Amounts in reg. 11(3A)(a) & (b) substituted by reg. 4(c) of S.I. 2015/577 as from 6.4.15.

►<sup>3</sup>(3B) Subject to paragraphs (4) and (5), the prescribed equivalents of the upper secondary threshold for secondary Class 1 contributions in relation to the Under 21 age group shall be—

- (a) where the earnings period is a month, £3,532;
- (b) where the earnings period is a year, £42,385;
- (c) where the earnings period is a multiple of a week, the amount calculated by dividing the figure in sub-paragraph (b) by 52 and multiplying the result by the corresponding multiple;
- (d) where the earnings period is a multiple of a month, the amount calculated by dividing the figure in sub-paragraph (b) by 12 and multiplying the result by the corresponding multiple;
- (e) in any other case, the amount calculated by dividing the figure in sub-paragraph (b) by 365 and multiplying the result by the number of days in the earnings period concerned.◄

<sup>3</sup>Reg. 11(3B) inserted & words in reg. 11(4) & (5) substituted by reg. 4(d)-(f) of S.I. 2015/577 as from 6.4.15.

►<sup>4</sup>(4) The amounts determined in accordance with paragraphs (2)(b) and (c), paragraph (2A)(c) and (d)►<sup>1</sup>, paragraph (3)(c) and (d)►<sup>3</sup>, and paragraph (3A)(c) and (d) and paragraph (3B)(c) and (d)◄ if not whole pounds, shall be rounded up to the next whole pound.◄

<sup>4</sup>Para. (4) & words in para. (5) substituted & para. (6) inserted by reg. 3(7)-(9) of S.I. 2009/111 as from 6.4.09.

(5) The amounts determined in accordance with ►<sup>4</sup>paragraph (2)(d), paragraph (2A)(e)►<sup>1</sup>, paragraph 3(e)►<sup>3</sup>, paragraph (3A)(e) and paragraph (3B)(e)◄◄ shall be calculated to the nearest penny, and any amount of a halfpenny or less shall be disregarded.

►<sup>4</sup>(6) The following provisions of this regulation do not apply to Northern Ireland—

- (a) paragraph (1A), and
- (b) both references to “the upper accrual point” in paragraph (2), so that the term “the weekly limits” shall be read as referring only to the lower earnings limit in relation to Northern Ireland.◄

**Reg. 12****Calculation of earnings-related contributions**

**12.—**(1) Subject to paragraphs (3) and (4), earnings-related contributions shall be calculated as follows—

- (a) primary and secondary Class 1 contributions under section 6 of the Act (liability for Class 1 contributions) and any primary and secondary Class 1 contributions at the normal rate and at the contracted-out rate shall each be calculated separately; and
- (b) as regards the calculation referred to in sub-paragraph (a) primary and secondary Class 1 contributions shall be calculated to the nearest penny and any amount of a halfpenny or less shall be disregarded.

(2) In the alternative, but subject to the provisions of paragraphs (3) to (5), the contributions specified in paragraph (1) may be calculated in accordance with the appropriate scale or, for contributions payable on earnings above the upper earnings limit or the prescribed equivalent of that limit, a contributions calculator prepared by the Board.



- (3) Where the amount of earnings to which—
- (a) the appropriate scale is to be applied does not appear in the scale, the amount of contributions payable shall be calculated by reference to the next smaller amount of earnings in the appropriate column in the scale;
  - (b) the appropriate contributions calculator is to be applied does not appear in the calculator, the amount of contributions payable shall be calculated—
    - (i) by obtaining from the calculator the amounts of contributions payable on the largest components of the earnings provided for in the calculator, and
    - (ii) by adding together the amounts so obtained.

(4) Where a scale or a contributions calculator would, but for the period to which it relates, be appropriate and the earnings period in question is a multiple of the period in the scale or, as the case may be, calculator, the scale or calculator shall be applied by dividing the earnings in question so as to obtain the equivalent earnings for the period to which the scale or calculator relates and—

- (a) in the case of the scale, by multiplying the amount of contributions shown in the scale as appropriate to those equivalent earnings by the same factor as the earnings were divided;
- (b) in the case of the calculator, by multiplying the amount of contributions shown in the calculator as appropriate to those equivalent earnings or, where no equivalent earnings are shown, the amount of contributions calculated in accordance with paragraph (3)(b), by the same factor as the earnings were divided.

(5) Unless the Board agree to the contrary, all the contributions payable in a year in respect of the earnings paid to or for the benefit of an earner in respect of his employed earner's employment or, where he has more than one such employment and the earnings from those employments are aggregated under paragraph 1(1) of Schedule 1 to the Act (Class 1 contributions where more than one employment), in respect of those employments, shall be calculated either in accordance with paragraph (1) or paragraph (2) but not partly in accordance with one and partly in accordance with the other of those paragraphs, save that the contributions calculator may also be used where the contributions have been calculated in accordance with paragraph (1).

### **General provisions as to aggregation**

**13.** Where on one or more occasions the whole or any part of a person's earnings in respect of employed earner's employment is not paid weekly (whether or not it is treated for the purpose of earnings-related contributions as paid weekly), paragraph 1 of Schedule 1 to the Act (Class 1 contributions where more than one employment) shall have effect as if for the references to "week" there were substituted references to "earnings period".

### **Aggregation of earnings paid in respect of separate employed earner's employments under the same employer**

**14.** For the purpose of earnings-related contributions, where an earner is concurrently employed in more than one employed earner's employment under the same employer, the earnings paid to or for the benefit of the earner in respect of those employments shall not be aggregated if such aggregation is not reasonably practicable because the earnings in the respective employment are separately calculated.

### **Aggregation of earnings paid in respect of different employed earner's employments by different persons and apportionment of contribution liability**

**15.—(1)** Subject to regulation 7, for the purposes of determining whether earnings-related contributions are payable in respect of earnings paid to or for the benefit of an earner in a given earnings period, and, if so, the amount of contributions, where in that period earnings in respect of different employed earner's employments are paid to or for the benefit of the earner—

**Regs. 15-18**

- (a) by different secondary contributors who in respect of those employments carry on business in association with each other;
- (b) by different employers, one of whom is, by virtue of Schedule 3 to the Social Security (Categorisation of Earners) Regulations 1978(a), treated as the secondary contributor in respect of each of those employments; or
- (c) by different persons, in respect of work performed for those persons by the earner in those employments and in respect of those earnings, some other person is, by virtue of that Schedule, treated as the secondary contributor,

the earnings paid in respect of each of the employments referred to in this paragraph shall, unless in a case falling under sub-paragraph (a) it is not reasonably practicable to do so, be aggregated and treated as a single payment of earnings in respect of one such employment.

(2) Where, under paragraph (1), earnings are aggregated, liability for the secondary contributions payable in respect of those earnings shall, in a case falling within paragraph (1)(a), be apportioned between the secondary contributors in such proportions as they shall agree amongst themselves, or, in default of agreement, in the proportions which the earnings paid by each bearer to the total amount of the aggregated earnings.

**Aggregation of earnings paid after pensionable age**

16. Notwithstanding the provisions of regulation 15, a payment of earnings to which regulation 28 applies shall not be aggregated with any other earnings.

**Apportionment of single payment of earnings in respect of different employed earner's employments by different secondary contributors**

17. Where any single payment of earnings is made in respect of two or more employed earner's employments under different secondary contributions, liability for earnings-related contributions shall be determined by apportioning the payment as follows—

- (a) where the secondary contributors are, in respect of those employments, carrying on business in association with each other, to the secondary contributor who makes the payment;
- (b) where the secondary contributors are not so carrying on business in association with each other, to each of those secondary contributors in the proportion which the earnings due in respect of that secondary contributor's employment bears to the total of the single payment.

**Change of earnings period**

18.—(1) Paragraphs (2) and (3) apply where, by reason of a change in the regular interval at which any part of an earner's earnings is paid or treated as paid in respect of employed earner's employment ("the regular interval of payment"), that person's earnings period in any employment or employments under the same secondary contributor is, or is in the process of being, changed.

(2) Subject to paragraph (3), in relation to any payments made on or after the date of change the earnings period shall be determined in accordance with the new interval.

(3) Where the new period is longer than the old period and during the first new period any payment has also been made at the old interval, the earnings-related contributions payable on any payment made on or after the date of change shall not exceed in amount the total which would have been payable if all the payments during the new period had been made at the new interval.

(4) In this regulation—

- (a) the regular interval of payment which has been discontinued is referred to as "the old interval" and the interval which has, or is to, become the regular

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(a) S.I. 1978/1689. Schedule 3 was amended by regulation 4 of S.I. 1984/350, regulation 3 of S.I. 1990/1894, regulation 4 of S.I. 1994/726 and regulation 4 of S.I. 1998/1728.

- interval of payment is referred to as “the new interval”;
- (b) the earnings period determined according to the old interval is referred to as “the old period” and that determined according to the new interval is referred to as “the new period”;
  - (c) reference to payment means payment of earnings actually made or, as the case may be, treated under regulation 7 as made, at an interval or date; and
  - (d) “date of change” means the date on which the first payment of earnings at the new interval is made.

### Holiday payments

**19.** Where as respects an employed earner’s employment in which the earner is paid or would, but for paragraph (b), be treated under regulation 7 as paid at a regular interval of a week or a fixed number of weeks, a payment of earnings includes or comprises a payment in respect of a period of holiday entitlement other than such a payment made to an earner in respect of a period of holiday entitlement outstanding on termination of that employment, for the purposes of calculating the earnings-related contributions payable in respect of that payment of earnings—

- (a) the earnings period may be the length of the period in respect of which the payment is made, but where the length of that earnings period includes a fraction of a week that fraction shall be treated as a whole week; and
- (b) where the earnings period is so determined, regulation 7 shall not apply.

### ►<sup>1</sup>Joint employment of spouses or civil partners◄

**20.** For the purposes of earnings-related contributions, where ►<sup>1</sup>spouses or civil partners◄ are jointly employed in employed earner’s employment and earnings in respect of the employment are paid to them jointly, the amount of the earnings of each shall be calculated upon the same basis as that upon which those earnings are calculated for the purposes of income tax and, in the absence of such calculation, upon such basis as may be approved by the Board.

<sup>1</sup>Words substituted in reg. 20 by reg. 3 of S.I. 2005/3130 as from 5.12.05.

### ►<sup>2</sup>Annual maxima for those with more than one employment

**21.—(1)** For the purposes of section 19(1) and (2) of the Act (power to prescribe maximum amounts of contributions and repayments of excess) if an earner is employed in more than one employment his liability in any year—

- (a) for primary Class 1 contributions; or
- (b) where both primary Class 1 contributions and Class 2 contributions are payable by him, for both primary Class 1 contributions and Class 2 contributions,

<sup>2</sup>Reg. 21 substituted by reg. 6 of S.I. 2003/193 as from 6.4.03.

shall not exceed an amount which equals the amount found in accordance with paragraph (2).

(2) The amount is found as follows.

*Step One*

Calculate—

$$53 \times (\text{UEL} - \text{PT})$$

Here *UEL* is the upper earnings limit, and *PT* the primary threshold, specified for the year.

*Step Two*

Multiply the result of Step One by ►<sup>1</sup>12 per cent.◄.

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<sup>1</sup>Words substituted in reg. 21(2), steps 2, 5, 7 & para. (3) by reg. 2(2)(a) & (b) of S.I. 2012/573 as from 26.3.12.

*Step Three*

Add together, in respect of all of the employed earner's employments, so much of the earnings in each of those employments as exceeds the primary threshold and does not exceed the upper earnings limit.

*Step Four*

From the sum produced by Step Three subtract the amount found by the formula in Step One.

*Step Five*

If the result produced by Step Four is a positive value, multiply it by ►<sup>1</sup>2 per cent. ◀.

If that result is nil or a negative value, it is treated for the purposes of Step Eight as nil.

*Step Six*

Add together, in respect of all of the employed earner's employments, so much of the earnings in each of those employments as exceeds the upper earnings limit.

*Step Seven*

Multiply the sum produced by Step Six by ►<sup>1</sup>2 per cent. ◀.

*Step Eight*

Add together the amounts produced by Steps Two, Five and Seven.

The result of Step Eight is the annual maximum, subject to the further qualifications in paragraphs (3) and (4).

(3) For the purpose only of determining the extent of the earner's liability for contributions under paragraph (2), the amount of a primary Class 1 contribution which is paid at a rate less than ►<sup>1</sup>12 per cent ◀—

- (a) because the earner is in contracted-out employment, or
- (b) because the earner is a married woman who has made an election to pay contributions at the reduced rate as mentioned in regulation 127,

shall be treated as equal to the amount of the primary Class 1 contribution which would be payable if the employment were not contracted-out or the election had not been made.

(4) Paragraph (2) is subject to—

- (a) section 12 of the Act (late paid Class 2 contributions); and
- (b) regulations 63 to 65 (special provisions about Class 2 and Class 3 contributions paid late).

(5) Notwithstanding paragraphs (1) to (4), an earner shall be liable, in the first instance, for the full amount of the contributions which would have been payable but for this regulation. ◀

**►<sup>1</sup>Amounts ◀ to be treated as earnings**

**22.—**(1) For the purposes of section 3 of the Act (earnings)(a), the amounts

## Reg. 22

specified in paragraphs ►<sup>1</sup>(2) to ►<sup>2</sup>(11)◀◀ shall be treated as remuneration derived from an employed earner's employment.

(2) The amount specified in this paragraph is the amount of any payment by a company to or for the benefit of any of its directors if—

- (a) apart from this regulation the payment would, when made, not be earnings for the purposes of the Act; and
- (b) the payment is made on account of or by way of an advance on a sum which would be earnings for those purposes.

►<sup>1</sup>(3) The amount specified in this paragraph is the amount equal to the cash equivalent in respect of car fuel which is treated as earnings from the employment of the earner for income tax purposes by virtue of section 149 of ITEPA 2003.

(4) The amount specified in this paragraph is the amount which is treated as earnings from the employment of the employed earner by virtue of section 222(2) of ITEPA 2003(b).

(5) The amount specified in this paragraph is the amount which counts as employment income of the employed earner under Chapter 2 of Part 7 of ITEPA 2003 computed in accordance with section 428 of ITEPA 2003(c) in respect of conditional shares or interests in conditional shares acquired before 16th April 2003.

References in this paragraph and paragraph (6) to ITEPA 2003 are to that Act as originally enacted.

(6) The amount specified in this paragraph is the amount which counts as employment income of the employed earner by virtue of Chapter 4 of Part 7 of ITEPA 2003 (shares: post-acquisition charges) in respect of shares or interests in shares acquired before 16th April 2003.

(7) The amounts specified in this paragraph are those—

- (a) which count as employment income of the employed earner in relation to employment-related securities (within the meaning given by section 421B(8) of ITEPA 2003(d); and
- (b) to which section 698 of ITEPA 2003 (PAYE: special charges on employment-related securities)(e) applies.

Reference in this paragraph ►<sup>3</sup>and paragraphs (9) and (10)◀ to ITEPA 2003 are to that Act as amended.

(8) The amount specified in this paragraph is the amount—

- (a) which counts as employment income of the employed earner by virtue of sections 500 to 508 of ITEPA 2003; and
- (b) in respect of which income tax is recoverable in accordance with PAYE regulations.◀

►<sup>3</sup>(9) The amount specified in this paragraph is any amount—

- (a) which, by reason of the operation of Schedule 2 to the Finance (No. 2) Act 2005, counts as employment income of the employed earner under any of Chapters 2 to 4 of Part 7 of ITEPA 2003; and
- (b) where the relevant date for that income determined under section 698(6) of ITEPA 2003 (whether or not the PAYE Regulations apply to that income) is

<sup>1</sup>Words in reg. 22 heading & para. (1) substituted & paras. (3) to (5) substituted for (3) to (8) by reg. 5(2)-(4) of S.I. 2003/2085 as from 1.9.03.

<sup>2</sup>Words in reg. 22(1) substituted by reg. 3(a) of S.I. 2013/1907 as from 1.9.13.

<sup>3</sup>Words inserted in reg. 22(7) & paras. (9) & (10) added by regs. 2(1)-(4) of S.I. 2007/1057 as from 6.4.07.

(a) Section 3 was amended by sections 48 and 49 of the Social Security Act 1998 (c. 14) and paragraph 3 of Schedule 3 to the Transfer Act.

(b) Section 222 was amended by section 144 of the Finance Act 2003.

(c) Section 428 is substituted by paragraph 3(1) of Schedule 22, subject to the saving contained in paragraph 3(2) of that Schedule in relation to securities and interests in securities acquired before 16th April 2003.

(d) Section 421B was inserted by paragraph 2(1) of Schedule 22.

(e) Section 698 is substituted by paragraph 12(1) of Schedule 22, subject to the saving in sub-paragraph (2) of that paragraph.

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on or after 2nd December 2004 and before 20th July 2005.

(10) The amount specified in this paragraph is any amount—

- (a) which by virtue of the operation of section 92 of the Finance Act 2006 counts as employment income of the employed earner under any of Chapters 2 to 4 of Part 7 of ITEPA 2003; and
- (b) where the relevant date for that income determined under section 698(6) of ITEPA 2003 (whether or not the PAYE Regulations apply to that income) is on or after 2nd December 2004 and before 19th July 2006.◀

▶<sup>1</sup>(11) The amount specified in this paragraph is the amount treated as earnings from the employment by virtue of section 226A of ITEPA 2003 (amount treated as earnings)(a).

<sup>1</sup>Reg. 22(11) inserted by reg. 3(b) of S.I. 2013/1907 as from 1.9.13.

▶<sup>2</sup>**Amounts to be treated as earnings in connection with the use of qualifying vehicles other than cycles**

<sup>2</sup>Reg. 22A inserted by reg. 5 of S.I. 2002/307 as from 6.4.02.

**22A.**—(1) To the extent that it would not otherwise be earnings, the amount specified in paragraph (2) shall be so treated.

(2) The amount is that produced by the formula—

$$\mathbf{RME - QA}$$

Here—

**RME** is the aggregate of relevant motoring expenditure within the meaning of paragraph (3) in the earnings period; and

**QA** is the qualifying amount calculated in accordance with paragraph (4).

(3) A payment is relevant motoring expenditure if—

- (a) it is a mileage allowance payment within the meaning of ▶<sup>3</sup>section 229(2) of ITEPA 2003;◀
- (b) it would be such a payment but for the fact that it is paid to another for the benefit of the employee; or
- (c) it is any other form of payment, except a payment in kind, made by or on behalf of the employer, and made to, or for the benefit of, the employee in respect of the use by the employee of a qualifying vehicle.

<sup>3</sup>Words substituted in para. (3) of reg. 22A by reg. 4(a) of S.I. 2004/770 as from 6.4.04.

▶<sup>3</sup>Here “qualifying vehicle” means a vehicle to which section 235 of ITEPA 2003 applies◀ but does not include a cycle within the meaning of section 192(1) of the Road Traffic Act 1988(b).

(4) The qualifying amount is the product of the formula—

$$\mathbf{M \times R}$$

Here—

**M** is the sum of—

- (a) the number of miles of business travel undertaken, at or before the time when the payment is made—
  - (i) in respect of which the payment is made, and
  - (ii) in respect of which no other payment has been made; and
- (b) the number of miles of business travel undertaken—

(a) 2003 c. 1. Section 226A is inserted, with effect from 1st September 2013 (see The Finance Act 2013, Schedule 23 (Employee Shareholder Shares) (Appointed Day) Order 2013 (S.I. 2013/1755) (C. 71)), by paragraph 3 of Schedule 23 to the Finance Act 2013 (c. 29).

(b) 1988 c. 52. There are amendments to section 192 which are not relevant for the purposes of this instrument.

- (i) since the last payment of relevant motoring expenditure was made, or, if there has been no such payment, since the employment began, and
- (ii) for which no payment has been, or is to be, made; and

**R** is the rate applicable to the vehicle in question, at the time when the payment is made, in accordance with <sup>1</sup>section 230(2) of ITEPA 2003<sup>2</sup> and, if more than one rate is applicable to the class of vehicle in question, is the higher or highest of those rates.◀

<sup>1</sup>Words substituted in para. (4) of reg. 22A by reg. 4(b) of S.I. 2004/770 as from 6.4.04.

#### ▶<sup>2</sup>Amounts to be treated as earnings: Part 7A of ITEPA 2003

**22B.**—(1) For the purposes of section 3 of the Act<sup>(a)</sup> (earnings), the amount specified in paragraph (2) shall be treated as remuneration derived from an employed earner's employment.

<sup>2</sup>Reg. 22B inserted by reg. 3 of S.I. 2011/2700 as from 6.12.11.

(2) The amount is the amount which counts as employment income of the employed earner by virtue of Chapter 2 of Part 7A of ITEPA 2003<sup>(b)</sup>.

(3) Paragraph (2) does not apply if the relevant step which gives rise to the amount which counts as employment income by virtue of Chapter 2 of Part 7A of ITEPA 2003 would otherwise give rise to earnings for the purposes of the Act.

(4) In paragraph (3) "relevant step" means a relevant step for the purposes of Part 7A of ITEPA 2003.◀

#### Manner of making sickness payments treated as remuneration

**23.** Where by virtue of section 4(1) of the Act (payments treated as remuneration and earnings) a sickness payment is treated as remuneration derived from an employed earner's employment, that payment shall be made through the person who is the secondary contributor in relation to the employment concerned except where—

- (a) the payment is payable by another person;
- (b) that person has agreed with the secondary contributor to make the payment; and
- (c) arrangements have been made between them for the person who has agreed to make the payment to furnish the secondary contributor with the information specified in paragraph 3(5)(a) of Schedule 4 (intermediate employers).

#### Calculation of earnings for the purposes of earnings-related contributions

**24.** For the purpose of determining the amount of earnings-related contributions, the amount of a person's earnings from employed earner's employment shall be calculated on the basis of his gross earnings from the employment or employments in question.

*This is subject to the provisions of Schedule 2 (calculation of earnings for the purposes of earnings-related contributions in particular cases) and Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions).*

#### Payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions

**25.** Schedule 3 specifies payments which are to be disregarded in the calculation of earnings from employed earner's employment for the purpose of earnings-related contributions.

(a) Regulation 1 of the Social Security (Contributions) Regulations 2001 defines "the Act".

(b) Section 122 of the Social Security Contributions and Benefits Act 1992 and section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 define "ITEPA 2003".

## Regs. 26-27

**Certain payments by trustees to be disregarded**

**26.**—(1) For the purposes of earnings-related contributions, there shall be excluded from the calculation of a person's earnings in respect of any employed earner's employment any payment, or any part of a payment—

- (a) which is made by trustees before 6th April 1990;
- (b) the amount of which is or may be dependent upon the exercise by the trustees of a discretion or the performance by them of a duty arising under the trust;
- (c) not being a sickness payment which by virtue of section 4(1) of the Act (payments treated as remuneration and earnings) is treated as remuneration derived from an employed earner's employment,

and in respect of which either paragraph (2) or (3) is satisfied.

(2) This paragraph is satisfied if the trust, under which the payment is made, was created before 6th April 1985.

(3) This paragraph is satisfied if—

- (a) the trust, under which the payment is made, was created on or after 6th April 1985;
- (b) that trust took effect immediately on the termination of a trust created before 6th April 1985;
- (c) the person to whom the payment is made either—
  - (i) was a beneficiary under the earlier trust, or
  - (ii) would have been such a beneficiary if, while the earlier trust was subsisting, he had held the employment in respect of which the payment is made; and
- (d) there were or are payments under the earlier trust which in the case of payments made on or after 6th October 1987, are payments made in circumstances to which sub-paragraphs (a), (b) and (c) apply.

**Payments to directors which are to be disregarded**

**27.**—(1) For the purposes of earnings-related contributions, there shall be excluded from the calculation of a person's earnings any payment in so far as it is a payment—

- (a) by a company;
- (b) to or for the benefit of a director of that company;
- (c) in respect of any employed earner's employment of that director with that company; and
- (d) in respect of which paragraph (2), (3) or (4) is satisfied.

(2) This paragraph is satisfied if—

- (a) the director is a partner in a firm carrying on a profession;
- (b) being a director of a company is a normal incident of membership of that profession and of membership of the firm of the director;
- (c) the director is required by the terms of his partnership to account to his firm for the payment; and
- (d) the payment forms an insubstantial part of that firm's gross returns.

(3) This paragraph is satisfied if—

- (a) the director was appointed to that office by a company having the right to do so by virtue of its shareholding in, or an agreement with, the company making the payment;
- (b) by virtue of an agreement with the company that appointed him, the director is required to account for the payment to that company; and
- (c) the payment forms part of the profits brought into charge to corporation tax or income tax of the company that appointed the director.



- (4) This paragraph is satisfied if—
- (a) the director was appointed to that office by a company other than the company making the payment;
  - (b) by virtue of an agreement with the company that appointed him, the director is required to account for the payment to that company;
  - (c) the payment forms part of the profits brought into charge to corporation tax of the company that appointed the director; and
  - (d) the company that appointed the director is not one over which—
    - (i) the director has, or
    - (ii) any person connected with the director has, or
    - (iii) the director and any persons connected with him together have, control.
- (5) In this regulation—
- (a) “company” has the meaning given by section 832(1) <sup>1</sup> and Part 2 of Schedule 1 to ITEPA 2003 <sup>2</sup>;
  - (b) “the director” means the director to or for the benefit of whom the payment referred to in paragraph (1) is made; and
  - (c) in paragraph (4)(d)—
    - (i) “control” has the same meaning as in section 840 of the Taxes Act,
    - (ii) “any person connected with the director” means any of the following, namely the spouse, <sup>2</sup> civil partner, <sup>3</sup> parent, child, son-in-law or daughter-in-law of the director.

<sup>1</sup>Words omitted and inserted in reg. 27(5)(a) by reg. 5(a) & (b) of S.I. 2004/770 as from 6.4.04.

<sup>2</sup>Words inserted in reg. 27(5)(c)(ii) by reg. 4 of S.I. 2005/3130 as from 5.12.05.

**Liability for Class 1 contributions in respect of earnings normally paid after pensionable age**

28. Where in the year in which an earner attains pensionable age a payment of earnings is made to or for his benefit before the date he reaches pensionable age, and those earnings would normally fall to be paid in a year following that year, he shall be excepted from liability for primary Class 1 contributions payable in respect of those earnings.

**Liability for Class 1 contributions of persons over pensionable age**

29. If—
- (a) earnings are paid to or for the benefit of an earner after he attains pensionable age; and
  - (b) those earnings would normally fall to be paid before the date on which he reaches pensionable age,

section 6(3) of the Act (liability for Class 1 contributions)(a) shall not operate to except him from liability for primary Class 1 contributions in respect of those earnings.

**<sup>3</sup>Abnormal pay practices**

- 30.—(1) If an officer of the Board is satisfied that—
- (a) a secondary contributor has followed or is following a practice in the payment of earnings which is abnormal for the employment in question (“an abnormal pay practice”); and
  - (b) by reason of that practice the liability for earnings-related contributions is or has been avoided or reduced,

<sup>3</sup>Reg. 30 substituted by reg. 5 of S.I. 2002/2366 as from 8.10.02.

paragraph (2) applies.

(2) If this paragraph applies the officer may, and if requested to do so by the earner or the secondary contributor shall, decide any question relating to a person’s earnings-related contributions as if the secondary contributor had not followed an abnormal pay practice, but had followed a practice normal for the employment in question.

(a) Section 6 was substituted by paragraph 2 of Part I of Schedule 9 to the Welfare Reform Act.

## Regs. 30-35

(3) A decision under this regulation shall not apply to contributions based on payments made more than one year before the beginning of the year in which that decision is given.◀

<sup>1</sup>Reg. 31 substituted by reg. 6 of S.I. 2002/2366 as from 8.10.02.

▶<sup>1</sup>Practices avoiding or reducing liability for contributions

**31.**—(1) If an officer of the Board is satisfied that—

- (a) a practice exists as to the making of irregular or unequal payments of earnings; and
- (b) by reason of the practice the liability for earnings-related contributions is avoided or reduced,

he may, and if requested to do so by either the earner or the secondary contributor shall, decide whether to issue a direction to secure that the same contributions are payable as would be payable if the practice were not followed.

(2) A direction under paragraph (1)—

- (a) shall specify the date from which it is to have effect, which shall not be earlier than that on which it is given;
- (b) shall have effect until—
  - (i) the direction is superseded by the giving of a further direction, or
  - (ii) an officer of the Board is satisfied that the practice has ceased, or has ceased to have the effect mentioned in paragraph (1)(b); and
- (c) shall be given to the earner and the secondary contributor concerned.

This is subject to the qualification in paragraph (3).

(3) A direction under paragraph (1) need not be given to an earner if the officer of the Board is for any reason unable to ascertain his identity or whereabouts.

(4) This regulation does not limit the operation of regulation 30.◀

## PART 3

## CLASS 1A CONTRIBUTIONS

**Interpretation for the purposes of this Part**

<sup>2</sup>Regs. 32 to 35 omitted by reg. 6 of S.I. 2004/1770 as from 6.4.04.

**32.-35.**—(1) ▶<sup>2</sup>◀

**Reduction of certain Class 1A contributions on account of the number of employments in the cases of something provided or made available by reason of two or more employments and of something provided or made available to two or more employed earners**

**36.—**(1) This regulation applies if something is provided or made available—

- (a) an employed earner by reason of two or more employed earner's employments, whether under the same employer or different employers; or
- (b) two or more employed earners concurrently by reason of their respective employed earner's employments under the same employer,

and all of those employed earner's employments are employments ►<sup>1</sup>other than excluded employments within the meaning of the benefits code (see Chapter 2 of Part 3 of ITEPA 2003).◀

<sup>1</sup>Words substituted in reg. 36(1) omitted in reg. 36(2) & reg. 37 omitted by reg. 7 & 8 of S.I. 2004/770 as from 6.4.04.

(2) If this regulation applies the amount of any Class 1A contribution payable for the year by the person liable to pay such contribution shall be reduced ►<sup>1</sup>◀ by deducting from that amount an amount equal to the fraction—

$$\frac{X - 1}{X}$$

of the amount which would be payable but for this regulation.

Here X is the total number of employments in respect of which the thing is provided or made available.

**37. ►<sup>1</sup>◀**

**Exception from liability to pay Class 1 contributions in respect of cars made available to disabled employed earners only for business and home to work travel**

**38.—**(1) If the conditions mentioned in paragraphs (2) to (5) are satisfied, the person who would otherwise be liable to pay the Class 1A contribution for that year in respect of the employer earner and the car mentioned in those paragraphs shall be excepted from that liability.

(2) The first condition is that the car is made available to an earner who is disabled.

(3) The second condition is that the car is made available to the earner by reason of his employment.

(4) The third condition is that the car is made available account of the earner's disability for the purposes of, or for purposes which include assisting, the earner's travelling between the earner's home and place of employment.

(5) The fourth condition is that the terms on which the car is made available to the earner prohibit private use other than—

- (a) by the earner to whom it is made available; and
- (b) in travelling between the earner's home and place of employment.

(6) The fifth condition is that no prohibited private use of the car has been made in the year.

**Calculation of Class 1A contributions**

**39.** Where a person is liable to pay a Class 1A contribution in accordance with section 10 of the Act (Class 1A contributions: benefits in kind, etc.) the amount of that contribution shall be calculated to the nearest penny, and any amount of a halfpenny or less shall be disregarded.

**Regs. 40-40A**

<sup>1</sup>In reg. 40 words substituted by reg. 6 of S.I. 2003/2085 as from 1.9.03.

<sup>2</sup>Reg. 40(2)(za) omitted by reg. 33 of S.I. 2013/622 as from 6.4.13.

<sup>3</sup>In reg. 40 words substituted in (2)(a) and (6) & (6A) omitted by reg. 4 of S.I. 2006/576 as from 6.4.06.

<sup>4</sup>Sub-para. (ab) inserted in reg. 40(2) by reg-3(2) of S.I. 2005/728 as from 6.4.05.

<sup>5</sup>Words substituted in reg. 40(2)(c) by reg. 9(a) of S.I. 2004/770 as from 6.4.04.

<sup>6</sup>Words substituted in reg. 40(2) by reg. 3(2) of S.I. 2001/2412 as from 26.7.01.

<sup>7</sup>Reg. 40(4) omitted by reg. 7(1) of S.I. 2012/817 as from 6.4.12.

<sup>8</sup>Para. (5) of reg. 40 omitted by reg. 5 of S.I. 2005/778 as from 6.4.05.

<sup>9</sup>In reg. 40(7) words substituted, sub-para. (b), (d), (g)-(o) omitted by reg. 6(7) & (8) of S.I. 2003/2085 as from 1.9.03

<sup>10</sup>Words in reg. 40(7)(a) omitted by reg. 3(3) of S.I. 2001/1004 as from 26.7.01.

<sup>11</sup>Paras. (8) & (9) of reg. 40 omitted by reg. 5 of S.I. 2005/778 as from 6.4.05.

<sup>12</sup>Reg. 40A inserted by reg. 5(2) of S.I. 2014/3159 as from 6.12.14.

**Prescribed ►<sup>1</sup>general earnings◄ in respect of which Class 1A contributions not payable**

**40.**—(1) Class 1A contributions shall not be payable in respect of the ►<sup>1</sup>general earnings◄ prescribed by paragraphs (2) to (7).

(2) The ►<sup>1</sup>general earnings◄ prescribed by this paragraph are ►<sup>1</sup>those◄ which are excluded from the calculation of a person's earnings in respect of any employed earner's employment by virtue of the following provisions of Schedule 3—

(za) ►<sup>2</sup>◄

(a) in Part VI, ►<sup>3</sup>paragraphs 2(b), 3 to 5, 7, 10 and 11;◄

►<sup>4</sup>(ab) in Part VII, paragraph 12;◄

(b) in Part VIII, paragraphs 4, 5 and 13;

(c) in Part IX, paragraphs ►<sup>5</sup>3 to 7A◄; and

(d) in Part X, paragraphs 5, ►<sup>6</sup>9, 11 to 13 and 15.◄

(3) The ►<sup>1</sup>general earnings◄ prescribed by this paragraph are ►<sup>1</sup>those◄ which are payments which are not excluded from the calculation of a person's earnings in respect of any employed earner's employment by virtue of paragraph 1 of Part II of Schedule 3 (payments in kind), but which are so excluded by virtue of paragraph 3 of Part VIII of Schedule 3 (qualifying travelling expenses) or paragraph 9 of that Part (specific and distinct expenses).

(4) ►<sup>7</sup>◄

(5) ►<sup>8</sup>◄

(6) & (6A) ►<sup>3</sup>◄

(7) ►<sup>9</sup>The general earnings prescribed by this paragraph are so much of any general earnings as are not charged to income tax as employment income by virtue of◄ any of the following extra-statutory concessions published by the Board as at 1st September 2000—

(a) ►<sup>10</sup>◄

(b) ►<sup>9</sup>◄

(c) A11 (residence in the United Kingdom: year of commencement or cessation of residence);

(d) ►<sup>9</sup>◄

(e) A37 (tax treatment of directors' fees received by partnerships and other companies);

(f) A56 (benefits in kind: tax treatment of accommodation in Scotland provided for employees);

(g)-(o) ►<sup>9</sup>◄

(p) A91 (living accommodation provided by reason of employment);

(q) A97 (Jobmatch programme).

►<sup>9</sup>Sub-paragraph (f) applies only to Scotland and sub-paragraph (9) does not apply to Northern Ireland.◄

(8) - (9) ►<sup>11</sup>◄

**►<sup>12</sup>Exception from liability to pay Class 1A contributions in respect of an amount representing an amount on which Class 1 or Class 1A contributions have already been paid pursuant to the Social Security Contributions (Limited Liability Partnership) Relationships 2014**

**40A.** Class 1A contributions shall not be payable in respect of a benefit in kind provided by an employer to an employed earner which represents an amount on which Class 1 or Class 1A contributions are payable by a limited liability partnership in respect of that earner by virtue of regulation 3 or 4 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014(a).◄

(a) 2014/3159.

## PART 4

### CLASS 1B CONTRIBUTIONS

#### Calculation of Class 1B contributions

**41.** Where a person is liable to pay a Class 1B contribution in accordance with section 10A of the Act (Class 1B contributions)(a), the amount of that contribution shall be calculated to the nearest penny, and any amount of a half penny or less shall be disregarded.

#### Exception from liability to pay Class 1B contributions

**42.—(1)** A person shall be excepted from liability to pay a Class 1B contribution for any year in respect of—

- (a) the amount of any ►general earnings which are chargeable emoluments◄ under section 10A(4) of the Act of an employee included in a PAYE settlement agreement; and
- (b) the total amount of income tax in respect of which that person is accountable to the Board in relation to ►general earnings◄ of such an employee in accordance with a PAYE settlement agreement,

Words substituted in reg. 42(1)(a) & (b) by reg. 10(a) & (b) of S.I. 2004/770 as from 6.4.04.

where the employee is a person falling within paragraph (2) or (3).

(2) The employee falls within this paragraph if he is subject to the legislation of a contracting party, other than the United Kingdom, to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(b).

(3) The employee falls within this paragraph if he is subject to the legislation of a country outside the United Kingdom in respect of which there is an Order in Council under section 179 of the Administration Act (reciprocal agreements with countries outside the United Kingdom)(c) giving effect to a reciprocal agreement.

(4) If a person is excepted from liability to pay a Class 1B contribution for any year under paragraphs (1) to (3), he shall be entitled, if he so wishes, to pay that contribution for that year.

## PART 5

### EXCEPTION FROM LIABILITY FOR CLASS 2 CONTRIBUTIONS, PROVISIONS ABOUT CLASS 3 CONTRIBUTIONS, AND REALLOCATION AND REFUND OF CONTRIBUTIONS (OTHER THAN CLASS 4)

#### Exception from liability for Class 2 contributions

**43.—(1)** Subject to paragraphs (2) and (3), a self-employed earner shall be excepted from liability to pay a Class 2 contribution for any contribution week—

- (a) in respect of the whole of which the earner is in receipt of incapacity benefit;
- (b) throughout the whole of which the earner is incapable of work;
- (c) in respect of which the earner is in receipt of maternity allowance;

(a) Section 10A was inserted by section 53 of the Social Security Act 1998 and amended by paragraph 11 of Schedule 3 to the Transfer Act and section 77 of the Welfare Reform Act.

(b) OJ No. L1, 3.1.1994, p. 7.

(c) Section 179 was amended by paragraph 70 of Schedule 2 to the Jobseekers Act 1995 (c. 18), paragraph 107 of Schedule 7 to the Social Security Act 1998, paragraph 15 of Schedule 7 to the Transfer Act, paragraph 2 of Schedule 6 to S.I. 1999/671 and paragraph 3(g) of Schedule 1 to the Tax Credits Act 1999 (c. 10).

**Regs. 43-45**

Words substituted in reg. 43(1)(e) by reg. 3 of S.I. 2002/2924 as from 1.4.03.

- (d) throughout the whole of which he is undergoing imprisonment or detention in legal custody; or
- (e) in respect of any part of which the earner is in receipt of ►carer's allowance◄ or an unemployability supplement.

(2) For the purposes of paragraph (1), in computing the period of a contribution week—

- (a) subject to sub-paragraph (b), Sunday shall be disregarded;
- (b) in the case of a self-employed earner who objects on religious grounds to working on a specific day in each contribution week other than Sunday, and does not object to working on Sunday, that specific day shall be disregarded instead of Sunday.

(3) If a self-employed earner is excepted from liability to pay a Class 2 contribution for any contribution week by virtue of paragraph (1), he shall be entitled, subject to Part 6, to pay a contribution for that week if he so wishes.

**Application for, and duration and cancellation of, certificates of exception**

**44.**—(1) A self-employed earner who desires to be excepted from liability to pay Class 2 contributions by virtue of section 11(4) of the Act (exception from such liability for Class 2 contributions on grounds of small earnings) shall make an application for that purpose to the Board who, if they grant the application, shall issue to the applicant a certificate of exception.

(2) Any such application and certificate shall be in such form as may for the time being be approved by the Board.

(3) An applicant for, and a holder of, a certificate of exception shall furnish to the Board such information and evidence relating to his earnings as the Board may require on the making of the application and at any subsequent time.

(4) Subject to the conditions specified in paragraph (5), a certificate of exception shall be in force for such period as may be specified in the certificate.

(5) The conditions are that—

- (a) if any condition attached to the issue or continuation in force of the certificate is not, or ceases to be, fulfilled, the certificate shall cease to be in force as from the date of such non-fulfilment or cessation, and the holder shall immediately notify the Board to that effect;
- (b) the period specified in the certificate may, at the discretion of the Board, commence on such date not earlier than 13 weeks before the date on which the application for the certificate was made as the Board may consider appropriate to the circumstances of the case.

(6) The holder of a certificate of exception—

- (a) shall produce the certificate for inspection when called upon to do so by an officer of the Board, and
- (b) if he desires that the certificate be cancelled, shall give notice to the Board either in writing or in such form and by such means of electronic communications as are approved, and the certificate shall then cease to have effect from such date as the Board may determine.

**Earnings for the purposes of certificates of exception**

**45.**—(1) For the purposes of section 11(4) of the Act (exception from liability for Class 2 contributions on account of small earnings)(a) the earnings of an applicant for a certificate of exception shall, in respect of any particular year, be treated as less than the amount specified in that section, if it is shown to the satisfaction of the Board

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(a) Section 11(4) was amended by paragraph 12 of Schedule 3 to the Transfer Act and Article 3 of S.I. 2001/477.

that—

- (a) in the year preceding the particular year, the earnings of the applicant were less than the amount so specified for the preceding year and that there has since been no material change of circumstances; or
- (b) in the particular year the earnings of the applicant are expected to be less than the specified amount.

(2) In paragraph (1)—

- (a) “earnings” means the applicant’s net earnings from employment as a self-employed earner; and
- (b) in calculating those net earnings—
  - (i) where the applicant also has earnings from employed earner’s employment in the same year which are shown in the accounts of his business as a receipt of that business,
  - (ii) where the applicant, as a participant in the scheme arranged under section 2(2) of the Employment and Training Act 1973 (functions of the Secretary of State)(a) and known as “New Deal 50plus”, has received payments of an employment credit, or a training grant, under that scheme, or
  - (iii) where the applicant, as a participant in a scheme such as is mentioned in section 60(1) of the Welfare Reform Act, has received payments under that scheme,

those earnings or payments shall be disregarded.

(3) Paragraph 2(b)(iii) does not apply to Northern Ireland.

### **Certificates of exception - exception from liability for, and entitlement to pay, Class 2 contributions**

**46.** In respect of any contribution week during the whole of which there is in force a certificate of exception in relation to a self-employed earner, that earner—

- (a) shall be excepted from liability to pay a Class 2 contribution; but
- (b) shall, subject to Part 6, be entitled to pay such a contribution if he so wishes.

### **Return of Class 2 contributions paid by low earners**

**47.—(1)** A self-employed earner who desires repayment of Class 2 contributions in respect of a period which commenced not earlier than 6th April 1988 and which consists of, or falls within, a year for which his earnings from employment as a self-employed earner were, or are to be treated by regulation 45 as having been, less than the amount specified in section 11(4) of the Act (exception from liability for Class 2 contributions on account of small earnings) for that year shall make an application in writing for that purpose to the Board and shall supply to them evidence as to his earnings in respect of the period for which repayment of Class 2 contributions is desired.

(2) An application under this regulation in respect of a year, or a period falling within a year, shall be made not earlier than 6th April and not later than ►<sup>1</sup>31st January◀ immediately following the end of that year.

(3) If—

- (a) the applicant’s earnings were, or by virtue of regulation 45 are to be treated as having been, less than the amount specified in section 11(4) of the Act; and
- (b) an application has been made under this regulation;

the Board shall make a repayment of the contributions which fall to be repaid.

<sup>1</sup>Words substituted in reg. 47(2) by reg. 3 of S.I. 2003/2958 as from 10.12.03.

(a) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

This is subject to the qualification in paragraph (5).

(4) If the Board make a repayment of Class 2 contributions under this regulation the applicant shall be excepted from liability for the contributions repaid to him to the extent that he is not already excepted under regulation 43 and the Board shall issue a certificate to him which shall certify the period of exception from liability.

(5) If there has been paid to the applicant or any other person an amount by way of contribution-based jobseeker's allowance or any of the contributory benefits specified in section 20(1) of the Act<sup>(a)</sup> which would not have been paid had any of the contributions whose repayment has been applied for under paragraphs (1) and (2) not been paid in the first instance, the Board shall repay that part of the contributions remaining after the deduction of that amount paid by way of such allowance or benefits.

### Class 3 contributions

**48.**—(1) Subject to sections 13(2) and 14(1) of the Act (Class 3 contributions only payable for purposes of satisfying certain contribution conditions and circumstances in which persons shall not be entitled to pay Class 3 contributions) and these Regulations, any person who is over the age of 16 and fulfils the conditions as to residence or presence in Great Britain or in Northern Ireland prescribed in regulation 145, may, if he so wishes, pay Class 3 contributions.

- (2) It shall be a condition of a person's right to pay a Class 3 contribution that he—
- (a) complies with Part 7 in so far as it applies to persons paying such a contribution, and
  - (b) complies with either of the two conditions specified in paragraph (3).

(3) The conditions are that the person specified in paragraph (1) shall either—

- (a) pay the contribution not later than 42 days after the end of the year in respect of which it is paid; or
- (b) subject to <sup>1</sup>regulations 50, 50A <sup>2</sup>, 50B and 50C<sup>3</sup> and Part 6, pay the contribution—
  - (i) where the contribution is payable in respect of any year before 6th April 1982, before the end of the second year following the year in respect of which it is paid; and where the contribution is payable in respect of any year after 5th April 1982, before the end of the sixth year following the year in respect of which it is paid; or
  - (ii) where the year in respect of which it is paid includes a period of at least 6 months throughout which the contributor has been undergoing full-time education, or full-time apprenticeship or training for which, in either case, any earnings are less than the lower earnings limit, or has been undergoing imprisonment or detention in legal custody, before the end of the sixth year following the year in which the education, or apprenticeship or training, or imprisonment or detention terminated; and
  - (iii) where the year first mentioned in head (ii) is immediately preceded or followed by a year in which the conditions specified in that head are not satisfied in respect only of the length of the period specified in that head, in respect of that preceding or following year, before the end of the sixth year following the year in which the education, apprenticeship, training, imprisonment or detention described in that head terminated.

<sup>1</sup>Words substituted in reg. 48(3)(b) by reg. 3(4) of S.I. 2007/2520 as from 1.10.07.

<sup>2</sup>Words substituted in reg. 48(3)(b) by reg. 34 of S.I. 2013/622 as from 6.4.13.

### Precluded Class 3 contributions

**49.**—(1) Subject to paragraph (2), no person shall be entitled to pay a Class 3 contribution—

- (a) in respect of any year if he would, but for the payment of such a contribution,

<sup>3</sup>Words in reg. 49(1)(b) substituted by reg. 7 of S.I. 2003/193 as from 6.4.03.

(a) Section 20(1) was amended by paragraph 2(2) of Schedule 1 to the Social Security Incapacity for Work) Act 1994 (c. 18), Schedule 3 to the Jobseekers Act 1995, paragraph 2(1) of Schedule 4 to the Pensions Act 1995 (c. 26) and paragraph 3(2) of Schedule 8, paragraph 15(2) of Schedule 12 and Part V of Schedule 13 to the Welfare Reform Act.



- be entitled to be credited with a contribution;
- (b) in respect of any year in which the aggregate of his earnings factors derived from earnings in respect of which ►<sup>3</sup>primary Class 1 contributions, payable at the main primary percentage, ◀ have been paid, credited earnings, or Class 2 or Class 3 contributions paid or credited is less than 25 times the lower earnings limit and either the period has passed within which any Class 3 contributions may be treated as paid for that year under regulation 4 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(a) or he has sooner, in accordance with regulation 56, applied for the return of any Class 3 contributions paid in respect of that year;
  - (c) in respect of any year if the aggregate of his earnings factors derived from earnings in respect of which ►<sup>1</sup>primary Class 1 contributions, payable at the main primary percentage, ◀ have been paid, credited earnings, or Class 2 or Class 3 contributions paid or credited is more than 25 times the lower earnings limit but less than the qualifying earnings factor and either—
    - (i) the period referred to in sub-paragraph (b) has passed, or
    - (ii) he has sooner applied under regulation 56 for the return of any Class 3 contributions paid in respect of that year;
  - (d) in respect of any year if it causes the aggregate of his earnings factors derived from earnings in respect of which ►<sup>1</sup>primary Class 1 contributions, payable at the main primary percentage, ◀ have been paid, credited earnings, or Class 2 or Class 3 contributions paid or credited to exceed the qualifying earnings factor by an amount which is half or more than half that year’s lower earnings limit;
  - (e) ►<sup>2</sup>◀
  - (f) in respect of the year in which he attains 17 or 18 years of age if in an earlier year he has satisfied the first contribution condition for retirement pension or widow’s pension or widowed mother’s allowance.
- (2) Notwithstanding paragraph (1)(a), (b) or (c), a person shall be entitled to pay a Class 3 contribution in respect of any year if it would enable him to satisfy—
- (a) the first contribution condition for retirement pension or widow’s pension or widowed mother’s allowance and he has not satisfied that condition at the beginning of that year; or
  - (b) the contribution condition for widow’s payment and he has not satisfied that condition at the beginning of that year.
- <sup>2</sup>(2A) No person shall be entitled to pay a Class 3 contribution in respect of the year in which he attains pensionable age or any subsequent year.
- This is subject to the following qualification.
- (2B) A person—
- (a) who has attained the age of 60;
  - (b) to whom a full gender recognition certificate is issued; and
  - (c) whose acquired gender is male;
- is not precluded from paying Class 3 contributions for the relevant years.
- (2C) For the purposes of paragraph (2B) the relevant years are—
- (a) the year in which the person attains the age of 60;
  - (b) any subsequent year before that in which the full gender recognition certificate is issued; and
  - (c) the year in which the full gender recognition certificate is issued.◀

<sup>1</sup>Words in reg. 49(1)(c) & (d) substituted by reg. 7 of S.I. 2003/193 as from 6.4.03.

<sup>2</sup>Sub-para. (e) of reg. 49(1) omitted & paras. (2A) - (2C) inserted by reg. 6(1) and (2) of S.I. 2005/778 as from 6.4.05.

(3) In this regulation “credited” means credited for the purposes of retirement pension, widowed mother’s allowance and widow’s pension.

<sup>3</sup>Reg 49A inserted by reg. 3 of S.I. 2007/1838 as from 18.7.07.

►<sup>3</sup>Conditions relating to Class 3 contributions: transfers to the Communities’ pension scheme

(a) S.I. 2001/769.

## Regs. 49A-50A

**49A.**—(1) The entitlement of a person to pay a Class 3 contribution is subject to the condition set out in paragraph (2).

(2) The condition is that a person may not pay a Class 3 contribution for any part of the period to which that person's Communities transfer relates.

(3) For the purposes of this regulation, paragraph (3) of regulation 148A applies to determine the meaning of a Communities transfer in the same way as it applies to determine the meaning of that expression for the purposes of that regulation.◀

<sup>1</sup>Reg. 50 substituted by reg. 7 of S.I. 2002/2366 as from 8.10.02.

**Class 3 contributions not paid within prescribed periods**

▶<sup>1</sup>**50.**—(1) If—

(a) a person (“the contributor”)—

(i) was entitled to pay a Class 3 contribution under regulation 48, 146(2)(b) or 147; and

(ii) failed to pay that contribution in the appropriate period specified for its payment; and

(b) the condition in paragraph (2) is satisfied,

the contributor may pay the contribution within such further period as an officer of the Board may direct.

(2) The condition is that an officer of the Board is satisfied that—

(a) the failure to pay is attributable to the contributor's ignorance or error; and

(b) that ignorance or error was not the result of the contributor's failure to exercise due care and diligence.◀

<sup>2</sup>Reg. 50A inserted by reg. 4 of S.I. 2004/1362 as from 17.5.04.

**▶<sup>2</sup>Class 3 contributions: tax years 1996-97 to 2001-02**

**50A.**—(1) This regulation applies to Class 3 contributions payable in respect of the tax years 1996-97 to 2001-02 (“the relevant years”).

(2) If a person (“the contributor”)—

(a) was entitled to pay a Class 3 contribution in respect of any of the relevant years under regulation 48, 146(2)(b) or 147;

(b) had not, before the coming into force of these Regulations, paid that contribution; and

(c) had not, before 1st November 2003, received notice—

(i) in the case of a contributor in Great Britain, from the Department for Work and Pensions, the former Department of Social Security or the Board, or

(ii) in the case of a contributor in Northern Ireland, from the Department for Social Development, the former Department for Health and Social Services for Northern Ireland(**a**) or the Board,

that he was entitled to pay a Class 3 contribution for that relevant year(**b**);

he may pay the contribution within the period specified in paragraph (3).

(3) The period within which the contribution may be paid is the period beginning with the coming into force of these Regulations and ending—

(a) in the case of a contributor who has reached or will reach pensionable age before 24th October 2004, on 5th April 2010; and

(b) in the case of a contributor who will reach pensionable age on or after 24th

<sup>3</sup>Words in regulation 50A(4) substituted by reg. 3(5) of S.I. 2007/2520 as from 1.10.07.

(a) The functions of the Department of Health and Social Services for Northern Ireland 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).

(b) See section 14(1) of the Social Security Contributions and Benefits Act 1992.

October 2004, on 5th April 2009.

(4) Nothing in this regulation limits the application of <sup>3</sup>regulation 50 or 50B.◀

**Regs. 50B-50C**  
<sup>1</sup>Reg. 50B inserted by  
 reg. 6 of S.I. 2007/2520  
 as from 1.10.07.

▶<sup>1</sup>**Class 3 contributions: tax year 1993-94 to 2007-08**

**50B.**—(1) This regulation applies to Class 3 contributions payable in respect of the tax years 1993-94 to 2007-08 (“the relevant years”).

(2) Paragraph (4) applies if a person (“the contributor”)—

- (a) was entitled under regulation 48, 146(2)(b) or 147 to pay a Class 3 contribution in respect of any of the relevant years; and
- (b) was credited with any earnings—
  - (i) before 7th October 1996 under regulation 9 of the Social Security (Credits) Regulations 1975(a) (credits for unemployment or incapacity for work), or
  - (ii) after 6th October 1996 under regulation 8B of those Regulations (credits for incapacity for work), or
  - (iii) under regulation 7 of those Regulations (credits for approved training),
 and in each case these earnings were removed, on or after 1st July 2007, from the record of contributions paid by, or credited in respect of, that person on the relevant record system because the earnings had been recorded on that system due to an official error in relation to the relevant record system (“the removed earnings”).

(3) In paragraph (2) “an official error in relation to the relevant record system” means an official error—

- (a) arising from a failure to transpose information relating to the removed earnings correctly from the Department for Work and Pensions’ Pension Strategy Computer System to Her Majesty’s Revenue and Customs’ National Insurance Recoding System 2; or
- (b) arising from clerical procedures related to that transposition.

(4) The contributor may pay a Class 3 contribution in respect of any week to which the removed earnings related, provided this payment is made within the time specified in paragraph (5).

(5) The time within which the contribution may be paid is the period beginning with 1st October 2007 and ending on 5th April 2014.

(6) Nothing in this regulation limits the application of regulation 50 or 50A.◀

<sup>2</sup>Reg. 50C inserted by  
 reg. 35 of S.I. 2013/622  
 as from 6.4.13.

▶<sup>2</sup>**Class 3 contributions: tax years 2006-07 to 2015-16: unavailability of pension statements 2013-14 to 2016-17**

**50C.**—(1) This regulation applies to Class 3 contributions payable in respect of one or more of the tax years 2006-07 to 2015-16 (“the relevant contribution years”).

(2) Paragraph (3) applies if a person (“the contributor”)—

- (a) was entitled under regulation 48, 146(2)(b) or 147(1)(b) to pay a Class 3 contribution in respect of one or more of the relevant contribution years;
- (b) had not, before the coming into force of this regulation, paid that contribution; and
- (c) will reach pensionable age on or after 6th April <sup>3</sup>2016◀.

<sup>3</sup>Date “2017” in reg.  
 50C(2)(c) substituted by  
 reg. 2(2) of S.I. 2013/  
 718 as from 18.4.13.

(3) The contributor may pay a Class 3 contribution under this regulation, in respect

(a) S.I. 1975/556, relevant amending instruments are S.I. 1976/1736, 1977/788, 1978/409, 1982/96, 1983/197, 1987/414, 1987/687, 1988/516, 1988/1439, 1988/1545, 1989/1627, 1991/387, 1992/726, 1994/1837, 1995/829, 1996/2367, 1999/568, 1999/2566, 2000/3120 and 2003/521; there are other amending instruments, but none is relevant.

**Regs. 50C-52**

<sup>1</sup>Date "2017" substituted by reg. 2(2) of S.I. 2013/718 as from 18.4.13.

of any of the relevant contribution years, within the period specified in paragraph (4).

(4) The period within which the contribution may be paid is the period beginning on 6th April 2013 and ending on 5th April 2023.

▶<sup>1</sup>Consequential provision

Where the contributor reaches pensionable age on or after 6th April 2016 but before 6th April 2017 the reference to 6th April 2013 in regulations 50C(4) is to be read as a reference to 18th April 2013.◀

(5) Notwithstanding section 13(6) of the Act, the amount of a Class 3 contribution payable under this regulation shall be—

- (a) in respect of contribution years 2006-07 to 2009-10, the amount payable in relation to tax year 2012-13; or
- (b) in respect of contribution years 2010-11 to 2015-16, the amount payable in the contribution year to which the payment relates.

(6) Paragraph (5) does not apply to a Class 3 contribution paid on or after 6th April 2019.

(7) Nothing in this regulation limits the application of regulations 50, 50A and 50B.◀

<sup>2</sup>Words in reg. 51 substituted by reg. 4(a) & (b) of S.I. 2011/797 as from 6.4.11.

**Disposal of contributions not properly paid**

<sup>3</sup>Words in reg. 51(2) substituted by reg. 11 of S.I. 2004/770 as from 6.4.04.

**51.**—(1) Where contributions (other than Class 1A, Class 1B or Class 4 contributions) are paid which are of the wrong class, or at the wrong rate, or of the wrong amount, ▶<sup>2</sup>HMRC◀ may treat them as paid on account of contributions properly payable under the Act.

(2) Where the whole or any part of a Class 1A contribution or a Class 1B contribution falls to be returned by ▶<sup>2</sup>HMRC◀ to any person under ▶<sup>3</sup>regulation 52 or 52A◀ or any part of a Class 1A contribution falls to be repaid by ▶<sup>2</sup>HMRC to any person under regulation 55(1), or regulation 55A,◀ ▶<sup>2</sup>HMRC◀ may treat—

- (a) the amount of the Class 1A contribution or, as the case may be, any part of such a contribution, as a payment on account of any secondary Class 1 contributions, Class 1B contributions or Class 2 contributions;
- (b) the amount of that Class 1B contribution or, as the case may be, any part of such a contribution, as a payment on account of any secondary Class 1 contributions, Class 1A contribution or Class 2 contributions,

properly payable by that person.

<sup>4</sup>Reg. 52 & reg. 52(A) substituted by reg. 12 of S.I. 2004/770 as from 6.4.04.

**▶<sup>4</sup>Return of contributions paid in error**

**52.**—(1) This regulation applies if a contribution other than a Class 4 contribution has been paid in error.

This regulation is subject to regulations 51 and 57.

(2) If this regulation applies, an application may be made to the Board for the return of the contribution paid in error.

(3) An application under paragraph (2) shall be made to the Board—

- (a) in writing, or in such form and by such means of electronic communications as are approved; and
- (b) within the time permitted by paragraph (8).

(4) On the making of an application under paragraph (2) the Board shall return the contribution paid in error.

This is subject to paragraphs (5) and (6).

(5) Paragraph (4) does not require the return of contributions unless the amount to be returned exceeds—

- (a) in the case of Class 1 contributions, 1/15 of a contribution at the main primary percentage payable on earnings at the upper earnings limit in respect of primary Class 1 contributions prescribed in regulation 10 for the last or only year in respect of which the contributions were paid; or
- (b) in the case of a Class 1A or Class 1B contribution, 50 pence.

(6) Paragraph (4) does not require the return of a primary Class 1 contribution which is treated as properly paid by regulation 3 of the Social Security (Additional Pension) (Contributions Paid in Error) Regulations 1996(a).

(7) Contributions paid by a secondary contributor on behalf of any person in error—

- (a) if they are not recovered from that person by the secondary contributor, may be returned to the secondary contributor; and
- (b) if they are recovered by the secondary contributor from that person may be returned—
  - (i) to that person; or
  - (ii) with that person's consent given in writing or in such form and by such means of electronic communications as may be approved, to the secondary contributor.

(8) An application for the return of any contribution paid in error shall be made within the period of six years from the end of the year in which the contribution was due to be paid.

This is subject to the following qualification.

If the application is made after the end of that period, an officer of the Board shall admit it if satisfied that—

- (a) the person making the application had reasonable excuse for not making the application within that period; and
- (b) the application was made without unreasonable delay after the excuse had ceased.

(9) In this regulation “error” means, and means only, an error which—

- (a) is made at the time of the payment; and
- (b) relates to some past or present matter.

### **Return of contributions paid in excess of maxima prescribed in regulation 21**

**52A.**—(1) This regulation applies if there has been a payment of contributions in excess of the maximum determined in accordance with regulation 21 (annual maxima for those with more than one employment) in the particular case.

This regulation is subject to regulations 51, 52 and 57.

(2) If this regulation applies, an application may be made to the Board, in writing or in such form and by such means of electronic communications as may be approved for the return of so much of the payment of contributions as exceeds the maximum determined in accordance with regulation 21 in the particular case.

(3) On the making of an application under paragraph (2) the Board shall, subject to the following provisions of this regulation, return so much of the payment of contributions as exceeds the maximum determined in accordance with regulation 21 in the particular case.

(4) Paragraph (3) does not require the return of—

- (a) a payment of Class 1 or Class 2 contributions unless the amount to be

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(a) S.I. 1996/1245. Regulation 3 was amended by Schedule 2 to the Transfer Act.

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returned exceeds 1/15 of a contribution at the primary percentage payable on earnings at the upper-earnings limit in respect of main primary Class 1 contributions prescribed in regulation 10 for the last or only year in respect of which the contributions were paid;

- (b) a primary Class 1 contribution to which regulation 3 of the Social Security (Additional Pension) (Contributions Paid in Error) Regulations 1996 (purposes for which primary Class 1 contributions paid in error are to be treated as properly paid) applies.

(5) Contributions to which this regulation applies shall be returned in the following order—

- (a) primary Class 1 contributions at the reduced rate;
- (b) Class 2 contributions;
- (c) primary Class 1 contributions at the main primary percentage;
- (d) any amount of primary Class 1 contributions reduced in accordance with section 41(1) and (1A) of the Pensions Act<sup>(a)</sup> in respect of COSRS employment;
- (e) any amount of primary Class 1 contributions reduced in accordance with section 42A(1) and (2) of the Pensions Act<sup>(b)</sup> in respect of COMPS employment.

(6) The amount to be refunded is determined in accordance with the following Rules.

In this paragraph—

“a valid personal pension notice” means a notice given under subsection (1) of section 44 of the Pensions Act (approved personal pension arrangements)<sup>(c)</sup> which has not been rejected by the Board;

“an APP employment” means an employment in respect of which a valid personal pension notice has been given; ▶<sup>1</sup>◀

▶<sup>1</sup>“UAP” means the upper accrual point<sup>(d)</sup>; and ◀

“UEL” means the upper earnings limit for the year in respect of which the contributions were due to be paid and “PT” means the primary threshold for that year.

Rule 1 applies where none of the employments is contracted-out.

Rule 2 applies where at least one employment is contracted-out and no valid personal pension notice has been given in respect of another employment.

Rule 3 applies where at least one of the employments is contracted-out and a valid personal pension notice has been given in respect of another employment.

### Rule 1

The amount to be returned is the excess of the contributions actually paid by the earner over the maximum prescribed by regulation 21 in the particular case.

### ▶<sup>2</sup>Rule 2

(a) i.e. the Pension Schemes Act 1993 (see regulation 1(2) of the principal Regulations). Section 41 has been amended by paragraph 127 of Schedule 7 to the 1998 Act, paragraph 6 of Schedule 9 to the Welfare Reform Act and paragraph 36 of Schedule 1 to the 2002 Act.

(b) Section 42A was inserted by section 137(5) of the Pensions Act 1995 (c. 26) and subsections (1) and (2) were substituted by paragraph 128 of Schedule 7 to the Social Security Act 1995 and paragraph 7 of Part 2 of Schedule 9 to the Welfare Reform Act.

(c) Section 44(1) has been amended section 164 of the Pensions Act 1995 and paragraph 48 of Schedule 1 to the Transfer Act.

(d) Section 122(1) of the Social Security Contributions and Benefits Act 1992 & section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 give the meaning of upper accrual point.

<sup>1</sup>Word omitted & defn. of “UAP” inserted by reg. 2(a)-(b) of S.I. 2010/646 as from 6.4.10.

<sup>2</sup>Rule 2 and Rule 3 substituted by reg. 2(b) of S.I. 2010/646 as from 6.4.10.

If the amount of contributions paid in respect of contracted-out employments exceeds the amount found by the following formula, the amount to be returned is the excess.

The formula is—

$$53 \times [((UAP - PT) \times \blacktriangleright^1 10.6\% \blacktriangleleft) + ((UEL - UAP) \times \blacktriangleright^2 12\% \blacktriangleleft)]$$

In any other case to which this Rule applies take the following Steps: the amount to be returned is the excess of the contributions actually paid by the earner over the amount found by Step 5 in the following sequence.

**Step 1**

Determine the amount of earnings between PT and UAP in respect of contracted-out employments held in the year.

**Step 2**

Multiply the amount found at Step 1 by  $\blacktriangleright^1 10.6\% \blacktriangleleft$ .

**Step 3**

Subtract the amount found at Step 1 from that found by the formula—

$$53 \times (UEL - PT)$$

**Step 4**

Multiply the result found at Step 3 by  $\blacktriangleright^2 12\% \blacktriangleleft$ .

**Step 5**

Add together the results of Steps 2 and 4.

**Rule 3**

If the amount of contributions paid in respect of APP employments exceeds the amount produced by the formula below, the amount to be refunded is the excess.

The formula is—

$$53 \times (UEL - PT) \times \blacktriangleright^2 12\% \blacktriangleleft$$

In any other case to which this Rule applies take the following Steps: the amount to be returned is the excess of the contributions actually paid by the earner over the amount found by Step 7 in the following sequence.

**Step 1**

Determine the amount of earnings between PT and UEL in respect of APP employments held in the year.

**Step 2**

Multiply the amount found at Step 1 by  $\blacktriangleright^2 12\% \blacktriangleleft$ .

**Step 3**

Subtract the amount found at Step 1 from that found by the formula—

$$53 \times (UAP - PT)$$

<sup>1</sup>Percentages in reg. 52A(6) substituted by reg. 36 of S.I. 2013/622 as from 6.4.13.

<sup>2</sup>Percentages in reg. 52A(6) substituted by reg. 8(a) of S.I. 2012/817 as from 6.4.12.

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If the result is a positive amount go to Step 4, otherwise go to Step 5.

<sup>1</sup>Percentages in reg. 52A(6) substituted by reg. 8(a) & (b) of S.I. 2012/817 as from 6.4.12.

**Step 4**

Multiply the amount found at Step 3 by ►<sup>1</sup>10%◄.

**Step 5**

Subtract the amount found at Step 1 together with any previous amount found at Step 3 from the amount found by the formula—

$$53 \times (UEL - PT)$$

**Step 6**

Multiply the amount found at Step 5 by ►<sup>1</sup>12%◄.

**Step 7**





<sup>1</sup>Reg. 53 omitted by reg. 5 of S.I. 2006/576 as from 6.4.06.

Add together the results of Steps 2, 4 (if completed) and 6◀

**53.** ▶<sup>1</sup>◀

**Return of Class 1 contributions paid at the non-contracted out rate instead of at the contracted-out rate**

**54.**—(1) Subject to paragraphs (2) and (3) and without prejudice to paragraph 13(2) and (3) of Schedule 4, where a secondary contributor has paid an amount on account of contributions at the non-contracted-out rate in respect of any employed earner's employment which amount he would have been liable to pay but for that employment being or becoming contracted-out employment, the Board shall, on application of the secondary contributor, return to him the amount so paid after deducting the amount of Class 1 contributions payable at the contracted-out rate in respect of that employment.

(2) Any amount falling to be returned under paragraph (1) which has been paid by the secondary contributor on behalf of an earner and recovered from him shall be returned to the earner, or with the earner's consent given—

- (a) in writing; or
- (b) in such form and by such means of electronic communications as are approved,

to the secondary contributor.

(3) An application under paragraph (1) shall be made in such manner as the Board shall approve and within the period of 6 years from the end of the year in which the contracting-out certificate in respect of the employment ▶<sup>2</sup>was issued.

<sup>2</sup>Words substituted in reg. 54(3) by reg. 9 of S.I. 2002/2366 as from 8.10.02.

This is subject to the following qualification.

If the application is made after the end of that period, an officer of the Board shall admit it if satisfied that—

- (a) the secondary contributor had reasonable excuse for not making the application within that period; and
- (b) the application was made without unreasonable delay after the excuse had ceased.◀

**Repayment of Class 1A contributions**

**55.**—(1) Subject to regulations 51 and 57 and paragraphs (2) and (3), where, in a case specified in paragraph (2), in the light of information provided to the Board, it appears that too much has been paid in respect of a Class 1A contribution, they shall repay to the person paying that contribution the amount which has been overpaid, unless that amount does not exceed 50 pence.

(2) The cases to which paragraph (1) applies are those in which a person has paid a Class 1A contribution and—

- (a) in calculating the amount of that contribution the person used information which later proves to have been inaccurate or incomplete; or
- (b) the employee who received the <sup>1</sup>general earnings in respect of which the contribution was payable is later found to have been a person not residing in the United Kingdom for the purposes of income tax at the time of receipt.

<sup>1</sup>Words substituted in reg. 55(2)(b) by reg. 13 of S.I. 2004/770 as from 6.4.04.

(3) The repayment of part of a Class 1A contribution under paragraph (1) is subject to the condition that the person referred to in that paragraph <sup>2</sup>(“the applicant”) shall make an application to that effect in writing to the Board and within the period of 6 years from the end of the year in which the Class 1A contribution <sup>1</sup>was due to be paid.

<sup>2</sup>Words added & substituted in reg. 55(3) by reg. 10 of S.I. 2002/2366 as from 8.10.02.

This is subject to the following qualification.

If the application is made after the end of that period, an officer of the Board shall admit it if satisfied that—

- (a) the application had reasonable excuse for not making the application within that period; and
- (b) the application was made without unreasonable delay after the excuse had ceased.

**<sup>3</sup>55A.**—(1) Subject to regulations 51 and 57 and to paragraph (2), where an officer of Revenue and Customs is satisfied that an amount treated as earnings in respect of which a Class 1A contribution was paid is no longer treated as earnings in accordance with the provisions of Sections 100A and 100B of the Income Tax (Earnings and Pensions) Act 2003 (homes outside UK owned through company etc<sup>(a)</sup>), the amount paid shall be repaid to the person who paid that contribution.

<sup>3</sup>Regulation 55A & words in reg. 57(1) inserted by regs. 3 & 5 of S.I. 2011/797 as from 6.4.11.

(2) The repayment of all or part of a Class 1A contribution under paragraph (1) is subject to the condition that an application shall be made in writing to HMRC on or before 6th April 2015.

**Return of precluded Class 3 contributions**

**56.**—(1) Subject to regulations 51 and 57 and to paragraph (2), where a contributor has paid a Class 3 contribution which by virtue of section 14(1) of the Act (restriction on the right to pay Class 3 contributions) or regulation 49 he was not entitled to pay, the Board shall, on application of the contributor, return that contribution to the contributor.

(2) A contributor wishing to apply for the return of a contribution falling within paragraph (1) shall make an application to the Board either—

- (a) in writing; or
- (b) in such form, and by such means of electronic communications, as are approved.

**Calculation of return of contributions**

**57.**—(1) In calculating the amount of any return of contributions to be made under <sup>4</sup>regulation 52, 52A <sup>3</sup>, 55, 55A or 56, there shall be deducted—

- (a) the amount of any contribution which has under regulation 51 been treated as paid on account of other contributions;
- (b) in the case of such contributions paid in error in respect of any person, the amount, if any, paid to that person (and to any other person on the basis of that error) by way of contributory benefit which would not have been paid had any of the contributions (in respect of which an application for their return is duly made in accordance with <sup>4</sup>regulation 52(8)) not been paid in the first instance;

<sup>4</sup>Words substituted in reg. 57(1) and (1)(b) by reg. 14(a) & (b) of S.I. 2004/770 as from 6.4.04.

(a) 2003 c. 1; sections 100A and 100B were inserted by section 45(1) of the Finance Act 2008 (c. 9) and treated by subsection (2) of that section as always having had effect.

- (c) the amount of any contributions equivalent premium payable under Chapter III of Part III of the Pensions Act(a);
- (d) the amount of any minimum contributions paid by the Board under section 43 of the Pensions Act(b) (minimum contributions to personal pension schemes);
- (e) the amount of any payment made by the Board under section 7 of the Social Security Act 1986(c) (schemes becoming contracted-out between 1986 and 1993); and
- (f) in the case of such contributions paid in error in respect of any person, the amount of any payment made by the Board under section 42A(3) of the Pensions Act (age-related rebates)(d).

(2) Paragraph (1)(b) is subject to the qualification that, if the Secretary of State certifies that a deduction of an additional amount of income support or income-based jobseeker's allowance has been made under regulation 13 of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 ("the 1988 Regulations")(e) (sums to be deducted in calculating the recoverable amount), paragraph (3) applies.

(3) If this paragraph applies, the amount to be returned shall be reduced by applying the formula—

### CB - IS

Here—

**CB** is the amount of contributory benefit specified in paragraph (1)(b) and

**IS** is the amount of income support or income-based jobseeker's allowance specified in regulation 13(b) of the 1988 Regulations.

(4) In this regulation the expression "contributions equivalent premium" has the same meaning as in section 55(2)(f) of the Pensions Act.

#### **Reallocation of contributions for benefit purposes**

**58.**—(1) Where any payment of earnings is made in one year which, but for regulation 7(3), would by virtue of that regulation have been treated as paid at an interval falling within another year, the contributions paid in respect of those earnings shall, on the application of the employed earner or the direction of the Secretary of State, be treated, for the purposes of entitlement to benefit, as paid in respect of that other year.

(2) Where—

- (a) an employed earner's employment commences in one year;
- (b) the first payment of earnings in respect of that employment is made in the following year; and
- (c) earnings in respect of that employment which fall to be paid in that later year are paid at regular intervals,

the contributions paid in respect of the first payment of earnings shall, on the application of the employed earner to the Secretary of State, be treated, for the purposes of entitlement to benefit, as paid in respect of the year in which the employment commenced.

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- (a) References to "contributions equivalent premiums" are substituted for those to "limited revaluation premiums" by the Pensions Act 1995 (see, in particular, section 141(1) of that Act).
  - (b) Section 43 was amended by paragraph 42 of Schedule 5 to the Pensions Act 1995 (c. 26) and paragraph 47 of Schedule 1 to the Transfer Act.
  - (c) 1986 c. 50. Section 7 was repealed by Schedule 5 to the Pensions Act but continues to have effect by virtue of paragraph 22 of Schedule 6 to that Act. See also paragraph 1 of Schedule 1 to the Transfer Act.
  - (d) Section 42A was inserted by section 137(5) of the Pensions Act 1995 and subsection (3) was amended by paragraph 46(2) of Schedule 1 to the Transfer Act.
  - (e) S.I. 1988/664: regulation 13 was amended by regulation 23(5) of S.I. 1996/1345 and regulation 11 of S.I. 1999/2571.
  - (f) Section 55(2) was substituted by section 141(1) of the Pensions Act 1995 (c. 26) and amended by paragraph 7(1) of Schedule 2 to the Welfare Reform Act.

**Circumstances in which two-year limit for refunds of Class 1, 1A or 1B contributions not to apply**

**59.**—(1) Section 19A(1) of the Act<sup>(a)</sup> (repayment of Class 1, 1A or 1B contributions paid in error) does not apply where the three circumstances prescribed in paragraphs (2), (3) and (4) exist.

(2) The first circumstance is that, in respect of the earnings derived in year 1 from an employment of the earner, Class 1, 1A or 1B contributions have been paid.

(3) The second circumstance is that in respect of that employment and before the end of year 2—

- (a) an application for the determination of a question as to the category of earners in which the earner is or was to be included (“the categorisation question”) has been made under section 17(1)(a) of the Administration Act in accordance with regulation 13(1) of the Social Security (Adjudication) Regulations 1995<sup>(b)</sup>;
- (b) the question of law arising in connection with the categorisation question has been referred by the Secretary of State to a court under section 18 of the Administration Act;
- (c) a request in writing has been made that an officer of the Board—
  - (i) decide the categorisation question under section 8(1)(a) of the Transfer Act, or
  - (ii) vary a decision made under that section; or
- (d) the amount of income tax, which is liable to be paid in respect of year 1 and in respect of which the person liable to pay a Class 1B contribution is accountable, has been the subject of a relevant tax appeal.

(4) The third circumstance is that the question, reference, request or appeal referred to in paragraph (3) has not been determined or finally disposed of, as the case may be, at the end of year 2.

(5) For the purposes of this regulation—

“relevant tax appeal” has the meaning given by paragraph 6(4A) of Schedule 1 to the Act<sup>(c)</sup>;

“year 1” and “year 2” have the meanings given by section 19A(1) of the Act,

and a question, reference, request or appeal shall only be taken to be determined or finally disposed of when the time for appealing against it has expired or no further appeal is possible.

**PART 6****LATE PAID AND UNPAID CONTRIBUTIONS (OTHER THAN CLASS 4 CONTRIBUTIONS)****Treatment for the purpose of contributory benefit of unpaid primary Class 1 contributions where no consent, connivance or negligence on the part of the primary contributor**

**60.**—(1) If a primary Class 1 contribution payable on a primary contributor’s behalf by a secondary contributor is not paid, and the failure to pay that contribution is shown to the satisfaction of ►<sup>1</sup>an officer of the Board◀ not to have been with the consent or connivance of, or attributable to any negligence on the part of the primary contributor, that contribution shall be treated—

- (a) for the purpose of the first contribution condition of entitlement to a contribution-based jobseeker’s allowance or short term incapacity benefit as paid on the date on which payment is made of the earnings in respect of which the contribution is payable; and
- (b) for any other purpose of entitlement to contributory benefit, as paid on the due date.

<sup>1</sup>Words substituted in reg. 60(1) by reg. 11 of S.I. 2002/2366 as from 8.10.02.

(a) Section 19A was inserted by section 54 of the Social Security Act 1998 and amended by paragraph 20 of Schedule 3 to the Transfer Act.

(b) S.I. 1995/1801. Regulation 13 was revoked by regulation 59 of, and Schedule 4 to S.I. 1999/991. Article 5 of S.I. 1999/2422 contains relevant savings.

(c) Sub-paragraph (4A) was inserted by paragraph 77(11) of Schedule 7 to the Social Security Act 1998 (c. 14) and amended by paragraph 5 of Schedule 9 to the Transfer Act.

**Regs. 60-61A**

(2) In paragraph (1)(a) “the first contribution condition”, in relation to a contribution-based jobseeker’s allowance means the condition specified in section 2(1)(a) of the Jobseeker’s Act 1995(a).

<sup>1</sup>Reg. 60(3) inserted by reg. 5 of S.I. 2007/1056 as from 6.4.07.

►<sup>1</sup>(3) Where—

- (a) an amount is retrospectively treated as earnings by retrospective contributions regulations, and
- (b) the primary Class 1 contribution payable in respect of those earnings is not paid, and the failure to pay that contribution is shown to the satisfaction of an officer of the Board not to have been with the consent or connivance of, or attributable to any negligence on the part of the primary contributor,

that contribution shall be treated in accordance with paragraph (1)(a) and (b).◀

**Voluntary Class 2 contributions not paid within permitted period**

<sup>2</sup>Words substituted in reg. 61 by reg. 12 of S.I. 2002/2366 as from 8.10.02.

►<sup>2</sup>61.—(1) If a person who was entitled, but not liable, to pay a Class 2 contribution (“the contributor”) fails to pay that contribution within the period within which it may be paid, and the condition in paragraph (2) is satisfied, the contribution may be paid within such further period as an officer of the Board may direct.

(2) The condition is that an officer of the Board is satisfied that—

- (a) the failure was attributable to the contributor’s ignorance or error; and
- (b) that ignorance or error was not the result of the contributor’s failure to exercise due care and diligence.◀

<sup>3</sup>Reg. 61A inserted by reg. 7 of S.I. 2007/2520 as from 1.10.07.

**►<sup>3</sup>Voluntary Class 2 contributions: tax years 1993-94 to 2007-08**

**61A.**—(1) This regulation applies to Class 2 contributions which a person (“the contributor”) was entitled, but not liable, to pay in respect of the tax years 1993-94 to 2007-08 (“the relevant years”).

(2) Paragraph (4) applies if the contributor—

- (a) was entitled under regulation 147 to pay a Class 2 contribution in respect of any of the relevant years; and
- (b) was credited with any earnings—
  - (i) before 7th October 1996 under regulation 9 of the Social Security (Credits) Regulations 1975 (credits for unemployment or incapacity for work), or
  - (ii) after 6th October 1996 under regulation 8B of those Regulations (credits for incapacity for work), or
  - (iii) under regulation 7 of those Regulations (credits for approved training), and in each case these earnings were removed, on or after 1st July 2007, from the record of contributions paid by, or credited in respect of, that person on the relevant record system because the earnings had been recorded on that system due to an official error in relation to the relevant record system (“the removed earnings”).

(3) In paragraph (2) “an official error in relation to the relevant record system” means an official error—

- (a) arising from a failure to transpose information relating to the removed earnings correctly from the Department for Work and Pensions’ Pension Strategy Computer System to Her Majesty’s Revenue and Customs’ National Insurance Recording System 2; or
- (b) arising from clerical procedures related to that transposition.

(4) The contributor may pay a Class 2 contribution in respect of any week to which the removed earnings related, provided this payment is made within the time specified in paragraph (5).

(5) The time within which the contribution may be paid is the period beginning with 1st October 2007 and ending on 5th April 2014.

(6) Nothing in this regulation limits the application of regulation 61.◀

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(a) 1995 c. 18.

## Regs. 61B-63

**►<sup>1</sup>Voluntary Class 2 contributions: tax years 2006-07 to 2015-16: unavailability of pension statements 2013-14 to 2016-17**

<sup>1</sup>Regs. 61B inserted by reg. 37 of S.I. 2013/622 as from 6.4.13.

**61B.**—(1) This regulation applies to Class 2 contributions which a person (“the contributor”) was entitled, but not liable, to pay in respect of one or more of the tax years 2006-07 to 2015-16 (“the relevant contribution years”).

(2) Paragraph (3) applies if the contributor—

- (a) was entitled under regulation 46 or 147(1)(a) to pay a Class 2 contribution in respect of one or more of the relevant contribution years;
- (b) had not, before the coming into force of this regulation, paid that contribution; and
- (c) will reach pensionable age on or after 6th April ►<sup>2</sup>2016◄.

<sup>2</sup>Date “2017” substituted by reg. 2(2) of S.I. 2013/718 as from 18.4.13.

(3) The contributor may pay a Class 2 contribution under this regulation, in respect of any of the relevant contribution years, within the period specified in paragraph (4).

(4) The period within which the contribution may be paid is the period beginning on 6th April 2013 and ending on 5th April 2023.

►<sup>2</sup>Consequential provision

Where the contributor reaches pensionable age on or after 6th April 2016 but before 6th April 2017 the reference to 6th April 2013 in regulations 61B(4) is to be read as a reference to 18th April 2013.◄

(5) Notwithstanding section 12(3) of the Act, the amount of a Class 2 contribution payable under this regulation shall be—

- (a) in respect of contribution years 2006-07 to 2010-11, the amount payable in relation to tax year 2012-13; or
- (b) in respect of contribution years 2011-12 to 2015-16, the amount payable in the contribution year to which the payment relates.

(6) Paragraph (5) does not apply to a Class 2 contribution paid on or after 6th April 2019.

(7) Nothing in this regulation limits the application of regulations 61 and 61A.◄

**Payment of contributions after death of contributor**

**62.** If a person dies, any contributions which, immediately before his death he was entitled, but not liable, to pay, may be paid, notwithstanding his death, subject to the same provisions with respect to the time for payment as were applicable to that person.

**Class 2 contributions paid late in accordance with a payment undertaking**

**63.**—(1) This regulation applies to any Class 2 contributions which—

- (a) the earner has failed to pay on or by the due date and which, after that date, is payable in accordance with the provisions of an undertaking to pay such a contribution entered into after that date; and
- (b) would when paid fall to be computed in accordance with section 12(3) of the Act.

(2) In the case of a contribution to which this regulation applies—

- (a) which is paid in accordance with the provisions of an undertaking entered into in the contribution year or the year immediately following that year, the amount of such a contribution shall be computed by reference to the weekly rate applicable in the contribution year;
- (b) which is paid in accordance with the provisions of an undertaking entered into in any year other than a year specified in sub-paragraph (a), the amount of such a contribution shall be computed by reference to the highest weekly rate of such a contribution in the period beginning with the contribution week in respect of which the contribution is paid and ending with the day on which the undertaking was entered into;

- (c) which is not paid in accordance with the provisions of the undertaking, the amount of such a contribution shall be computed by reference to the highest weekly rate of such a contribution—
  - (i) where the contribution is paid in accordance with a further undertaking, in the period beginning with the contribution week in respect of which the contribution is paid and ending with the day on which the further undertaking was entered into, or
  - (ii) where the contribution is paid otherwise than in accordance with a further undertaking, in the period beginning with the contribution week in respect of which the contribution is paid and ending with the day on which it is paid.

(3) In this regulation “undertaking” means an arrangement between the Board and an earner under which the Board have agreed to accept payment of arrears of Class 2 contributions by instalments.

#### Collection of unpaid Class 2 contributions through PAYE code

<sup>1</sup>Reg. 63A inserted by reg. 38 of S.I. 2013/622 as from 6.4.13.

- <sup>1</sup>63A.—(1) Where—
- (a) the amount of any Class 2 contributions (“relevant debt”) would fall to be computed in accordance with section 12(3) of the Act<sup>(a)</sup> (late paid Class 2 contributions), and
  - (b) paragraph (2) applies,
- the amount of the relevant debt must be computed in accordance with paragraph (4).
- (2) This paragraph applies where—
- (a) the code (“the PAYE code”) required by regulation 13 of the PAYE Regulations<sup>(b)</sup> (determination of code by Inland Revenue) for use by an employer for a year<sup>(c)</sup> in respect of the person liable to pay the relevant debt is determined in accordance with regulation 14A of the PAYE Regulations (determination of code in respect of recovery of relevant debts) so as to effect recovery of the relevant debt;
  - (b) the determination of the PAYE code is made assuming the amount of the relevant debt is the amount computed in accordance with paragraph (4); and
  - (c) the relevant debt is paid in the year in respect of which the PAYE code is determined for use by an employer of the person liable to pay the relevant debt.
- (3) For the purpose of determining whether a relevant debt is paid in accordance with paragraph (2)(c), the amount of the relevant debt must be assumed to be the amount computed in accordance with paragraph (4).
- (4) The amount referred to in paragraphs (1), (2)(b) and (3) is the highest weekly rate of a Class 2 contribution in the period beginning with the contribution week to which the relevant debt relates and ending with the day the PAYE code mentioned in paragraph (2)(a) is determined. ◀

#### Class 2 and Class 3 contributions paid within a month from notification of amount of arrears

- 64.—(1) This regulation applies to any Class 2 or Class 3 contribution—
- (a) which would when paid fall to be computed in accordance with section 12(3) or 13(6) of the Act<sup>(d)</sup>; and
- 
- (a) Regulation 1(2) of S.I. 2001/1004 provides that “the Act” means the Social Security Contributions and Benefits Act 1992. Regulation 156 provides that a reference to a provision in an enactment that applies only to Great Britain, shall be construed so far as necessary as including a reference to the corresponding enactment applying in Northern Ireland. Schedule 7 provides that the corresponding enactment is the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
  - (b) S.I. 2003/2682, amended by S.I. 2011/1584.
  - (c) Regulation 1(2) of S.I. 2001/1004 provides that “year” means “tax year”.
  - (d) Section 12 was amended by paragraph 13 of Schedule 3, and paragraph 3 of Schedule 9, to the Transfer Act. Section 13 was amended by paragraph 14 of Schedule 3 to the Transfer Act and article 4 of S.I. 2001/477.



- (b) the amount of that contribution has been notified to the contributor by the Board in the last month of a year.
- (2) Where a contribution to which this regulation applies is paid—
  - (a) within one calendar month from the date of such notification; and
  - (b) in the year following that in which the amount was so notified;

the amount of that contribution shall be computed by reference to the weekly rate or, as the case may be, amount of such a contribution calculated in accordance with section 12 or 13 of the Act as if the contribution had been paid on the last day of the year in which the notification was given.

### **Class 2 and Class 3 contributions paid late through ignorance or error**

**65.**—(1) This regulation applies to any Class 2 or Class 3 contribution which would when paid fall to be computed at a rate or, as the case may be, an amount other than that applicable in the contribution year in accordance with section 12(3) or 13(6) of the Act.

(2) Where—

- (a) it is shown ►<sup>1</sup>to the satisfaction of an officer of the Board◄ that, by reason of ignorance or error on the part of the earner, not being ignorance or error due to any failure on his part to exercise due care and diligence, he has failed to pay a Class 2 contribution to which this regulation applies for any period on or by the due date; and
- (b) payment of that contribution is made in a year later than that in which the period commenced;

<sup>1</sup>Words substituted in reg. 65(2)(a), (3) & (4)(c) by reg. 13 of S.I. 2002/2366 as from 8.10.02.

the amount of that contribution shall be calculated by reference to the weekly rate at which a contribution paid under section 12 of the Act would have been payable if it had been paid at the time when the period began.

(3) Where a Class 3 contribution would otherwise fall to be calculated in accordance with section 13(6) of the Act, but it is shown ►<sup>1</sup>to the satisfaction of an officer of the Board◄ that the contributor has not paid that contribution before the end of the second year following the contribution year by reason of ignorance or error on the part of the earner, not being ignorance or error due to any failure on his part to exercise due care and diligence, the amount of that contribution shall be computed by reference to the amount of such a contribution applicable to the period for which the contribution is paid.

(4) Where—

- (a) a Class 3 contribution would when paid fall to be computed in accordance with section 13(6) of the Act,
- (b) such a contribution remains unpaid for a period commencing at any time after the end of the second year following the contribution year (“the relevant period”), and
- (c) it is shown ►<sup>1</sup>to the satisfaction of an officer of the Board◄ that the contributor has not, during the relevant period only, paid such a contribution by reason of ignorance or error not being ignorance or error due to any failure on the contributor’s part to exercise due care and diligence,

paragraph (5) applies.

(5) If this paragraph applies to a contribution, the amount of that contribution shall be calculated in accordance with section 13(6) of the Act as if the contribution had been paid at the time when the relevant period commenced.

**Regs. 65ZA-65B**

<sup>1</sup>Reg. 65ZA inserted by reg. 8 of S.I. 2007/2520 as from 1.10.07.

**►<sup>1</sup>Amounts of Class 2 and Class 3 contributions in certain cases where earnings removed**

**65ZA.**—(1) The amount of—

- (a) a Class 2 contribution payable by virtue of regulation 61A and paid during the period mentioned in paragraph (5) of that regulation;
- (b) a Class 2 contribution that satisfies the conditions in paragraph (2);
- (c) a Class 3 contribution payable by virtue of regulation 50B and paid during the period mentioned in paragraph (5) of that regulation,

shall, despite sections 12(3) and 13(6) of the Act, be calculated by reference to the weekly rate which would have been applicable if it had been paid during the contribution year to which it relates.

(2) The conditions mentioned in paragraph (1)(b) are that:

- (a) there is a liability to pay the contribution;
- (b) earnings were removed in the circumstances described in paragraph (2)(b) of regulation 61A; and
- (c) the contribution is paid during the period beginning with 1st October 2007 and ending on 5th April 2014.◀

<sup>2</sup>Reg. 65A inserted by reg. 5 of S.I. 2004/1362 as from 17.5.04.

**►<sup>2</sup>Amount of Class 3 contributions payable by virtue of regulation 50A**

**65A.** The amount of a contribution payable by virtue of regulation 50A during the period mentioned in paragraph (3) of that regulation shall, notwithstanding section 13(6) of the Act, be calculated by reference to the weekly rate which would have been applicable if it had been paid during the contribution year to which it relates.◀

<sup>3</sup>Reg. 65B inserted by reg. 7 of S.I. 2005/778 as from 6.4.05.

**►<sup>3</sup>Amount of Class 3 contributions payable after issue of a full gender recognition certificate**

**65B.** The amount of a contribution payable by virtue of regulation 49(2B) (Class 3 contributions not precluded where gender recognition certificate issued) which is paid in the year in which the full gender recognition certificate is issued or the following year shall, notwithstanding section 13(6) of the Act, be calculated by reference to the weekly rate which would have been applicable if it had been paid during the contribution year to which it relates.◀

**►<sup>1</sup>Late payment of voluntary Class 2 and 3 contributions for tax year 2005-06**<sup>1</sup>Reg. 65C inserted by reg. 3 of S.I. 2008/607 as from 6.4.08.**65C.**—(1) Paragraph (2) applies where a person who will reach pensionable age on or after 6th April 2010—

- (a) is entitled, but not liable, to pay a Class 2 or Class 3 contribution in respect of the tax year 2005-06; and
- (b) pays the contribution after the end of that year, but not later than 5th April 2012.

(2) Notwithstanding sections 12(3) and 13(6) of the Act, the amount of the contribution shall be calculated by reference to the weekly rate which would have been payable if it had been paid during the tax year 2005-06.◀

**PART 7****COLLECTION OF CONTRIBUTIONS (OTHER THAN CLASS 4 CONTRIBUTIONS) AND RELATED MATTERS****Notification of national insurance numbers to secondary contributors****66.** Every employed earner, in respect of whom any person is liable to pay an earnings-related contribution, shall, on request, supply his national insurance number to that person.**Collection and recovery of earnings-related contributions, and Class 1B contributions****67.**—(1) Subject to the provisions of regulations 68 and 70, earnings-related contributions and Class 1B contributions shall be paid, accounted for and recovered in like manner as income tax deducted from the ►<sup>2</sup>general earnings from an office or employment by virtue of regulations under section 684 of ITEPA 2003 (PAYE Regulations).◀<sup>2</sup>Words substituted in reg. 67(1) and (2) by reg. 15(a) and (b) of S.I. 2004/1770 as from 6.4.04.(2) ►<sup>3</sup>◀ the provisions contained in Schedule 4, (which contains provisions derived from the Income Tax Acts and the ►<sup>2</sup>the PAYE Regulations◀ with extensions and modifications) shall apply to and for the purposes of earnings-related contributions and Class 1B contributions.<sup>3</sup>Words in reg. 67(2) omitted by reg. 3 of S.I. 2008/636 as from 1.4.08.►<sup>4</sup>(3) Schedules 4A (real time returns) and 4B (additional information about payments) apply to and for the purposes of earnings related contributions.◀<sup>4</sup>Reg. 67(3) inserted by reg. 3 of S.I. 2012/821 as from 6.4.12.**►<sup>5</sup>Penalty for failure to make payments on time: Class 1 contributions**<sup>5</sup>Regs. 67A & 67B inserted by reg. 3 of S.I. 2010/721 as from 6.4.10.**67A.** Schedule 56 to the Finance Act 2009(a) (“Schedule 56 FA 2009”) (penalty for failure to make payments on time) shall apply in relation to the late payment of Class 1 contributions, as if—

- (a) the Class 1 contributions were an amount of tax falling within item 2 of the Table in paragraph 1 of Schedule 56 FA 2009 (“the Table”),
- (b) references to the PAYE Regulations were references to these Regulations, and
- (c) references to “an assessment or determination” in item 24 of the Table were references to a decision made under section 8(1)(c) of the Social Security Contributions (Transfer of Functions, etc) Act 1999(b).

►<sup>6</sup>(2) Regulation 69A of the PAYE Regulations (circumstances in which payment of a lesser amount is to be treated as payment in full for the purposes of paragraph 6(2) of Schedule 56 of the Finance Act 2009(c) applies in relation to the late payment of Class 1 contributions as if—<sup>6</sup>Reg. 67A(2) inserted by reg. 3 of S.I. 2014/608 as from 6.4.14.

(a) 2009 c. 10.

(b) 1999 c. 2.

(c) Regulation 69A was inserted into the PAYE Regulations by regulation 7 of S.I. 2014/472.

## Regs. 67A-70

- (a) the Class 1 contributions were an amount of tax falling within item 2 of the Table in paragraph 1 of that Schedule,
- (b) references to regulations 67G and 67H(2) were references to paragraphs 10 and 11 of Schedule 4 to these Regulations, and
- (c) references to earnings-related contributions were references to tax deducted under the PAYE Regulations.◀

**Penalty for failure to make payments on time: Class 1A and Class 1B contributions**

**67B.** Schedule 56 to the Finance Act 2009 (“Schedule 56 FA 2009”) shall apply in relation to the late payment of Class 1A and Class 1B contributions, as if—

- (a) the Class 1A and Class 1B contributions were an amount of tax falling within item 3 of the Table in paragraph 1 of Schedule 56 FA 2009,
- (b) in the case of Class 1b contributions, the reference to “amount shown in turn under section 254(1) of FA 2004” was a reference to the amount payable under section 10A of the Act(a), and
- (c) the reference to section 254(5) of the Finance Act 2004(b) was reference to these Regulations.◀

**Other methods of collection and recovery of earnings-related contributions**

**68.—(1)** The Board may authorise arrangements under which earnings-related contributions are to be paid in a different manner from that prescribed by regulation 67.

(2) The provisions of regulation 67 shall be in addition to any remedy otherwise available for the recovery of earnings-related contributions.

<sup>1</sup>Words substituted in heading & text of reg. 69 by reg. 4 of S.I. 2004/2096 as from 1.9.04.

**Transfer of liability from secondary contributor to employed earner: ▶<sup>1</sup>relevant employment income◀**

**69.** Schedule 5 contains provisions which have effect with respect to elections made jointly by a secondary contributor and an employed earner that the liability of the secondary contributor in respect of ▶<sup>1</sup>relevant employment income◀ shall be transferred to the employed earner.

**Payment of Class 1A contributions**

**70.—(1)** In the cases prescribed by paragraph (2), contributions shall be paid to the Board in accordance with regulations 71 to 83.

(2) The cases prescribed by this paragraph are cases where an employer is liable to pay a Class 1A contribution to the Board.

- (3) For the purposes of this regulation and regulations 71 to 83 where—
  - (a) any payment to the Board is made by cheque; and
  - (b) the cheque is paid on its first presentation to the banker on whom it is drawn,

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(a) 1992 c. 4; section 10A was inserted by section 53 of the Social Security Act 1998 (c. 14) and amended by paragraph 11 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), section 77 of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 3 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19), paragraph 177 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) and paragraph 1 of Schedule 1 to the National Insurance Contributions and Statutory Payments Act 2004 (c. 3). “The Act” is defined in regulation 1(2) of the Social Security (Contributions) Regulations 2001 as the Social Security Contributions and Benefits Act 1992. In accordance with regulation 156(3), a reference in those Regulations to a provision of that Act is to be construed, so far as necessary, as including a reference to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(b) 2004 c. 12.

the payment shall be treated as made on the day on which the cheque was received by the Board, and related expressions shall be construed accordingly.

(4) In this regulation, and in regulations 71 to 83, “employer” <sup>1</sup>means the person liable, in accordance with section 10(2) or 10ZA(a) of the Act, to pay a Class 1A contribution.◀

<sup>1</sup>Words substituted in reg. 70(4) by reg. 3 of S.I. 2002/2929 as from 28.11.02.

### Due date for payment of a Class 1A contribution

**71.**—(1) Subject to regulation 72(2) or 73(2), as the case may be, an employer who is liable to pay a Class 1A contribution to the Board shall pay that contribution to them not later than 19th July <sup>2</sup>or, where payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, not later than 22nd July◀ in the year immediately following the end of the year in respect of which it is payable.

<sup>2</sup>Words inserted in reg. 71(1) and substituted in reg. 72(1)(a) by reg. 16 & 17(a) of S.I. 2004/770 as from 6.4.04.

(2) A Class 1A contribution paid to the Board in accordance with paragraph (1) shall be shown in a return made to them in accordance with regulation 80(1).

### Provisions relating to a Class 1A contribution due on succession to business

**72.**—(1) Paragraphs (2) and (3) apply in relation to the payment of a Class 1A contribution if—

- (a) there is a change in the employer who is liable to pay <sup>2</sup>general earnings◀ to or for the benefit of all the persons who are employed in a business in respect of their employment in that business; and
- (b) the employees in question are those who ceased to be employed in that business before the change of employer occurred.

(2) Not later than 14 days <sup>3</sup>or, where payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, 17 days◀ after the end of the relevant final <sup>3</sup>tax month◀, the employer shall pay to the Board—

<sup>3</sup>Words inserted & substituted in reg. 72 & 73 by regs. 17 & 18 of S.I. 2004/770 as from 6.4.04.

- (a) any Class 1A contribution referred to in paragraph (1) in respect of the relevant final year; and
- (b) where the relevant final <sup>3</sup>tax month◀ is the month beginning on 6th April, 6th May or 6th June, any Class 1A contribution referred to in paragraph (1) in respect of the year immediately preceding the relevant final year.

(3) The employer shall include the amount of any Class 1A contribution which is payable in accordance with paragraph (2)(a) in the return required by regulation 80(1) for the relevant final year.

(4) In this regulation—

“business” includes any trade, concern or undertaking;

“employer” means the employer before the change referred to in paragraph (1)(a);

<sup>3</sup>“general earnings” means so much of a person’s remuneration or profits derived from employed earner’s employment as constitutes earnings for the purposes of the Act;◀

“relevant final <sup>3</sup>tax month◀” means the <sup>3</sup>tax month◀ in which the employer has made any payments of emoluments which were, by reason of the change of employer referred to in paragraph (1)(a) in respect of the employment of all those persons who were employed by him in that <sup>3</sup>tax month◀, the <sup>3</sup>final payment of general earnings◀ to be made by him in the year in which those payments were made; <sup>3</sup>◀

“emoluments” means so much of a person’s remuneration or profits derived from employed earner’s employment as constitutes earnings for the purposes of the Act; and

“relevant final year” means the year in which the relevant final <sup>3</sup>tax month◀ occurs.

(a) Section 10ZA was inserted by section 75 of the Child Support, Pensions and Social Security Act 2000 (c. 19).

## Regs. 73-74

**Provisions relating to Class 1A contribution due on cessation of business**

**73.**—(1) Paragraphs (2) and (3) apply in relation to the payment of a Class 1A contribution if—

- (a) an employer ceases to carry on business and upon that cessation no other person becomes liable to pay <sup>1</sup>general earnings<sup>4</sup> to or for the benefit of any employee in respect of his employment in that business; and
- (b) the employees are all those who were employed in that business at any time in the relevant final year or the year immediately preceding the relevant final year.

(2) Not later than 14 days <sup>1</sup>or, where payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, 17 days<sup>4</sup> after the end of the relevant final <sup>1</sup>tax month<sup>4</sup>, the employer shall pay to the Board—

- (a) any Class 1A contribution referred to in paragraph (1) in respect of the relevant final year; and
- (b) where the relevant final <sup>1</sup>tax month<sup>4</sup> is the month beginning on 6th April, 6th May or 6th June any Class 1A contribution referred to in paragraph (1) in respect of the year immediately preceding the relevant final year.

(3) The employer shall include the amount of any Class 1A contribution which is payable in accordance with paragraph (2)(a) in the return required by regulation 80 for the relevant final year.

(4) In this regulation—

“business” includes any trade, concern or undertaking;

“employer” means the employer before the cessation of business referred to in paragraph (1)(a);

<sup>2</sup>“general earnings” means so much of a person’s remuneration or profits derived from employed earner’s employment as constitutes earnings for the purposes of the Act;<sup>4</sup>

“relevant final <sup>2</sup>tax month<sup>4</sup>” means the <sup>2</sup>tax month<sup>4</sup> in which the employer has made any payments of emoluments which were, by reason of the cessation of business referred to in paragraph (1)(a) in respect of the employment of all those persons who were employed by him in that <sup>2</sup>tax month<sup>4</sup>, the <sup>2</sup>final payment of general earnings<sup>4</sup> to be made by him in the year in which those payments were made; <sup>2</sup><sup>4</sup>;

“emoluments” means so much of a person’s remuneration or profits derived from employed earner’s employment as constitutes earnings for the purposes of the Act;

“relevant final year” means the year in which the relevant final <sup>2</sup>tax month<sup>4</sup> occurs.

**Employer failing to pay a Class 1A contribution**

**74.**—(1) If—

- (a) the employer has paid no amount of a Class 1A contribution to the Board by the date which applies to him under regulation 71(1), 72(2) or 73(2) (as the case may be); and
- (b) the Board are unaware of the amount, if any, which the employer is liable so to pay, they may give notice to the employer requiring him to render, within 14 days, a return in the prescribed form showing the amount of a Class 1A contribution which the employer is liable to pay to them under that regulation in respect of the year in question.

(2) A notice may be given by the Board under paragraph (1) notwithstanding that an amount of a Class 1A contribution has been paid to them by the employer under regulation 71(1), 72(2) or 73(2), in respect of the year in question, if they are not satisfied that the amount so paid is the full amount which the employer is liable to pay to them for that year and the provisions of this regulation shall have effect accordingly.

<sup>1</sup>Words inserted & substituted in reg. 72 & 73 by regs. 17 & 18 of S.I. 2004/770 as from 6.4.04.

<sup>2</sup>Defn. of “general earnings” inserted & words in other defns. substituted & omitted by reg. 18(c) of S.I. 2004/770 as from 6.4.04.

(3) Upon receipt of a return made by an employer under paragraph (1) the Board may prepare a certificate showing the amount of a Class 1A contribution which the employer is liable to pay to them for the year in question.

(4) The production of the return made by the employer under paragraph (1) and of the certificate of the Board under paragraph (3) shall be sufficient evidence that the amount shown in the certificate is the amount of a Class 1A contribution which the employer is liable to pay to the Board in respect of the year in question.

(5) Any document purporting to be a certificate under paragraph (3) shall be presumed to be such a certificate until the contrary is proved.

#### **Specified amount of a Class 1A contribution**

**75.**—(1) If, following the date which applies to him under regulation 71(1), 72(2) or 73(2) (as the case may be), the employer has paid no amount of a Class 1A contribution to the Board in respect of the year in question and there is reason to believe that the employer is liable so to pay, the Board—

- (a) in the case of the first year in which the employer is liable to pay such a contribution, upon consideration of any information which has been provided to them by the employer relating to his liability to pay such contributions; or
- (b) in the case of any later year, upon consideration of the employer's record of past payments;

may to the best of their judgment specify the amount of a Class 1A contribution which they consider the employer is liable to pay and give notice to him of that amount.

(2) If, on the expiration of the period of 7 days allowed in the notice, the specified amount of a Class 1A contribution or any part of that amount is unpaid, the amount so unpaid—

- (a) shall be treated for the purposes of these Regulations to be an amount of a Class 1A contribution which the employer was liable to pay in respect of the year in question in accordance with regulation 71(1), 72(2) or 73(2); and
- (b) may be certified by the Board.

(3) Paragraph (2) does not apply if, during the period allowed in the notice—

- (a) the employer pays to the Board the full amount of a Class 1A contribution which he is liable to pay under regulation 71(1), 72(2) or 73(2), in respect of the year in question; or
- (b) the employer satisfies the Board that no amount of such a contribution is due.

(4) The production of a certificate such as is mentioned in paragraph (2)(b) shall, until the contrary is established, be sufficient evidence that the employer is liable to pay to the Board the amount shown in the certificate, and any document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

(5) A notice may be given by the Board under paragraph (1) notwithstanding that an amount of a Class 1A contribution has been paid to them by the employer under regulation 71(1), 72(2) or 73(2) in respect of the year in question, if, after seeking the employer's explanation as to the amount of a Class 1A contribution paid, they are not satisfied that the amount so paid is the full amount which the employer is liable to pay to them in respect of that year, and this regulation shall have effect accordingly, but paragraph (2) shall not apply if, during the period allowed in the notice, the employer satisfies the Board that no further amount of a Class 1A contribution is due in respect of that year.

(6) Where, during the period allowed in a notice given by the Board under paragraph (1), the employer claims, but does not satisfy the Board, that the payment of a Class 1A contribution made in respect of the year specified in the notice is the full amount of a Class 1A contribution which he is liable to pay to the Board in respect of that year, the

**Regs. 75-78**

<sup>1</sup>Words substituted in reg. 75(6) & (7) by reg. 4 of S.I. 2009/600 as from 1.4.09.

employer may require the Board to inspect his documents and records as if they had called upon him to produce those documents and records in accordance with ►<sup>1</sup>Schedule 36 to the Finance Act 2008(a) (information and inspection powers)◄.

(7) If the employer does require the Board to inspect his documents and records in accordance with paragraph (6), the provisions of ►<sup>1</sup>paragraph 26A◄ of Schedule 4 shall apply in relation to that inspection and the notice given by the Board under paragraph (1) shall be disregarded.

**Interest on an overdue Class 1A contribution**

**76.**—(1) Where an employer has not paid a Class 1A contribution, which he is liable to pay, by the date which applies to him under regulation 71(1), 72(2) or 73(2) (as the case may be), any contribution not so paid shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Act from the reckonable date until payment.

(2) Interest payable under this regulation shall be recoverable as if it were a Class 1A contribution which an employer is liable to pay to the Board under regulation 71(1), 72(2) or 73(2) (as the case may be).

(3) A contribution to which paragraph (1) applies shall carry interest from the reckonable date even if that date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(b).

(4) A certificate of the Board that any amount of interest payable under this regulation has not been paid to the Board or, to the best of the Board's knowledge and belief, to any person acting on their behalf, shall be sufficient evidence that the employer is liable to pay to the Board the amount of interest shown on the certificate and that the sum is unpaid and due to be paid, and any document purporting to be such a certificate shall be deemed to be a certificate until the contrary is proved.

(5) For the purposes of this regulation, "the reckonable date" means the 19th July ►<sup>2</sup>or where payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, the 22nd of July◄ in the year immediately following the end of the year in respect of which the Class 1A contribution is payable to the Board.

<sup>2</sup>Words inserted in reg. 76(5) by reg. 19 of S.I. 2004/770 as from 6.4.04.

**Payment of interest on a repaid Class 1A contribution**

**77.**—(1) Where—

- (a) a Class 1A contribution paid by an employer to the Board in respect of the year ended 5th April 1999 or any subsequent year is repaid to him; and
- (b) that repayment is made after the relevant date,

any such repaid contribution shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Act from the relevant date until the order for the repayment is issued.

(2) For the purposes of this regulation, "the relevant date" means—

- (a) the 14th day after the end of the year in respect of which the Class 1A contribution was paid; or
- (b) if later than that day, the date on which the contribution was paid.

**Repayment of interest paid on a Class 1A contribution**

**78.** If an employer has paid interest on a Class 1A contribution, that interest shall be repaid to him where—

- (a) the interest paid is found not to have been due to be paid, although the contribution in respect of which it was paid was due to be paid;

(a) 2008 c. 9 Schedule 36 is brought into force on 1st April 2009 by S.I. 2009/404 (c. 25).

(b) 1882 c. 61: section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).



- (b) the Class 1A contribution in respect of which interest was paid is returned or repaid to the employer in accordance with the provisions of regulation 52 or 55.

**Remission of interest on a Class 1A contribution**

79.—(1) Where interest is payable in accordance with regulation 76 it shall be remitted for the period commencing on the first relevant date and ending on the second relevant date in the circumstances specified in paragraph (2).

(2) For the purposes of paragraph (1), the circumstances are that the liability, or a greater liability, to pay interest in respect of a Class 1A contribution arises as the result of an official error being made.

(3) For the purposes of this regulation—

“official error” means a mistake made, or something omitted to be done, by an officer of, or person employed in relation to, the Board acting as such, where the employer or any person acting on his behalf has not caused, or materially contributed to, that mistake or omission;

“the first relevant date” means the date defined in regulation 76(5) or, if later, the date on which the official error occurs; and

“the second relevant date” means the date 14 days after the date on which the official error is rectified and the employer is advised of its rectification.

**Return by employer**

80.—(1) Where a Class 1A contribution is payable to the Board in accordance with regulation 71(1), 72(2) or 73(2), the employer shall render to them a return, not later than 6th July following the end of the year, showing—

- (a) such particulars as they may require for the identification of the employer;
- (b) the year to which the return relates;
- (c) the amounts which are <sup>1</sup>general earnings in respect of which a Class 1A contribution is payable; and
- (d) the amount of any Class 1A contribution payable in respect of that year.

<sup>1</sup>(1A) The employer must render the return required by paragraph (1)—

- (a) by sending it to the Board; or
- (b) arranging for the information which it would contain to be delivered to an official computer system by an approved method of electronic communications.

(1B)-(1F) <sup>1</sup>◀

(2) The return shall include a declaration by the person making the return to the effect that the return is, to the best of his knowledge, correct and complete.

<sup>2</sup>(3) The declaration must be—

- (a) signed by the employer; or
- (b) where the employer is a body corporate, signed either by the secretary or by a director.

(3A) Where the return referred to in this regulation is rendered as mentioned in paragraph (1A)(b) the declaration must, instead of being signed, be authenticated by or on behalf of the employer in such a manner as may be approved by HMRC.

(4) If, by the date which applies to him under regulation 71(1), 72(2) or 73(2) (as the case may be), an employer has failed to pay a Class 1A contribution which he is liable to pay, the Board may prepare a certificate showing the total amount of a Class 1A contribution remaining unpaid in respect of the year in question and regulation 76(1) and (2) shall, with any necessary modifications, apply to the amount shown in that certificate.

80A. <sup>3</sup>◀

<sup>1</sup>Words substituted in reg. 80(1)(c), para. (1A) substituted and paras. (1B) to (1F) omitted by reg. 20(a)-(c) of S.I. 2004/770 as from 6.4.04.

<sup>2</sup>Reg. 80(3) substituted & para. (3A) added by reg. 19(a) & (b) of S.I. 2012/821 as from 6.4.12.

<sup>3</sup>Reg. 80A omitted by reg. 21 of S.I. 2004/770 as from 6.4.04.

**Reg. 81**

<sup>1</sup>Reg. 81(1) substituted by reg. 4 of S.I. 2010/721 as from 6.4.10.

**Penalties for failure to make a return and incorrect returns**

**81.**—<sup>1</sup>(1) Schedule 24 to the Finance Act 2007(a) (penalties for errors) applies to the return of contributions referred to in regulation 80(1) (return by employer) as if—

- (a) Class 1A contributions were a tax; and
- (b) that tax and the return of contributions in relation to it were listed in the table in paragraph 1 of that Schedule.

(1A) That Schedule also applies to decisions made under section 8(1)(c) of the Social Security Contributions (Transfer of Functions, etc) Act 1999 regarding Class 1A contributions and for that purpose a reference in the Schedule to an assessment is to be treated as if it included a reference to a decision and “under-assessment” shall be construed accordingly.

(1B) Paragraphs (6) to (9) do not apply in relation to penalties under paragraphs (1) and (1A).◀

(2) Any person who fails to make a return referred to in paragraph (1) by the date which applies to him under regulation 71(1), 72(2) or 73(2), may be liable—

- (a) within 6 years after the date of that failure, to a penalty of the relevant monthly amount for each month (or part of a month) during which the failure continues but excluding any month after the twelfth, or for which a penalty under this paragraph has already been imposed; and
- (b) if the failure continues beyond 12 months, to a penalty not exceeding so much of the amount payable by him in accordance with the regulations for the year to which the return relates as remains unpaid at the end of 19th July after the end of that year.

(3) The penalty referred to in paragraph (2)(b) is without prejudice to any penalty which may be imposed under paragraph (2)(a) and may be imposed within six years after the date of the failure referred to in paragraph (2) or at any later time within three years of the final determination of the amount of a Class 1A contribution by reference to which the amount of that penalty is to be ascertained.

(4) For the purposes of paragraph (2), “the relevant monthly amount” in the case of a failure to make a return is—

- (a) where the number of earners in respect of whom particulars of the amount of any Class 1A contribution payable should be included in the return is 50 or less, £100; or
- (b) where that number is greater than 50, £100 for each 50 such earners and an additional £100 where that number is not a multiple of 50.

(5) The total penalty payable under paragraph (2)(a) shall not exceed the total amount of Class 1A contributions payable in respect of the year to which the return in question relates.

(6) Any penalty imposed in accordance with this regulation shall be recoverable as if it were a Class 1A contribution which the employer is liable to pay to the Board under regulation 71.

(7) A penalty imposed in accordance with this regulation shall be due and payable at the end of 30 days beginning with the date on which notice of the decision to impose it was issued.

(8) The Board may, in their discretion, mitigate any penalty, or stay or compound any proceedings for any penalty, imposed in accordance with the provisions of this regulation, and may also, after judgment, further mitigate or entirely remit such a penalty.

(9) For the purposes of this regulation a person shall be deemed not to have failed to have done anything required to be done within a limited time if he—

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(a) 2007 c. 11. Schedule 24 was amended in particular by Schedule 40 to the Finance Act 2008 (c. 9) and Schedule 57 to the Finance Act 2009 (c. 10).

- (a) did it within such further time as the Board allowed; or
- (b) had a reasonable excuse for the failure and if that excuse ceased, did it without unreasonable delay after that excuse ceased.

#### **Application of the Management Act to penalties for failure to make a return and incorrect returns**

**82.—(1)** Section 100 of the Management Act(a) (determination of penalties by an officer of the Board) shall apply with any necessary modifications in relation to the determination of any penalty under regulation 81 as it applies to the determination of a penalty under the Taxes Acts.

(2) Section 100D(b) of the Management Act (penalty proceedings before court) shall apply with any necessary modifications in relation to any proceedings for a penalty under regulation 81 as it applies to proceedings for a penalty under the Taxes Acts.

(3) Section 104 of the Management Act (saving for criminal proceedings) shall apply with any necessary modifications in relation to the provisions of regulation 81 as it applies to the provisions of the Taxes Acts.

(4) Section 105 of the Management Act (evidence in cases of fraudulent conduct)(c) shall apply with any necessary modifications in respect of any proceedings for a penalty under regulation 81, or on appeal against the determination of such a penalty, as it applies in relation to any proceedings for a penalty, or on appeal against the determination of a penalty, under the Management Act.

(5) In this regulation—

“the Management Act” means the Taxes Management Act 1970(d); and

“the Taxes Acts” has the same meaning as in section 118(1) of the Management Act (interpretation)(e).

#### **Set-off of Class 1A contributions falling to be repaid against earnings-related contributions**

**83.—(1)** In the circumstance prescribed by paragraph (2), an amount in respect of a Class 1A contribution that falls to be repaid in accordance with these Regulations may be set off against liabilities under them to the extent prescribed in paragraph (3).

(2) The circumstance is that an employer has paid to the Board in accordance with regulations 70 to 82 an amount, in respect of Class 1A contributions, which he was not liable to pay.

(3) The extent of the set-off is that the employer shall be entitled to deduct the amount which he was not liable to pay in respect of Class 1A contributions from any payment in respect of secondary earnings-related contributions which he is subsequently liable to pay to a Collector under paragraph 10 or 11 of Schedule 4 for any income tax period in the same year.

(4) In this regulation “Collector”, “income tax period” and “year” have the meanings given in paragraph 1(2) of Schedule 4.

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(a) Sections 100 to 100D were substituted for section 100 by section 167 of the Finance Act 1989. Section 100 was amended by paragraph 3(2) of Schedule 11 to the Finance Act 1990 (c. 29), paragraph 14 of Schedule 1 and Part I of Schedule 2 to S.I. 1994/1813, and paragraph 38 of Schedule 19 to the Finance Act 1998 (c. 36).

(b) Section 100D was amended by Article 2 of, and the Schedule to S.I. 1999/679.

(c) Section 105 was amended by sections 149(5) and 168(5) of the Finance Act 1989.

(d) 1970 c. 9.

(e) The definition was amended by paragraph 32(d) of Schedule 8 to the Development Land Tax Act 1976 (c. 24), Schedule 31 to the Taxes Act 1988 and paragraph 2(1) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12).



**►<sup>1</sup>Requirement to give security or further security for amounts of Class 1A contributions**

<sup>1</sup>Reg. 83A inserted by reg. 17 of S.I. 2012/821 as from 6.4.12.

**83A.** Paragraphs 29M to 29X of Schedule 4 (security for payment of Class 1 contributions) apply in relation to Class 1A contributions as they apply in relation to Class 1 contributions but as if—

- (a) in paragraph 29N—
  - (i) the reference to “Class 1 contributions” were a reference to “Class 1A contributions”; and
  - (ii) the reference to “paragraph 10, 11 or 11A” were a reference to “section 10 or 10ZA of the Social Security Contributions and Benefits Act 1992, or section 10 or 10ZA of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as the case may be”; and
- (b) in paragraph 29O(1) for “within the meaning given in paragraph 1(2)” there were substituted “within the meaning given in regulation 70(4).◀

**Special provisions relating to primary Class 1 contributions**

►<sup>2</sup>**84.**—(1) If in accordance with an arrangement authorised under regulation 68, notwithstanding paragraph 3(1) of Schedule 1 to the Act (method of paying Class 1 contributions), an earner is required to make direct payments in respect of primary Class 1 contributions in respect of earnings paid to him or for his benefit, the following provisions of this regulation apply.

<sup>2</sup>Reg. 84 substituted and reg. 85 omitted by regs. 8 & 9 of S.I. 2003/193 as from 6.4.03.

(2) In a case to which this regulation applies—

- (a) the earner shall be liable for such of the primary Class 1 contributions as are specified in the arrangements authorised under regulation 68, and
- (b) the secondary contributor shall be liable for any other Class 1 contributions,

in respect of earnings paid to the earner or for the earner’s benefit from the employment in question.

(3) The Board shall notify the secondary contributor in writing of—

- (a) the arrangement,
- (b) the contributions for which, notwithstanding the arrangement, he will remain accountable to the Board, and
- (c) the period to which the arrangement relates (“the relevant period”).

(4) During the relevant period, paragraph 3(1) of Schedule 1 to the Act (method of paying Class 1 contributions) shall not apply to the secondary contributor in respect of those contributions—

- (a) to which the arrangement relates, and
- (b) for which he would otherwise have been accountable to the Board,

unless and until the arrangement has been cancelled before the end of the period and the secondary contributor has been notified in writing of its cancellation.◀

**85.** ►<sup>2</sup>◀

**Special provisions relating to culpable employed earners and to secondary contributors or employers exempted by treaty etc., from enforcement of the Act or liability under it**

**86.**—(1) As respects any employed earner’s employment—

- (a) where there has been a failure to pay any primary contribution which a secondary contributor is, or but for the provisions of this regulation would be, liable to pay on behalf of the earner and—

- <sup>3</sup>(i)◀ the failure was due to an act or default of the earner and not to any negligence on the part of the secondary contributor ►<sup>2</sup>, or
- (ii) it is shown to the satisfaction of an officer of the Board that the earner knows that the secondary contributor has wilfully failed to pay the

<sup>3</sup>Sub-para. (i) renamed & (ii) inserted into reg. 86(1)(a) by reg. 22(a) of S.I. 2004/770 as from 6.4.04.

primary contribution which the secondary contributor was liable to pay on behalf of the earner and has not recovered that primary contributions from the earner<sup>1</sup> or

- (b) where the secondary contributor is a person against whom, by reason of any international treaty or convention as mentioned in paragraph 30 of Schedule 4, the provisions of the Act are not enforceable and who is not willing to pay on behalf of the earner any contribution due in respect of earnings paid to or for the benefit of the earner in respect of that employment,

the provisions of paragraph 3(1) of Schedule 1 to the Act (method of paying Class 1 contributions) shall not apply in relation to that contribution.

(2) Where, as respects any employed earner's employment the employer is a person who by reason of any such international treaty or convention is exempt from the provisions of the Act, he may, if he so wishes, pay contributions in respect of any earnings paid to or for the benefit of the earner in respect of the employment, or contributions under section 10 of the Act <sup>3</sup>, in either case to the same extent to which he could have paid such contributions if he had not been so exempt.

(3) In this regulation "employer" has the same meaning as it has in paragraph 30 of Schedule 4.

**Notification of commencement or cessation of payment of Class 2 or Class 3 contributions <sup>1</sup>on or before 5th April 2009<sup>2</sup>**

<sup>1</sup>Words omitted from reg. 86(2) by reg. 22(b) of S.I. 2004/770 as from 6.4.04.

**87.**—(1) Every person to whom paragraph (2) applies shall immediately notify the relevant date to the Board in writing or by such means of electronic communications as may be approved.

<sup>2</sup>Words inserted in heading to & sub-para. (2) of reg. 87 by reg. 5(a) & (b) of S.I. 2009/600 as from 6.4.09.

(2) This paragraph applies to a person who <sup>2</sup>on or before 5th April 2009<sup>1</sup>—

- (a) becomes, or ceases to be, liable to pay a Class 2 contribution;
- (b) becomes, or ceases to be, entitled to pay a Class 2 contribution although not liable to do so; or
- (c) is entitled to pay a Class 3 contribution and wishes either to do so or to cease doing so.

(3) If a person becomes liable to pay a Class 2 contribution and fails immediately to notify the Board in accordance with paragraph (1), he shall be liable to a penalty of £100.

This is subject to the qualification that a person shall be treated as having immediately notified the Board in accordance with paragraph (1) if he—

- (a) notifies the Board within such further time, if any, as the Board may allow;
- (b) has a reasonable excuse for not notifying the Board, and if that excuse ceases, notifies the Board without unreasonable delay after it ceases; or
- (c) shows to the Board's satisfaction that his earnings met the conditions set out in regulation 45(1) for the purposes of section 11(4) of the Act<sup>(a)</sup> throughout the period beginning on the date on which he became liable to pay a Class 2 contribution and ending on the date on which he notified the Board.

(4) The penalty referred to in paragraph (3) shall be incurred—

- (a) in the case of a failure which first occurs on or after 30th April 2001 and continues throughout the period of three calendar months beginning with the first day of the calendar month following that in which he becomes liable to pay a Class 2 contribution, the date after the day on which that period ends; or
- (b) in the case of a failure which first occurs on or after 6th April 2001 but before 30th April 2001 and continues throughout the period ending on 31st July 2001, 1st August 2001.

<sup>(a)</sup> Section 11(4) was amended by paragraph 12 of Schedule 3 to the Transfer Act and article 3 of S.I. 2001/477.

(5) The penalty referred to in paragraph (3) may be imposed by a notice of decision by an officer of the Board under section 8(1)(k)(ii) of the Transfer Act within six years after the date on which the penalty is incurred in accordance with paragraph (4).

(6) The penalty referred to in paragraph (3)–

- (a) shall be due and payable at the end of the period of 30 days beginning with the date of the issue of the notice of decision referred to in paragraph (5); and
- (b) shall be recoverable as if it were a Class 2 contribution due and payable.

(7) The Board may, in their discretion, mitigate or remit any penalty imposed under this regulation, or stay or compound any proceedings for the penalty.

(8) In paragraph (1) “the relevant date” means, in relation to a person to whom–

- (a) paragraph (2)(a) applies, the date on which he commences or ceases to be a self-employed earner;
- (b) paragraph (2)(b) or (c) applies, the date on which he wishes to commence or cease paying either Class 2 or Class 3 contributions, as the case may be.

**►<sup>1</sup>Notification of commencement or cessation of payment of Class 2 or Class 3 contributions on or after 6th April 2009**

<sup>1</sup>Reg. 87A-87G inserted by reg. 6 of S.I. 2009/600 as from 6.4.09.

**87A.**—(1) A person (P) to whom paragraph (2) applies shall immediately notify the relevant date to HMRC in writing or by such means of electronic communications as may be approved.

(2) This paragraph applies where P on or after 6th April 2009–

- (a) becomes, or ceases to be, liable to pay a Class 2 contribution;
- (b) becomes, or ceases to be, entitled to pay a Class 2 contribution although not liable to do so; or
- (c) is entitled to pay a Class 3 contribution and wishes either to do so or to cease doing so.

(3) In paragraph (1) “the relevant date” means–

- (a) in relation to a person to whom paragraph (2)(a) applies, the date on which P commences or ceases to be a self-employed earner;
- (b) in relation to a person to whom paragraph (2)(b) or (c) applies, the date on which P wishes to commence or cease paying either Class 2 or Class 3 contributions, as the case may be.

(4) P is to be treated as having immediately notified HMRC in accordance with paragraph (1) if P has notified HMRC within such further time, if any, as HMRC may allow.

**Penalty for failure to notify**

**87B.**—(1) A penalty is payable by P where–

- (a) P becomes liable to pay a Class 2 contribution;
- (b) P fails to comply with the requirement to notify in accordance with regulation 87A(1); and
- (c) notification has not been made by 31st January following the end of the year<sup>(a)</sup> in which P became liable to pay a Class 2 contribution.

(2) A failure by P to comply with the requirement to notify is–

- (a) “deliberate and concealed” if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the requirement, and
- (b) “deliberate but not concealed” if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the requirement.

(a) Regulation 1(2) of the Social Security (Contributions) Regulations 2001 defines “year” as meaning “tax year”.

- (3) The penalty payable under paragraph (1) is—
- (a) for a deliberate and concealed failure to comply with the requirement to notify, 100% of the lost contributions,
  - (b) for a deliberate but not concealed failure to comply with the requirement, 70% of the lost contributions, and
  - (c) for any other case, 30% of the lost contributions.
- (4) “The lost contributions” are the amount of Class 2 contributions which P is liable to pay—
- (a) beginning on the date on which P becomes liable to pay a Class 2 contribution, and
  - (b) ending on the 31st January preceding the day on which HMRC received notification of, or otherwise became fully aware of P’s liability to pay Class 2 contributions.
- (5) When calculating the amount of “the lost contributions” no account is to be taken of any Class 2 contribution—
- (a) that is unpaid after the end of the sixth year following the year in which liability for that contribution arose, or
  - (b) in respect of which P’s earnings meet the conditions set out in regulation 45(1) for the purposes of section 11(4) of the Act<sup>(a)</sup> (exception from liability for Class 2 contributions on account of small earnings).
- (6) Liability to a penalty under paragraph (1) does not arise in relation to a failure to comply with the requirement to notify which is not deliberate if P satisfies HMRC or (on appeal) the tribunal that there is a reasonable excuse for the failure.
- (7) For the purposes of paragraph (6)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
  - (b) where P relies on any other person to notify HMRC, that is not a reasonable excuse unless P took reasonable care to avoid the failure,
  - (c) where P had a reasonable excuse but the excuse has ceased, P is to be treated as having continued to have that excuse if P notifies without unreasonable delay after the excuse ceased.
- (8) For the purposes of this regulation, the reference to a failure by P includes a failure by a person who acts on P’s behalf; but P is not liable to a penalty in respect of a failure by P’s agent where P satisfies HMRC or (on appeal) the tribunal that P took reasonable care to avoid the failure.

### Disclosure

**87C.**—(1) Regulation 87D makes provision for the reduction of a penalty where P discloses a failure to comply with the requirement to notify.

- (2) P discloses a failure to comply with the requirement to notify by—
- (a) telling HMRC about it,
  - (b) giving HMRC reasonable help in quantifying the contributions unpaid by reason of it, and
  - (c) allowing HMRC access to records for the purpose of checking the amount of contributions so unpaid.
- (3) Disclosure of a failure to comply with the requirement to notify—
- (a) is “unprompted” if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the failure to comply with the requirement to notify, and

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<sup>(a)</sup> Regulation 1(2) of the Social Security (Contributions) Regulations 2001 provides that “the Act” means the Social Security and Contributions and Benefits Act 1992.



(b) otherwise, is “prompted”.

(4) In relation to disclosure “quality” includes timing, nature and extent.

### Reduction of penalty for disclosure

**87D.**—(1) Where P, who would otherwise be liable to a 100% penalty has made an unprompted disclosure, HMRC shall reduce the 100% to a percentage not below 30%, which reflects the quality of the disclosure.

(2) Where P, who would otherwise be liable to a 100% penalty has made a prompted disclosure, HMRC shall reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

(3) Where P, who would otherwise be liable to a 70% penalty has made an unprompted disclosure, HMRC shall reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.

(4) Where P, who would otherwise be liable to a 70% penalty has made a prompted disclosure, HMRC shall reduce the 70% to a percentage not below 35%, which reflects the quality of the disclosure.

(5) Where P, who would otherwise be liable to a 30% penalty has made an unprompted disclosure, HMRC shall reduce the 30%—

- (a) if HMRC become aware of the failure to notify less than 12 months after 31st January following the end of the year during which a person became liable to pay a Class 2 contribution, to a percentage (which may be 0%), or
- (b) in any other case, to a percentage not below 10%,

which reflects the quality of the disclosure.

(6) Where P, who would otherwise be liable to a 30% penalty has made a prompted disclosure, HMRC shall reduce the 30%—

- (a) if HMRC become aware of the failure to notify less than 12 months after the 31st January following the end of the year during which a person became liable to pay a Class 2 contribution, to a percentage not below 10%, or
- (b) in any other case, to a percentage not below 20%,

which reflects the quality of the disclosure.

### Special reduction

**87E.**—(1) If HMRC think it right because of special circumstances, they may reduce a penalty under regulation 87B(1).

(2) In paragraph (1) “special circumstances” does not include P’s ability to pay.

(3) In paragraph (1) the reference to reducing a penalty includes a reference to—

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

### Notice of decision etc.

**87F.**—(1) Where P becomes liable for a penalty in accordance with regulation 87B(1) an officer of Revenue and Customs(a) shall—

- (a) make a decision in accordance with section 8(1)(k)(ii) of the Transfer Act (b);

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(a) Section 7 of the Commissioners for Revenue and Customs Act 2005 (c. 11) provides that a function conferred on an Officer of the Board of Inland Revenue vests in an officer of Revenue and Customs.

(b) Regulation 1 of the Social Security (Contributions) Regulations 2001 provides that the Transfer Act means the Social Security Contributions (Transfer of Functions, etc) Act 1999; regulation 156 of those Regulations provides that a provision of an enactment which applies only to Great Britain shall be construed so far as necessary as including a reference to the corresponding enactment applying in Northern Ireland.

- (b) notify P; and
  - (c) state in the notice of decision the amount of the penalty imposed and the period to which it relates.
- (2) The penalty referred to in regulation 87B(1)–
- (a) must be paid before the end of the period of 30 days beginning with the date of the issue of the notice of decision; and
  - (b) shall be recoverable as if it were a Class 2 contribution due and payable.
- (3) A notice of decision must be issued before the end of the period of 12 months beginning with–
- (a) where there has been a decision that P was liable to pay Class 2 contributions and a determination of the amount P was or is liable to pay, the end of the appeal period; or
  - (b) if there is no such decision, the date on which the contributions unpaid by reason of the failure to notify are finally determined.
- (4) In paragraph (3)(a) “appeal period” means the period during which–
- (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.
- (5) A notice of decision under paragraph (1), may be combined with an assessment issued in accordance with paragraph 16 of Schedule 41 to the Finance Act 2008(a).

#### Double jeopardy

**87G.** P is not liable to a penalty under regulation 87B(1) in respect of a failure or action in respect of which P has been convicted of an offence.◀

#### Notification of change of address

**88.** A person liable to pay Class 2 contributions; or paying Class 2 contributions (although not liable to do so) or Class 3 contributions, shall immediately notify the Board of any change of his address in writing or by such means of electronic communications as may be approved.

#### Method of, and time for, payment of Class 2 and Class 3 contributions etc.

**89.—(1)** Where Class 2 or Class 3 contributions are payable by a person other than in accordance with arrangements approved under regulation 90, such contributions shall be paid in accordance with paragraph (2), ▶<sup>1</sup>(2A), ◀(3) or (4), as the case may be.

▶<sup>1</sup>(1A) Where a person who is liable to pay a Class 2 contribution in respect of any contribution week in a biannual contribution period has notified HMRC of his liability in accordance with the provisions of regulation 87 or 87A HMRC shall, no later than the notification date, issue to him a written notice of the number of contribution weeks in that biannual contribution period and of the weekly rate at which the contribution is payable.

(2) Where a person who is liable to pay a Class 2 contribution in respect of any contribution week in a biannual contribution period has notified HMRC of his liability in accordance with the provisions of regulation 87 or 87A that person shall, subject to paragraph (4) below, pay to HMRC–

- (a) the amount of contributions for which he is liable in relation to the first biannual contribution period not later than 31st January following the end of that period;
- (b) the amount of contributions for which he is liable in relation to the second biannual contribution period not later than 31st July following the end of that period.

(2A) Where–

- (a) a person who is entitled, although not liable, to pay a Class 2 contribution in any year has notified HMRC of his entitlement in accordance with the provisions of regulation 87 or 87A; and

<sup>1</sup>Words in reg. 89(1) & reg. 89(2) substituted & regs. 89(1A) & (2A) inserted by reg. 6(a)-(e) of S.I. 2011/797 as from 6.4.11.

(a) 2008 c. 9.

- (b) HMRC has, no later than the notification date, issued him with written notice of the amount he may pay in respect of his entitlement in that period;

that person may, if the person so wishes, pay to HMRC a sum not exceeding that amount.◀

(3) Where—

- (a) a person ▶◀ who is entitled to pay a Class 3 contribution, in any year, has notified ▶<sup>1</sup>HMRC◀ of his entitlement in accordance with the provisions of regulation 87 ▶<sup>1</sup>, or 87A◀; and
- (b) ▶<sup>1</sup>HMRC◀, within 14 days after the end of a contribution quarter which commences in that year, have issued him with written notice of the amount he may pay in respect of his entitlement in that quarter;

<sup>1</sup>Words in reg. 89(3), (4) & (5)-(7) substituted by reg. 6(e)-(g) of S.I. 2011/797 as from 6.4.11.

that person may, if he so wishes, pay to ▶<sup>1</sup>HMRC◀ a sum not exceeding that amount.

(4) Where—

- (a) paragraph (5) or (6) applies to a person; and
- (b) ▶<sup>1</sup>HMRC◀ have then, in respect of that person's liability for Class 2 contributions or entitlement to pay Class 2 or Class 3 contributions, issued or re-issued him, as the case may be, with written notice of the number of contribution weeks in respect of which the liability arises together with the weekly rate, and of the date specified as the date of notification, or, where he is entitled to pay contributions, of the amount of his entitlement;

that person shall, if he is liable to pay a contribution, pay the amount of contributions for which he is liable not later than ▶<sup>1</sup>the date for payment specified in the notice◀ and, if he is entitled to pay a contribution, he may pay a sum not exceeding the amount of his entitlement, to ▶<sup>1</sup>HMRC◀.

▶<sup>1</sup>(5) This paragraph applies to a person who—

- (a) has notified HMRC in accordance with the provisions of regulation 87 or 87A that—
- (i) he is liable to pay a Class 2 contribution in respect of one or in a biannual contribution period, or
- (ii) he is entitled although not liable to pay a Class 2 contribution in a biannual contribution period, or is entitled to pay a Class 3 contribution in a contribution quarter; and
- (b) has—
- (i) not, by the notification date, had written notice issued to him in respect of the that week or weeks of the kind referred to in paragraph (2A);
- (ii) not had written notice issued to him in respect of that week or weeks of a kind mentioned in paragraph (3) and more than 14 days have elapsed since the end of the contribution quarter in question; or
- (iii) notified HMRC in accordance with regulation 87 or 87A that he has ceased to be liable to pay Class 2 contributions or ceased to be entitled to pay Class 2 or Class 3 contributions, as the case may be.

(6) This paragraph applies to a person—

- (a) to whom a written notice of the kind referred to in paragraph (1A), (2A), (3) or (4) has been issued and who has informed HMRC immediately—
- (i) that the notice he received has since been lost, destroyed or defaced, or
- (ii) that he disputes the amount of contributions which he is liable or entitled to pay in the biannual contribution period or contribution quarter in question; or
- (b) who—
- (i) in relation to a notice of the kind referred to in paragraph (1A) or (2A) has notified HMRC not later than 28 days after the notification date that he has not received such a notice;

(ii) in relation to a notice of the kind referred to in paragraph (3) has notified HMRC not later than 28 days after the end of the contribution quarter in question that he has not received such a notice.

(7) In this regulation—

- (a) “biannual contribution period” means either the first biannual contribution period or the second biannual contribution period;
- (b) “first biannual contribution period” means the 26 contribution weeks beginning with the first day of the first contribution week of any year;
- (c) “second biannual contribution period” means the period of not less than 26 contribution weeks commencing on the first day of the twenty seventh contribution week in that year;
- (d) “contribution quarter” means one of the four periods of not less than 13 contribution weeks commencing on the first, fourteenth, twenty-seventh or fortieth contribution week, as the case may be, in any year;
- (e) “notification date” means—
  - (i) in relation to the first biannual contribution period, 1st December following the end of that period;
  - (ii) in relation to the second biannual contribution period, 1st June following the end of that period.◀

#### **Arrangements approved by the Board for method of, and time for, payment of Class 2 and Class 3 contributions**

**90.**—(1) The Board may from time to time approve arrangements under which contributions are paid at times or in a manner different from those prescribed by regulation 89.

This is subject to paragraphs (2) to (4).

(2) When granting approval under paragraph (1), the Board may impose such conditions as they see fit.

(3) The Board may, in particular, grant approval under paragraph (1) if, as respects any year in which a person is both an employed earner and a self-employed earner, the condition in paragraph (4) is satisfied.

<sup>1</sup>Words substituted in reg. 90(4) by reg. 10 of S.I. 2003/193 as from 6.4.03.

(4) The condition is that the Board are satisfied that the ►<sup>1</sup>total amounts of primary Class 1 contributions and Class 2 contributions◀ likely to be paid by or in respect of that person in respect of that year will exceed ►<sup>1</sup>the amount equal to 53 primary Class 1 contributions payable on earnings at the upper earnings limit for that year at the main primary percentage◀.

(5) The provisions of these Regulations shall, subject to the provisions of the arrangements, apply to the person affected by the arrangements.

(6) Where in respect of an earner arrangements are approved under paragraph (1) for payment of contributions by way of direct debit of a bank, those arrangements shall be subject to the condition that any payment by way of direct debit on account of such contributions after the authority of the bank to make such payment has for any reason ceased to be effective, shall not be a payment of contributions for the purposes of the Act.

<sup>2</sup>Part 7A inserted by reg. 23 of S.I. 2004/770 as from 6.4.04.

## ►<sup>2</sup>PART 7A

### ELECTRONIC COMMUNICATIONS

#### **Whether information has been delivered electronically**

**90A.**—(1) For the purposes of these Regulations, information is taken to have been delivered to an official computer system by an approved method of electronic communications only if it is accepted by that official computer system.

(2) References in these Regulations to information and to the delivery of information must be construed in accordance with section 135(8) of the Finance Act 2002 (mandatory e-filing).

#### **Proof of content of electronic delivery**

**90B.**—(1) A document certified by the Board to be a printed-out version of any information delivered by an approved method of electronic communications is evidence, unless the contrary is proved, that the information—

- (a) was delivered by an approved method of electronic communications on that occasion, and
- (b) constitutes everything which was delivered on that occasion.

(2) A document which purports to be a certificate given in accordance with paragraph (1) is presumed to be such a certificate unless the contrary is proved.

#### **Proof of identity of person sending or receiving electronic delivery**

**90C.** The identity of—

- (a) the person sending any information delivered by an approved method of electronic communications to the Board,
- (b) the person receiving any information delivered by an approved method of electronic communications by the Board,

is presumed, unless the contrary is proved, to be the person recorded as such on an official computer system.

#### **Information sent electronically on behalf of a person**

**90D.**—(1) Any information delivered by an approved method of electronic communications—

- (a) to the Board, or
- (b) to an official computer system,

on behalf of a person is taken to have been delivered by that person.

(2) But this does not apply if the person proves that the information was delivered without the person's knowledge or connivance.

#### **Proof of delivery of information sent electronically**

**90E.**—(1) The use of an approved method of electronic communications is presumed, unless the contrary is proved, to have resulted in the delivery of information—

- (a) to the Board, if the delivery of the information has been recorded on an official computer system;
- (b) by the Board, if the despatch of the information has been recorded on an official computer system.

(2) The use of an approved method of electronic communications is presumed, unless the contrary is proved, not to have resulted in the delivery of information—

- (a) to the Board, if the delivery of the information has not been recorded on an official computer system;
- (b) by the Board, if the despatch of the information has not been recorded on an official computer system.

(3) The time of receipt or despatch of any information delivered by an approved method of electronic communications is presumed, unless the contrary is proved, to be the time recorded on an official computer system.

**Proof of payment sent electronically**

**90F.**—(1) The use of a method of electronic communications is presumed, unless the contrary is proved, to have resulted in the making of a payment—

- (a) to the Board, if the making of the payment has been recorded on an official computer system;
- (b) by the Board, if the despatch of the payment has been recorded on an official computer system.

(2) The use of a method of electronic communications is presumed, unless the contrary is proved, not to have resulted in the making of a payment—

- (a) to the Board, if the making of the payment has not been recorded on an official computer system;
- (b) by the Board, if the despatch of the payment has not been recorded on an official computer system.

(3) The time of receipt or despatch of any payment sent by a method of electronic communications is presumed, unless the contrary is proved, to be the time recorded on an official computer system.

**Use of unauthorised method of electronic communications**

**90G.**—(1) This regulation applies to information which is required to be delivered to the Board or to an official computer system under a provision of these Regulations.

(2) The use of a method of electronic communications for the purpose of delivering such information is conclusively presumed not to have resulted in the delivery of that information, unless that method of electronic communications is for the time being approved for delivery of that kind under that provision.

**Mandatory electronic payment**

**90H.**—<sup>1</sup>(1) An employer who is a large employer within the meaning of regulation <sup>1</sup>198A (large employers) <sup>4</sup> of the PAYE Regulations must pay the specified payment using an approved method of electronic communications. <sup>4</sup>

(2) Paragraph (1) applies regardless of whether a payment of tax is due under regulation <sup>2</sup>67G or <sup>4</sup> 68 of the PAYE Regulations (payment and recovery of tax by employer).

(3) If the Board have given a direction under regulation 199(3) of the PAYE Regulations requiring a particular method of electronic communications to be used in the case of an employer, he must use that method.

<sup>3</sup>(4) This regulation does not apply to a payment of contributions, whether primary or secondary, in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force. <sup>4</sup>

<sup>4</sup>(5) A specified payment is not treated as received in full by HMRC on or before the date by which that specified payment is required in accordance with paragraph 10 or paragraph 11 of Schedule 4 unless it is made in a manner which secures (in a case where the specified payment is made otherwise than in cash) that, on or before that date, all transactions can be completed which need to be completed before the whole amount of the specified payment becomes available to the Commissioners for Her Majesty's Revenue and Customs. <sup>4</sup>

**90I-90L.** <sup>4</sup> <sup>4</sup>

**<sup>5</sup>Paragraph 22 return and specified payments <sup>4</sup>**

**90M.** In this Part—

<sup>5</sup>“paragraph 22 return” means the return and accompanying information required by paragraph 22 of Schedule 4 (return by employer at the end of the year); <sup>4</sup> and

<sup>1</sup>Words in reg. 90H(1) substituted by reg. 5(1)(b) of S.I. 2010/721 as from 6.4.10.

<sup>2</sup>Words inserted in reg. 90H(2) by reg. 4 of S.I. 2012/821 as from 6.4.12.

<sup>3</sup>Reg. 90H(4) inserted by reg. 6 of S.I. 2007/1056 as from 6.4.07.

<sup>4</sup>Reg. 90H(5) inserted & regs. 90I, 90J, 90K & 90L omitted by reg. 5(1)(c) & reg. 6 of S.I. 2010/721 as from 6.4.10.

<sup>5</sup>Heading to & defn. of “specified information” substituted, words in reg. 90M inserted by regs. 4 & 5 of S.I. 2009/2028 as from 13.8.09.

►<sup>1</sup>“specified payments” means payments of earnings related contributions under paragraph 10 (payments made monthly by employer) or paragraph 11 (payments made quarterly by employer) of Schedule 4.◄

<sup>1</sup>Defn. of “specified payments” in reg 90M & reg. 90N substituted by regs. 7 & 8 of S.I. 2010/721 as from 6.4.10.

#### ►<sup>1</sup>Mandatory use of electronic communications

**90N.**—(1) An employer (as to which see regulation 90NA) must deliver a paragraph 22 return to an official computer system using an approved method of electronic communications.

(2) If the Commissioners for Her Majesty’s Revenue and Customs have made a direction under regulation 205B(1) of the PAYE Regulations requiring a particular method of electronic communication to be used in the case of an employer, the employer must use that method.

(3) This regulation does not apply to a return in respect of retrospective earnings where those earnings relate to a tax year which is closed (see paragraph 1(2) of Schedule 4) at the time the relevant retrospective contributions regulations come into force.

#### Employers

**90NA.**—(1) For the purposes of regulation 90N, the following shall not be regarded as employers—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications,
- (b) a partnership, if all the partners fall within sub-paragraph (a),
- (c) a company, if all the directors and company secretary fall within sub-paragraph (a),
- (d) an employer who is authorised by HMRC to deduct tax from relevant payments made to employees in accordance with regulation 34 of the PAYE Regulations (simplified deduction scheme for personal employees) and who has not received an incentive payment, and
- (e) a care and support employer.

(2) In paragraph (1)(c), “company” means a body corporate or unincorporated association but does not include a partnership.

(3) In paragraph (1)(e), a “care and support employer” means an individual (“the employer”) who employs a person to provide domestic or personal services at or from the employer’s home where—

- (a) the services are provided to the employer or a member of the employer’s family,
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm,
- (c) the employer has not received an incentive payment in respect of the last 3 tax years, and
- (d) it is the employer who delivers the paragraph 22 return (and not some other person on the employer’s behalf).

(4) In this regulation “incentive payment” means an incentive payment received under the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003(a).◄

#### Standards of accuracy and completeness

**90O.**—(1) ►<sup>2</sup>Any paragraph 22 return◄ delivered by a method of electronic communications must meet the standards of accuracy or completeness set by specific or general directions given by the Board.

<sup>2</sup>Words in reg. 90O(1), substituted by reg. 7 of S.I. 2009/2028 as from 13.8.09.

(a) S.I. 2003/2495; amended by S.I. 2005/826; there are other amending instruments but none is relevant.

**Regs. 90O-90P**

<sup>1</sup>Words in reg. 90O(2) & 90P(1) substituted, reg. 90P(2A) inserted and reg. 90P(2) substituted by regs. 7-8(b) of S.I. 2009/2028 as from 13.8.09.

(2) <sup>1</sup>Any paragraph 22 return which fails to meet those standards must be treated as not having been delivered.

**Penalties and appeals**

**90P.**—(1) An employer who fails to deliver <sup>1</sup>a paragraph 22 return or any part of it in accordance with regulation 90N is liable to a penalty.

<sup>1</sup>(2) Table 2 sets out the penalties for employers for the tax year ending 5th April 2010, depending on the number of employees for whom particulars should have been included with the paragraph 22 return.

TABLE 2

PENALTIES: TAX YEAR ENDING 5TH APRIL 2010

<i>1 Number of employees for whom particulars should have been included with the return</i>	<i>2 Penalty</i>
1-5	0
6-49	£100
50-249	£600
250-399	£900
400-499	£1200
500-599	£1500
600-699	£1800
700-799	£2100
800-899	£2400
900-999	£2700
1000 or more	£3000

(2A) Table 3 sets out the penalties for employers for the tax years ending 5th April 2011 and subsequent years, depending on the number of employees for whom particulars should have been included with the paragraph 22 return.

TABLE 3

PENALTIES: TAX YEAR ENDING 5TH APRIL 2011 AND SUBSEQUENT YEARS

<i>1 Number of employees for whom particulars should have been included with the return</i>	<i>2 Penalty</i>
1-5	£100
6-49	£300
50-249	£600
250-399	£900
400-499	£1200
500-599	£1500
600-699	£1800
700-799	£2100
800-899	£2400
900-999	£2700
1000 or more	£3000



- (3) An employer is not liable to a penalty if the employer had—
- (a) a reasonable excuse for failing to comply with regulation 90N which had not ceased at the time the <sup>1</sup>paragraph 22 return<sup>◀</sup> was delivered, or
  - ▶<sup>2</sup>(b) been subject to a penalty for failing to deliver the return and accompanying information required by regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)) in accordance with regulation 205 (mandatory use of electronic communication) of those Regulations.<sup>◀</sup>
- (4) A notice of appeal against a determination under section 100 of the Management Act of a penalty under this paragraph can only be on the grounds that—
- (a) the employer did comply with regulation 90N,
    - ▶<sup>2</sup>(aa) the employer is not regarded as an employer for the purposes of regulation 90N,<sup>◀</sup>
  - (b) the amount of the penalty is incorrect, or
  - (c) paragraph (3) applies.
- (5) Section 103A of the Management Act (interest on penalties) applies to penalties payable under this paragraph.

<sup>1</sup>In reg. 90P words in para. 3(a) substituted by reg. 8(c) of S.I. 2009/2028 from 13.8.09.  
<sup>2</sup>Words in reg. 90P(3)(b) substituted & para. 4(aa) inserted by reg. 9 of S.I. 2010/721 as from 6.4.10.

### Appeals: supplementary provisions

**90Q.**—(1) The following provisions of the Management Act apply to appeals under regulation 90J (default notice and appeals), as they apply to an appeal under section 31 of that Act—

- (a) section 31A(5) and (6) (notice of appeal);
- (b) section 31B (appeals to General Commissioners);
- (c) section 31D (election to bring appeal before Special Commissioners).

(2) In an appeal under regulation 90J (appeal against default notice) or regulation 90L(4) (appeal against surcharge notice), the relevant place for the purposes of paragraph 3(1)(a) of Schedule 3 to the Management Act (rules for assigning proceedings to General Commissioners) is the place which at the time of the notice of appeal is—

- (a) the employer's place of business in the United Kingdom, or
- (b) if there is no such place, the employer's place of residence in the United Kingdom.

(3) In paragraph (2)—

“place of business” means—

- (a) the place where the trade, profession, vocation or business with which the proceedings are concerned is carried out, or
- (b) if more than one such place, the head office or place where it is mainly carried out; and

“place of residence” means the employer's usual place of residence or, if that is unknown, the employer's last known place of residence.

### Interpretation

**90R.** In this Part “the Management Act” means the Taxes Management Act 1970(a).<sup>◀</sup>

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(a) 1970 c. 9.

## PART 8

### CLASS 4 CONTRIBUTIONS

#### **Exception from Class 4 liability of persons over pensionable age and persons not resident in the United Kingdom**

**91.** Any earner who—

- (a) at the beginning of a year of assessment is over pensionable age; or
- (b) for the purposes of income tax is not resident in the United Kingdom in the year of assessment;

shall be excepted from liability for contributions under section 15 of the Act (Class 4 contributions).

#### **Exception of divers and diving supervisors from liability for Class 4 contributions**

**92.** A person who performs the duties of an employment to which section 314 of the Taxes Act applies (divers and diving supervisors) shall be excepted from liability for contributions under section 15 of the Act on so much of his profits or gains as are derived from that employment.

#### **Exception of persons under the age of 16 from liability for Class 4 contributions**

**93.**—(1) Where, as respects any year of assessment, a person to whom this regulation applies wishes to be excepted from liability to pay contributions under section 15 of the Act for that year, the following provisions of this regulation shall apply, subject to the provisions of regulations 97 and 98.

(2) Any such person shall make application to the Board for a certificate of exception for that year.

(3) If it is shown to the satisfaction of the Board that the applicant is a person to whom this regulation applies and the application is made before the beginning of the year of assessment to which it relates, the Board shall issue in respect of the applicant such a certificate of exception for that year.

(4) If the application is not made until the beginning of the year of assessment to which it relates, but is made before contributions under that section 15 of the Act for that year become due and payable and it is shown to the satisfaction of the Board that the applicant is a person to whom this regulation applies, the Board may issue in respect of the applicant a certificate of exception for that year.

(5) Where under paragraphs (1) to (4) a certificate of exception has been issued in respect of an applicant for any year of assessment, the Board shall not collect any contributions under section 15 of the Act from the applicant for that year.

(6) This regulation applies to any person who at the beginning of the year of assessment is under the age of 16.

<sup>1</sup>Heading and para. (1) to reg. 94 substituted by reg. 11 of S.I. 2003/193 as from 6.4.03.

#### **►<sup>1</sup>Exception from Class 4 liability in respect of earnings from employed earner's employment chargeable to income tax under Schedule D**

**94.**—(1) If, for any year of assessment—

- (a) an earner has earnings from employment which is employed earner's employment; and
- (b) those earnings are chargeable to income tax under Schedule D;

the earner shall be excepted from liability to pay contributions under section 15 of the Act on those earnings.

This is subject to the following qualification.◀

(2) It shall be a condition of exception from liability that the earner makes an application for such an exception to the Board before the beginning of the year of assessment to which the application relates, or before such later date as the Board may allow.

(3) An application under paragraph (2) shall be made in such manner as the Board may direct and, for the purpose of enabling the Board to determine whether the earner is entitled to the exception, the earner shall furnish the Board with such information and evidence as the Board may require, whether the requirement is made at the time of the application or later.

(4) Without prejudice to the earner's right to any such exception, nothing in paragraphs (1) to (3) shall affect the Board's powers under regulation 95 to defer, pending the determination of the application, the earner's liability under section 15 of the Act.

►<sup>1</sup>**Exception from Class 4 liability in respect of certain amounts chargeable to income tax under Schedule D**

<sup>1</sup>Reg. 94A inserted by reg. 4 of S.I. 2003/2958 as from 10.12.03.

**94A.** Where—

- (a) an earner has earnings from employment which is employed earner's employment; and
- (b) an amount representing those earnings is included in the calculation of the profits chargeable to income tax under Schedule D,

the earner shall be excepted from liability to pay contributions under section 15 of the Act (Class 4 contributions)(a) on that amount. ◀

►<sup>2</sup>**Liability of a partner in an AIFM firm for Class 4 contributions**

<sup>2</sup>Reg. 94B inserted by reg. 2(2) of S.I. 2014/3196 as from 4.12.14.

**94B—**(1) This regulation applies if an AIFM firm makes an election under section 863H of ITTOIA 2005 (election for special provision for alternative investment fund managers to apply)(b).

(2) Where a partner ("P") in an AIFM firm allocates a profit ("the allocated profit") to that firm as provided for in section 863I(2) of ITTOIA 2005 (allocation of profit to the AIFM firm), no class 4 contributions are payable in respect of that allocated profit by virtue of the allocation.

(3) Paragraph (4) applies if all or part of the allocated profit vests in P at a time when P is carrying on the AIFM trade (whether as a partner in the AIFM firm or otherwise).

(4) The amount treated as a profit under section 863J(2) and (5) of ITTOIA 2005 (vesting of remuneration represented by the allocated profit) is to be treated for the purposes of the Act(c) as if it were profits—

- (a) to which section 15(1) of the Act (class 4 contributions recoverable under the Income Tax Acts)(d) applies; and
- (b) made by P in the tax year in which that profit is chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005.

(a) Section 15 was amended by section 13 of the Limited Liability Partnerships Act 2000 (c. 12) and section 3(1) of the National Insurance Contributions Act 2002.

(b) "ITTOIA 2005" is defined in paragraph 5 as the Income Tax (Trading and Other Income) Act 2005 (c. 5). Sections 863H to 863L were inserted by paragraph 15 of Schedule 17 to the Finance Act 2014 (c. 26).

(c) "The Act" is defined in regulation 1(2) as the Social Security Contributions and Benefits Act 1992 (c. 4). Regulation 156(3) provides that references to enactments applying only to Great Britain shall be construed as including a reference to corresponding enactments applying to Northern Ireland, which in this case is the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

(d) Section 15(1) has been amended by sections 882(1) and 884 of, and paragraphs 423 and 424 of Schedule 1 to, and Schedule 3 to, ITTOIA 2005.

(5) In this regulation—

“AIFM firm” and “AIFM trade” have the meanings given in section 863H(3) and (4) of ITTOIA 2005; and

“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005.◀

#### **Deferment of Class 4 liability where such liability is in doubt**

**95.** Where, as respects any year of assessment, it appears to the Board that, by virtue of the provisions of this Part, there is doubt as to the extent, if any, of an earner’s liability to pay contributions under section 15 of the Act (Class 4 contributions) for that year, or that at the date on which any application under regulation 96 is made, it is not possible to determine whether, having regard to the provisions of these Regulations, the earner is or will be liable to pay such contributions for that year, the Board may issue in respect of the earner a certificate of deferment deferring that earner’s liability for such contributions ▶<sup>1</sup>and for such period◀ as the Board may direct.

<sup>1</sup>Words in reg. 95 substituted by reg. 12 of S.I. 2003/193 as from 6.4.03.

#### **Application for deferment of Class 4 liability**

**96.**—(1) If a person wishes his liability to pay contributions under section 15 of the Act for any year of assessment to be deferred, he shall make an application for that purpose to the Board.

(2) Any such application—

(a) shall be made before the beginning of that year or before such later date as the Board may allow; and

(b) is subject to regulations 97 and 98.

**General conditions for application for, and issue of, certificates of exception and deferment**

97.—(1) Any application made under any of regulations 91 to 96, for a certificate of exception from, or deferment of, liability to pay contributions under section 15 of the Act for any particular year of assessment shall be made in such form and in such manner as the Board may approve.

(2) Any person making such application shall furnish, or cause to be furnished, to the Board such information or evidence as they may require for the purpose of enabling them to determine whether such a certificate should be issued in respect of that person.

(3) On the issue of such a certificate the person in respect of whom the certificate is issued shall be excepted from liability to pay the contributions to which the certificate relates or his liability for such payment shall be deferred.

This is subject to paragraph (4).

(4) If, for the purpose of obtaining a certificate of exception or deferment, the person making the application furnishes or causes to be furnished to the Board information which is erroneous, or fails to furnish or cause to be furnished to them information which is relevant, and but for such furnishing or failure the certificate would not have been issued for any particular year of assessment—

- (a) the Board may revoke the certificate in so far as it relates to that year; and
- (b) the person who made the application shall be liable to pay contributions under section 15 of the Act for that year to the extent to which he would have been so liable if the certificate had not been issued.

**Revocation of certificates of exception and deferment**

98. Where under regulation 97(4)(a) the Board revoke a certificate of exception or deferment—

- (a) they shall be responsible for calculating the contributions due under section 15 of the Act for the year specified in paragraph 97(4)(b) (being the current or a past year) and for the collection of those contributions;
- (b) the applicant shall—
  - (i) furnish, or cause to be furnished, to the Board all such information or evidence as they may require for the purpose of calculating those contributions, and
  - (ii) within such period as the Board may direct, pay to them the contributions so calculated.

**Calculation of liability for, and recovery of, Class 4 contributions after issue of certificate of deferment**

99.—(1) Where a certificate of deferment has been issued in respect of any earner under regulations 91 to 98—

- (a) the profits or gains of that earner, in respect of which contributions would be payable under section 15 of the Act (Class 4 contributions), but for the issue of the certificate of deferment, shall be assessed under the Income Tax Acts for each year to which the certificate relates, in all respects as if no such certificate had been issued, provided that (without prejudice to the validity of the assessment of the amount of the earner's profits or gains and his right of appeal against that assessment) no figure representing ►<sup>1</sup>contributions, the payment of which has been deferred, ◀ shall be shown in any such assessment or on any notice of such assessment nor shall any of the provisions of the Income Tax Acts (as applied or modified by section 16 of, and Schedule 2 to, the Act) as to collection, repayment or recovery apply to any such assessment; and
- (b) the Board shall be responsible for the calculation, administration and recovery of Class 4 contributions ultimately payable in respect of the profits or gains so assessed for any year of assessment to which the certificate of deferment relates.

(2) Any such calculation shall be subject to the provisions of regulations 94 and 100 and for the purpose of the calculation where the total amount of the profits or gains for any year of assessment to which the certificate relates includes a fraction of £1, that fraction shall be disregarded.

<sup>1</sup>Words in reg.99(1)(a) substituted by reg. 13(2) of S.I. 2003/193 as from 6.4.03.

## Regs. 99-100

(3) For the purpose of enabling the Board to make the calculation, they shall certify the amount of the earner's profits or gains, computed under Schedule 2 to the Act for each year of assessment.

<sup>1</sup>Words in reg. 99(3) & (4) substituted by reg. 13(3) & (4) of S.I. 2003/193 as from 6.4.03.

►<sup>1</sup>This is subject to the following qualification.◄

(4) Notwithstanding paragraph (3), the Board shall not be required to certify the amount referred to in that paragraph unless the assessment made under this regulation has become ►<sup>1</sup>final and conclusive.◄

that the amount of the earner's profits or gains so computed is not less than the higher of the two money sums specified in section 15(3) of the Act.

(5) The Board, on making the calculation referred to in paragraph (3), shall give notice to the earner of the amount of the contributions due from him under section 15 of the Act for each year to which the certificate of deferment relates.

(6) The earner shall pay to the Board those contributions within the period of 28 days from the receipt of the notice from them, unless before the expiry of that period the earner—

- (a) has appealed out of time or made a claim or appealed against the decision on a claim made under the Income Tax Acts on any matter concerning the amount of the profits or gains certified as mentioned in paragraph (3), and has notified the Board accordingly; or
- (b) has appealed against a decision made under section 8 of the Transfer Act relating to those contributions.

(7) If the amount of any assessment made under this regulation for any year is altered for any reason, or if a further assessment is made in respect of that year, subsequently to the certification by the Board of the amount of an earner's profits or gains computed in accordance with the provisions of this regulation and that alteration or further assessment affects the amount of the earner's profits or gains so computed they shall immediately, or in the case of a further assessment when that further assessment has become final and conclusive, certify to the earner the altered amount of the earner's profits or gains.

<sup>2</sup>Reg. 100 substituted by reg. 14 of S.I. 2003/193 as from 6.4.03.

►<sup>2</sup>**Annual maximum of Class 4 contributions due under section 15 of the Act**

**100.**—(1) If, in respect of any year, there are payable by or in respect of an earner Class 4 contributions under section 15 of the Act (a) and also—

- (a) primary Class 1 contributions or Class 2 contributions; or
- (b) primary Class 1 contributions and Class 2 contributions,

paragraph (2) applies.

(2) If this paragraph applies, the earner's liability for Class 4 contributions shall not exceed the maximum found in accordance with paragraph (3).

(3) The maximum is found as follows.

*Step One*

Subtract the lower profits limit from the upper profits limit for the year.

*Step Two*

Multiply the result of Step One by ►<sup>3</sup>9 per cent.◄.

*Step Three*

Add to the result of Step Two 53 times the weekly amount of the appropriate Class 2 contribution.

*Step Four*

Subtract from the result of Step Three the aggregate amount of any Class 2 contributions and primary Class 1 contributions paid at the main primary percentage.

The application of the following steps is determined by reference to the following three Cases.

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(a) Section 15 has been amended: relevant amendments are those made by section 13 of the Limited Liability Partnerships Act 2000 (c. 12) and section 3(1) of the Contributions Act.

<sup>3</sup>Words substituted in reg. 100(3), step 2, by reg. 2(3)(a)(i) of S.I. 2012/573 as from 26.3.12.

**Case 1**

If the result of this step is a positive value, and exceeds the aggregate of–

- (a) primary Class 1 contributions payable at the main primary percentage,
- (b) Class 2 contributions; and
- (c) Class 4 contributions payable at the main Class 4 percentage,

in respect of the earner’s earnings, profits and gains for the year, the result of this step is the maximum amount of Class 4 contributions payable.

**Case 2**

If the result of this step is a positive value, but does not exceed the aggregate mentioned in Case 1, the result of this step is the maximum amount of Class 4 contributions payable at the main Class 4 percentage.

**Case 3**

If the result of this step is a negative value, the maximum amount of a Class 4 contribution payable at the main Class 4 percentage is nil and the result of this step is treated as nil.

If Case 1 applies, Steps Five to Nine do not, but if Case 2 or Case 3 applies those Steps do apply.

*Step Five*

Multiply the result of Step Four by

$$\blacktriangleright \frac{100}{9} \blacktriangleleft$$

<sup>1</sup>Words substituted in steps 5, 8 & 9 of reg. 100 by reg. 2(3)(a)(ii)-(iv) of S.I. 2012/573 as from 26.3.12.

*Step Six*

Subtract the lower profits limit from the lesser of the upper profits limit and the amount of profits for the year.

*Step Seven*

Subtract the result of Step Five from the result of Step Six.

If the result of this step is a negative value, it is treated as nil.

*Step Eight*

Multiply the result of Step Seven by  $\blacktriangleright^{12}$  per cent.  $\blacktriangleleft$

*Step Nine*

Multiply the amount by which the profits and gains for the year exceed the upper profits limit for the year by  $\blacktriangleright^{12}$  per cent.  $\blacktriangleleft$

The maximum amount of Class 4 contributions payable is–

- (a) where Case 1 of Step Four applies, the result of that step, and
- (b) where Case 2 or Case 3 of Step Four applies, the amount produced by adding together the results of Steps Four, Eight and Nine.

This is subject to the qualifications in paragraphs (4) to (6).

In this paragraph–

“lower profits limit” means the lesser of the two monetary sums specified in section 15(3)(a) of the Act (a); and

“upper profits limit” means the greater of those sums.

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(a) Subsection (3) was substituted by section 3(1) of the Contributions Act.

## Regs. 100-102

(4) For the purpose only of determining the extent of the earner's liability for contributions under paragraph (3), the amount of a primary Class 1 contribution which would otherwise be payable at the main primary percentage but which is paid at a rate less than ►<sup>1</sup>12 per cent.◀ because the earner—

- (a) is in contracted-out employment, or
- (b) is a married woman who has made an election to pay contributions at the reduced rate as mentioned in regulation 127,

<sup>1</sup>Words substituted in reg. 100(4) of S.I. 2012/573 as from 26.3.12.

shall be treated as equal to the amount of the primary Class 1 contribution payable at the main primary percentage, which would be so payable if the employment were non-contracted-out employment or the election had not been made (as the case may be).

(5) Paragraph (2) is subject to the provisions of section 12 of the Act and to regulations 63 to 65.

(6) Notwithstanding paragraphs (1) to (5), an earner shall be liable, in the first instance, for the full amount of the contributions which would have been payable but for this regulation.◀

#### Disposal of Class 4 contributions under section 15 of the Act which are not due

**101.** Where for any year of assessment any payment is made by an earner as on account of contributions under section 15 of the Act (Class 4 contributions) and—

- (a) a certificate of exception is issued for that year, or would have been so issued if application had been made for its issue before the beginning of that year;
- (b) that payment is made in error ►<sup>2</sup>◀;
- (c) the payment is in excess of the amount which, subject to an exception under regulation 94, is due from that earner for that year or would have been so due if application for exception had been made under that regulation before the beginning of that year; or
- (d) the payment is in excess of the amount calculated in accordance with regulation 100,

<sup>2</sup>Words omitted from reg. 101(b), words substituted in reg. 102(1) & reg. 102(2) substituted by regs. 14 & 15 of S.I. 2002/2366 as from 8.10.02.

the Board may treat that payment as made on account of other contributions properly payable by that person under the Act.

#### Repayment of Class 4 contributions under section 15 of the Act which are not due

**102.**—(1) Subject to paragraph (2), any payment such as is specified in regulation 101 shall, except in so far as it is, under that regulation, treated by the Board as made on account of contributions under the Act, be repaid ►<sup>2</sup>to the earner◀, unless the net amount of such repayment would not exceed in value 50 pence.

►<sup>2</sup>(2) It is a condition of repayment under this regulation that the earner makes an application for the payment—

- (a) in such form and manner as the Board may determine; and
- (b) in the case of contributions falling within paragraph (b) of regulation 101, within the time prescribed in paragraph(3).◀

(3) The period referred to in paragraph (2) is one of—

- (a) six years beginning with 6th April in the year of assessment next following that in respect of which the payment was made where the application is in respect of any year of assessment ending before 6th April 1996,
- (b) five years beginning with 1st February in the year of assessment next following that in respect of which the payment was made where the application is in respect of any year of assessment beginning on or after 6th April 1996, or
- (c) if later than sub-paragraph (a) or (b), two years beginning with 6th April in the year of assessment next following that in which the payment was made.



**Class 4 liability of earners treated as self-employed earners who would otherwise be employed earners**

**103.**—(1) Subject to regulation 108, where—

- (a) an earner, in respect of any one or more employments of his, is treated by regulations under section 2(2)(b) of the Act (treatment of a person in employment of any prescribed description as falling in one or other of the categories of earner) as being self-employed;
- (b) in any year he has earnings from any such employment (one or more) which fall within section 11(3) of the Act (higher weekly rate of Class 2 contributions), but is not liable for a higher weekly rate of Class 2 contributions by virtue of regulations under that section;
- (c) those earnings are chargeable to income tax under ►general earnings◄; and
- (d) the total of those earnings exceeds the sum specified in section 18(1)(c) of the Act,

Words substituted in reg. 103(1)(c) by reg. 24 of S.I. 2004/770 as from 6.4.04.

paragraph (2) applies.

(2) If this paragraph applies, the earner shall be liable, in respect of the earnings mentioned in paragraph (1), to pay a Class 4 contribution (referred to in this Part as a “special Class 4 contribution”) ►of an amount equal to the aggregate of—

- (a) the main Class 4 percentage of so much of the total of those earnings as exceeds the lower, but does not exceed the higher, of the money sums, and
- (b) the additional Class 4 percentage of so much of the total of those earnings as exceeds the higher of the money sums,

Words in reg. 103(2) substituted by reg. 15 of S.I. 2003/193 as from 6.4.03.

for the time being specified in section 18(1A)(a).◄

**Notification of national insurance number and recording of category letter on deductions working sheet**

**104.**—(1) Any earner to whom regulation 103 applies shall, on request, notify his national insurance number to the person who pays him the earnings referred to in that regulation.

(2) The person who pays those earnings shall record on the earner’s deductions working sheet the earner’s national insurance number, and the appropriate category letter as indicated by the Board.

(3) In this regulation “deductions working sheet” has the same meaning as in Schedule 4.

**Calculation of earnings for the purposes of special Class 4 contributions**

**105.** For the purpose of the calculation of an earner’s liability for a special Class 4 contribution for any year—

- (a) the earnings of that earner for that year shall, subject to paragraph (b), be calculated by the Board on the basis that they are earnings to which regulations 24 and 25 and Schedules 2 and 3 apply;
- (b) in the calculation of these earnings, if the total amount of the earnings for the year includes a fraction of a pound, that fraction shall be disregarded.

**Notification and payment of special Class 4 contributions due**

**106.** The Board shall, subject to any other arrangements notified by them to the earner specified in regulation 105, give notice to the earner of the special Class 4 contribution due from him for any year, and the earner shall pay that contribution to the Board within the period of 28 days from the receipt of the notice unless, before the expiry of that period, the earner has appealed against a decision made under section 8 of the Transfer Act relating to that contribution.

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(a) Subsection (1A) was inserted by section 3(3) of the Contributions Act.

## Reg. 107

**Recovery of deferred Class 4 and special Class 4 contributions after appeal, claim or further assessment under the Income Tax Acts or appeal under section 8 of the Transfer Act**

**107.**—(1) Where—

- (a) the Board have been notified that there has been such a claim or appeal as is specified in regulation 99(6) or regulation 106; or
- (b) the Board have certified in accordance with regulation 99(7) an altered amount of earner's profits or gains,

paragraph (2) applies.

(2) If this paragraph applies, the Board shall, as soon as may be after the prescribed time, give to the earner notice or, as the case may be, revised notice of such contributions as might, having regard to the final decision on the claim or appeal or, the altered amount of profits or gains, be due from the earner—

- (a) under section 15 of the Act (Class 4 contributions) for the year or years to which the certificate referred to in regulation 99(7) relates; or
- (b) by way of a special Class 4 contribution for the year to which the notice specified in regulation 106 relates,

and the earner shall within 28 days of receipt of that notice pay to the Board the contribution or contributions specified in that notice.

- (3) In this regulation “prescribed time” means—
- (a) except where sub-paragraph (c) applies—
    - (i) in the case of an appeal out of time, the date of the determination of the appeal, and
    - (ii) in the case of a claim or appeal against a decision on a claim made under the Income Tax Acts, the date on which the time for appealing against the decision on the claim expires, or the date of the determination of the appeal, whichever is the later;
  - (b) in the case of an appeal under section 8 of the Transfer Act, the date on which the time for appealing against that decision expires or the date of the determination of the appeal, whichever is the later;
  - (c) in the case of an altered amount of profits or gains being certified by the Board, the date on which they are so certified.

#### Annual maximum of special Class 4 contribution

**108.**—(1) Where for any year there are payable (or, but for this regulation, there would be payable) by or in respect of an earner a special Class 4 contribution and also any contribution under section 15 of the Act (in this regulation referred to as “an ordinary Class 4 contribution”) or any primary Class 1 contribution or any Class 2 contribution, or any combination of such contributions, the maximum amount of the special Class 4 contribution payable for that year shall not exceed the maximum specified in paragraph (2).

- (2) The maximum is—
- (a) in the case of a special Class 4 contribution and an ordinary Class 4 contribution, the amount (if any) equal to the difference between the maximum amount of a special Class 4 contribution for which provision is made in section 18(1) of the Act and the amount of the ordinary Class 4 contributions ultimately payable for that year; or
  - (b) in any other case (whether or not a Class 4 contribution is also payable), the amount (if any) equal to the difference between the maximum amount prescribed in regulation 100 and the amount of such Class 4, primary Class 1 and Class 2 contributions as are ultimately payable for that year.

(3) Paragraphs (1) and (2) are without prejudice to the earner’s liability in the first instance for the full amount payable apart from those paragraphs.

#### Disposal of special Class 4 contributions paid in excess or error

**109.** Where any payment has been made by a person on account of a special Class 4 contribution and that payment has been made in excess of the amount prescribed under regulation 108 or has been made in error, the Board may treat that payment as made on account of other contributions properly payable by that person under the Act.

#### Return of special Class 4 contributions paid in excess or error

**110.**—(1) Subject to regulation 109 and paragraphs (2) and (3), where any payment has been made by a person as on account of a special Class 4 contribution and that payment has been made in excess of the amount prescribed in regulation 108 or has been made in error, that payment shall be returned by the Board to that person, unless the net amount to be returned does not exceed 50 pence, if application is made to the Board, in writing or in such other form and manner as the Board may allow, within the time specified in paragraph (3).

(2) In calculating the amount of any return of a special Class 4 contribution to be made under paragraph (1) there shall be deducted the amount (if any) treated under regulation 109 as paid on account of other contributions.

(3) Any person desiring to apply for the return of a special Class 4 contribution ▶(“the applicant”)◀ shall make the application within the period of six years from the end of the year in which the contribution ▶was due to be paid.

This is subject to the following qualification.

Words added & substituted in reg. 110(3) by reg. 16 of S.I. 2002/2366 as from 8.10.02.

If the application is made after the end of that period, an officer of the Board shall admit it if satisfied that—

- (a) the applicant had reasonable excuse for not making the application within that period; and
- (b) the application was made without unreasonable delay after the excuse had ceased.◀

## PART 9 SPECIAL CLASSES OF EARNERS

### Case A – Airmen

#### Interpretation

**111.** In this Case, unless the context otherwise requires—

“airman” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mails carried on that aircraft; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the aircraft is in flight,

but does not include a person in so far as his employment is as a serving member of the forces;

“British aircraft” means any aircraft belonging to Her Majesty and any aircraft registered in the United Kingdom of which the owner (or managing owner if there is more than one owner) resides or has his principal place of business in the United Kingdom, and references to the owner of an aircraft shall, in relation to an aircraft which has been hired, be taken as referring to the person for the time being entitled as hirer to possession and control of the aircraft by virtue of the hiring or any subordinate hiring.

#### Modification of employed earner’s employment

**112.**—(1) Subject to paragraphs (2) and (3), where an airman is employed as such on board any aircraft, and the employer of that airman or the person paying the airman his earnings in respect of the employment (whether or not the person making the payment is acting as agent for the employer) or the person under whose directions the terms of the airman’s employment and the amount of the earnings to be paid in respect of that employment are determined has—

- (a) in the case of the aircraft being a British aircraft, a place of business in Great Britain or Northern Ireland; or
- (b) in any other case, his principal place of business in Great Britain or Northern Ireland,

then, notwithstanding that the airman does not fulfil the conditions of section 2(1)(a) of the Act (definition of employed earner), he shall be treated as employed in employed earner’s employment and, for the purposes of regulation 145(1)(a), in respect of that employment, as present in Great Britain or Northern Ireland (as the case requires).

(2) Subject to paragraph (3), notwithstanding that an airman is employed in an employment to which the provisions of paragraph (1) applies, if that airman is neither domiciled nor has a place of residence in Great Britain or Northern Ireland (as the case requires) no contributions shall be payable by or in respect of him as an employed earner.

(3) Paragraph (2) is subject to any Order in Council giving effect to any reciprocal agreement made under section 179 of the Administration Act (reciprocal agreements with countries outside the United Kingdom).

**Application of the Act and regulations**

**113.** Part I of the Act and so much of Part VI of the Act as relates to contributions and the regulations made under those provisions, so far as they are not inconsistent with this Case, apply to an airman with the modification that, where an airman is, on account of his being outside the United Kingdom by reason of his employment as an airman, unable to perform an act required to be done either immediately or upon the happening of a certain event or within a specified time, he shall be deemed to have complied with such requirement if he performs the act as soon as is reasonably practicable, although after the happening of the event or the expiration of the specified time.

## Case B – Continental Shelf(a)

**Application to employment in connection with continental shelf of Part I of the Act and so much of Part VI of the Act as relates to contributions**

**114.**—(1) For the purposes of section 120 of the Act (employment at sea (continental shelf operations))(b), prescribed employment shall be any employment (whether under a contract of service or not) in any area which may from time to time be designated by Order in Council under section 1(7) of the Continental Shelf Act 1964(c), where the employment is in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998(d) in the designated area.

(2) Where a person is employed in any employment specified in paragraph (1), the provisions of Part I of the Act and so much of Part VI of the Act as relates to contributions shall, subject to the provisions of paragraph (3), apply as though the area so designated were in Great Britain, and notwithstanding that he does not satisfy the conditions as of residence or presence in Great Britain prescribed in regulation 145(1)(a).

(3) Where a person employed in any employment specified in paragraph (1) is, on account of his being outside Great Britain by reason of that employment, unable to perform any act required to be done either immediately or on the happening of a certain event or within a specified time, he shall be deemed to have complied with the requirement if he performs the act as soon as reasonably practicable, although after the happening of the event or the expiration of the specified time.

▶<sup>1</sup>(4) Where a continental shelf worker is employed in any employment specified in paragraph (1) and that employment is on or in connection with an offshore installation the secondary contributor is—

- (a) where the employer is present in Great Britain, the employer, or
- (b) where the employer is not present in Great Britain but has an associated company present in Great Britain, the associated company; or,
- (c) where the employer is not present and does not have an associated company present in Great Britain, the oil field licensee.

Where the employer has more than one associated company present in Great Britain the associated company to which sub-paragraph (b) applies is the company which has the greatest taxable total profit within the meaning of section 4 of the Corporation Tax Act(e) 2010 for the accounting period(f) which precedes the tax year in which the contributions are due.

<sup>1</sup>Reg. 114(4) inserted by reg. 2(2) of S.I. 2014/572 as from 6.4.14.

(a) The enabling power for this Case is section 120 of the Act; there is no equivalent provision in the Social Security Contributions and Benefits (Northern Ireland) Act 1992. However, contributions in respect of employment on the Continental Shelf would fall to be treated as satisfying the corresponding requirement in Northern Ireland by virtue of Article 2 of the Memorandum set out in Schedule 1 to S.I. 1976/1003 and Schedule 1 to S.R. 1976 No. 196. Article 2 of the Memorandum was amended by paragraph 3 of the first letter in the Schedule to S.I. 1999/2227 and S.R. 1999 No. 350.

(b) Section 120 was amended by paragraph 70 of Schedule 7 to the Social Security Act 1998 (c. 14) and paragraph 26 of Schedule 3, and paragraph 8 of Schedule 7 to the Transfer Act.

(c) 1964 c. 29.

(d) 1998 c. 17.

(e) 2010 c. 4.

(f) The definition of an “accounting period” can be found in section 1119 of the Corporation Tax Act 2010.

## Reg. 114-114A

(5) The modifications in sub-paragraph (4) do not apply to a continental shelf worker—

- (a) who is employed in a capacity described in Column (A) of Table 1,
- (b) who holds a certificate of a description in Column (B) of that Table, and
- (c) whose presence on the ship is required in order to meet the requirement of regulation 5(1)(c) of the Merchant Shipping (Safe manning, Hours of Work and Watchkeeping) Regulations 1997(a).

**Table 1**

<i>Column (A): capacity in which the continental shelf worker is employed</i>	<i>Column (B): description of the certificate</i>
Master or chief mate on a ship of 3000 gross tons or more.	A certificate which complies with regulation 7 of the Merchant Shipping Regulations.
Master or chief mate on a ship of less than 3000 gross tons.	A certificate which complies with regulation 7 of the Merchant Shipping Regulations.
Officer in charge of an engineering watch in a manned engine-room, or a designated duty engineer officer in a periodically unmanned engine-room, on a ship powered by main propulsion machinery of 70kW propulsion power or more.	A certificate which complies with regulation 7 of the Merchant Shipping Regulations
Chief engineer Officer or second engineer officer on a ship powered by main propulsion machinery of between 750kW and 3000kW propulsion power.	A certificate which complies with regulation 7 of the Merchant Shipping Regulations
Rating forming part of a navigational watch on a ship of 500 gross tons or more and whose duties are skilled in nature.	A certificate which complies with regulation 7 of the Merchant Shipping Regulations.
Rating forming part of an engine-room watch or designated to perform duties in a periodically unmanned engine-room on a ship powered by main propulsion machinery of 750kW propulsion power or more.	A certificate which complies with regulation 7 of the Merchant Shipping Regulations.

(6) in Table 1 “Merchant Shipping Regulations” means the Merchant Shipping (Training and Certification) Regulations 1997(b);

(7) To the extent that where this regulation and regulations 115 to 125 (case C. Mariners) apply, this regulation takes precedence. ◀

<sup>1</sup>Reg. 114A inserted by reg. 2(3) of S.I. 2014/572 as from 6.4.14.

▶<sup>1</sup>**Continental shelf workers: provisions relating to certificates**

**Application for certificate**

**114A.**—(1) An employer who meets the conditions in paragraph (2) may apply to HMRC for the issue of a UKCS continental shelf workers certificate.

(2) The conditions are that—

- (a) S.I. 1997/1320; there are amending instruments none of which are relevant.
- (b) S.I. 1997/348; relevant amendments made by S.I. 2006/89.

- (a) the employer supplies or intends to supply a continental shelf worker for whom the secondary contributor, under regulation 114(4) (application of Part 1 and Part 6 of the Act<sup>(a)</sup> to employment in connection with the continental shelf), is the oil field licensee;
  - (b) the employer has or intends to have a contractual relationship under which the employer acts, directly or indirectly, as an agent of the oil field licensee for the purposes of National Insurance; and
  - (c) the employer or an associated company has not had a certificate cancelled previously for a failure to comply with their obligations and responsibilities under regulation 114B.
- (3) An application under this regulation must be made in writing and must include—
- (a) the name and address of the employer and employer's PAYE reference;
  - (b) the name and address of a person in Great Britain who is authorised to accept service on behalf of the employer;
  - (c) confirmation that the employer understands and intends to discharge the obligations contained in regulation 114B; and
  - (d) the name, address, and employer's PAYE reference of any associated company which is a current or former holder of a UKCS continental shelf workers certificate.
- (4) When the employer makes the first application under this regulation, the employer may also comply with the obligation under regulation 114B(e) by including those details (if known) in the application.
- (5) An application made under this regulation may be combined with an application made under an equivalent PAYE provision.
- (6) Upon receipt of an application under this regulation, an officer of Revenue and Customs may, if they are satisfied the conditions in paragraph (2) are met, issue a UKCS continental shelf workers certificate.
- (7) A UKCS continental shelf workers certificate must include—
- (a) the name of the UKCS continental shelf workers certificate holder;
  - (b) the employer's PAYE reference of the UKCS continental shelf workers certificate holder; and
  - (c) the date on which the certificate is issued.
- (8) A UKCS continental shelf workers certificate may be issued to—
- (a) the person authorised to accept service on behalf of the employer;
  - (b) the employer; or
  - (c) both the person authorised to accept service on behalf of the employer and the employer.
- (9) A certificate may be combined with a certificate issued under an equivalent PAYE provision.
- (10) Where an employer ceases to meet the conditions in paragraph (2) or to comply with its obligations under regulation 114B, or an equivalent PAYE provision, an officer of Revenue and Customs may, by notice in writing to the person authorised to accept service on behalf of the employer, cancel the UKCS continental shelf workers certificate from the date specified in the notice of cancellation.
- (11) The date specified in paragraph (10) may not be earlier than 10 working days after the date of the notice.
- (12) A notice under paragraph (10) may be combined with a notice under an equivalent PAYE provision.

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(a) The definition of "the Act" can be found in regulation 1(2) of the Social Security (Contribution) Regulations 2001.

**UKCS continental shelf workers certificate holder: obligations and responsibilities**

**114B.** A UKCS continental shelf workers certificate holder must—

- (a) make such deductions, returns and repayments as are required of a secondary contributor;
- (b) keep written records of—
  - (i) the name, date of birth, and national insurance number of the continental shelf workers supplied;
  - (ii) the name, registered office and oil field licence number of the oil field licensee to whom each of the workers were supplied;
  - (iii) the offshore installation to which each of the workers were supplied; and
  - (iv) the dates between which the workers worked on the offshore installation;
- (c) keep the records required by sub-paragraph (b) for a period of 6 years from the end of the tax year to which they relate;
- (d) where an officer of Revenue and Customs requires them in writing to do so, provide copies of the records required by sub-paragraph (b) to HMRC within 30 days of the date of the request; and
- (e) before supplying the oil field licensee with continental shelf workers for the first time, inform HMRC in writing of the details of the oil field licensee including name, business address, and oil field licence number of the oil field licensee.

**UKCS oil field licensee certificate**

**114C.**—(1) Where a UKCS continental shelf workers certificate holder has notified HMRC that the employer intends to supply continental shelf workers to an oil field licensee an officer of Revenue and Customs must issue a UKCS oil field licensee certificate to the oil field licensee.

(2) The UKCS oil field licensee certificate must include—

- (a) the name of the oil field licensee;
- (b) the registered office of that oil field licensee;
- (c) the oil field licence number;
- (d) the name of the UKCS continental shelf workers certificate holder;
- (e) the date on which it is issued; and
- (f) a description of the continental shelf workers to whom it applies.

(3) Where a UKCS oil field licensee certificate is in force the holder of that certificate is not liable to pay any contributions in respect of any continental shelf worker of a description set out in the certificate.

(4) If a UKCS continental shelf workers certificate is cancelled by an officer of Revenue and Customs that officer must also, by notice in writing, cancel the UKCS oil field licensee certificate.

(5) A notice under paragraph (4) must—

- (a) be sent on the same day as the notice cancelling the UKCS continental shelf workers certificate;
- (b) specify the date of cancellation of the UKCS oil field licensee certificate; and
- (c) notify the oil field licensee that it is liable to meet its obligations as a secondary contributor.

(6) The date of cancellation of the UKCS oil field licensee certificate must be the same date as that specified in the UKCS continental shelf workers certificate cancellation notice.



**Interpretation of regulations 114 to 114C**

**114D.** In regulations 114 to 114C—

“associated company” means any company within the meaning of section 449 of the Corporation Tax Act 2010;

“an equivalent PAYE provision” means any provision in the PAYE Regulations(a) which has an equivalent effect to the provisions in regulations 114A to 114C;

“employer’s PAYE reference” has the meaning given in regulation 2(1) of the PAYE Regulations;

“offshore installation” means—

- (a) a structure which is, is to be, or has been, put to a relevant use while in water;
- (b) but a structure is not an offshore installation if—
  - (i) it has permanently ceased to be put to a relevant use,
  - (ii) it is not, and is not to be, put to any other relevant use, and
  - (iii) since permanently ceasing to be put to a relevant use, it has been put to a use which is not a relevant use;
- (c) a use is a relevant use if it is—
  - (i) for the purposes of exploiting mineral resources,
  - (ii) for the purposes of exploration with a view to exploiting mineral resources,
  - (iii) for the storage of gas in or under the shore or the bed of any waters,
  - (iv) for the recovery of gas so stored,
  - (v) for the conveyance of things by means of a pipe,
  - (vi) mainly for the provision of accommodation for individuals who work on or from a structure which is, is to be, or has been put to any of the above uses while in the water,
  - (vii) for the purposes of decommissioning any structure which has been used for or in connection with any of the relevant uses above;
- (d) a structure is put to use while in water if it is put to use while—
  - (i) standing in any waters,
  - (ii) stationed (by whatever means) in any waters, or
  - (iii) standing on the foreshore or other land intermittently covered with water;
- (e) a “structure” includes a ship or other vessel except where it is used wholly or mainly—
  - (i) for the transport of supplies;
  - (ii) as a safety vessel;
  - (iii) for a combination of (i) and (ii); or
  - (iv) for the laying of cables; and

“oil field licensee” means the holder of a licence under Part 1 of the Petroleum Act 1998(b) in respect of the area in which the duties of the continental shelf worker’s employment are performed;

“UKCS continental shelf workers certificate” means a certificate issued under regulation 114A;

“UKCS oil field licensee certificate” means a certificate issued under regulation 114C(1).◀

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(a) The definition of “the PAYE Regulations” can be found in regulation 1(2) of the Social Security (Contributions) Regulations 2001.

(b) 1998 c. 17.

**Interpretation**

**115.** In this Case–

“British ship” means–

- (a) any ship or vessel belonging to Her Majesty; or
- (b) any ship or vessel whose port of registry is a port in the United Kingdom; or
- (c) a hovercraft which is registered in the United Kingdom;

“foreign-going ship” means any ship or vessel which is not a home-trade ship;

“home-trade ship” includes–

- (a) every ship or vessel employed in trading or going within the following limits, that is to say, the United Kingdom (including for this purpose the Republic of Ireland), the Channel Islands, the Isle of Man, and the continent of Europe between the river Elbe and Brest inclusive;
- (b) every fishing vessel not proceeding beyond the following limits–
  - on the South, Latitude 48°30’N.,
  - on the West, Longitude 12°W., and
  - on the North, Latitude 61°N.;

“managing owner” means the owner of any ship or vessel who, where there is more than one such owner, is responsible for the control and management of that ship or vessel;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where–

- (c) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried by the ship or vessel; and
- (d) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage;

but does not include a person in so far as his employment is as a serving member of the forces;

“owner” in relation to any ship or vessel, means the person to whom the ship or vessel belongs and who, subject to the right of control of the captain or master of the ship or vessel (“the master’s rights”), is entitled to control of that ship or vessel, and references to the owner of a ship or vessel shall, in relation to a ship or vessel which has been demised, be construed as referring to the person who for the time being is entitled as charterer to possession and, subject to the master’s rights, to control of the ship or vessel by virtue of the demise or any sub-demise;

“passenger” means any person carried on a ship except–

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship; or
- (b) a person on board the ship either in pursuance of the obligation to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled;

“pay period” in relation to any payment of a mariner’s earnings means the period in respect of which the payment is made;

“radio officer” means a mariner employed in connection with the radio apparatus of any ship or vessel and holding a certificate of competence in radio telephony granted by the Secretary of State or by an authority empowered in that behalf by the legislature of some part of the Commonwealth or of the Republic of Ireland and recognised by the Secretary of State as equivalent to the like certificate granted by him;

“share fisherman” means any person who–

- (a) is ordinarily employed in the fishing industry, otherwise than under a contract of service as the master or a member of the crew of any United Kingdom fishing vessel within the meaning of section 1(3) of the Merchant Shipping

Act 1995(a), manned by more than one person, and who is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of the fishing vessel, or

- (b) has ordinarily been so employed, but who by reason of age or infirmity permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in the United Kingdom, otherwise than under a contract of service, making or mending any gear appurtenant to a United Kingdom fishing vessel or performing other services ancillary to or in connection with that vessel and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of that vessel and has not ceased to be ordinarily engaged in such employment;

“ship or vessel” for the purposes of this Case other than those of regulations 116 to 120 includes hovercraft;

“voyage period” means a pay period comprising an entire voyage or series of voyages (including any period of leave on pay which immediately follows the day on which the termination of that voyage or series of voyages occurs);

“week” means a period of 7 consecutive days and “weekly” shall be construed accordingly.

#### Modification of section 162(5) of the Administration Act

**116.** In section 162 of the Administration Act (destination of contributions), subsection (5)(b) (which specifies the amount of the national health service allocation to be deducted from each class of contribution prior to their payment into the National Insurance Fund) shall be modified, in the case of contributions paid at the rate reduced in accordance with regulation 119(1), as if, instead of the percentage figure specified in paragraph (b) of that subsection, there were specified the percentage figure “0.6”.

#### Conditions of domicile or residence

**117.**—(1) As respects any employment of a person as a mariner and liability for payment of any contribution under the Act as an employed earner by or on behalf, or in respect, of that mariner in respect of that employment—

- (a) the provisions of Case F of these Regulations relating to conditions as to residence or presence in Great Britain or Northern Ireland (as the case requires) shall not apply; but
- (b) it shall be a condition of liability to pay a contribution under the Act that the mariner is domiciled or resident in Great Britain or Northern Ireland (as the case requires); and
- (c) it shall be a condition of liability to pay a secondary contribution under the Act that the secondary contributor is resident or has a place of business in Great Britain or Northern Ireland (as the case requires).

This is subject to the following qualification.

(2) This regulation has effect subject to any Order in Council giving effect to any reciprocal agreement made under section 179 of the Administration Act (reciprocal agreements with countries outside the United Kingdom).

#### Modification of employed earner’s employment

**118.** Where a mariner—

- (a) is employed as such and—
- (i) the employment is on board a British ship, or
- (ii) the employment is on board a ship and the contract in respect of the employment is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage, and

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(a) 1995 c. 21.

(b) Subsection (5) was amended by section 2(1) of the Social Security (Contributions) Act 1994 (c. 1), section 65(2) of, and paragraph 99(3) of Schedule 7 to, the Social Security Act 1998 (c. 14), paragraph 9(2) of Part III of Schedule 9 to the Welfare Reform Act and section 74(7) of the Child Support, Pensions and Social Security Act (c. 19).

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- (iii) in a case to which sub-paragraph (ii) applies, the person by whom the mariner's earnings are paid, or, in the case of employment as a master or member of the crew of a ship or vessel, either that person or the owner of the ship or vessel (or the managing owner if there is more than one owner) has a place of business in Great Britain or Northern Ireland (as the case requires); or
- (b) is employed as a master, member of the crew or as a radio officer on board any ship or vessel, not being a mariner to whom paragraph (a) applies, and—
  - (i) in the case of employment as a radio officer, if the contract under which the employment is performed is entered into in the United Kingdom, the employer or the person paying the radio officer his earnings for that employment has a place of business in Great Britain or Northern Ireland (as the case requires), or
  - (ii) in the case of the employment being a master, member of the crew or as a radio officer, if the contract is not entered into in the United Kingdom, the employer or the person paying the earnings has his principal place of business in Great Britain or Northern Ireland (as the case requires),

then, notwithstanding that he does not fulfil the conditions of section 2(1)(a) of the Act (definition of employed earner), the employment of the mariner as mentioned above shall be treated as employed earner's employment.

**Modification of section 9(2) of the Act**

**119.**—(1) As respects earnings paid to or for the benefit of a mariner for employment as such in any employment specified in paragraph (2), being employment which by virtue of regulation 118 is treated as employed earner's employment, from the figure specified as the secondary percentage in section 9(2) of the Act (a) there shall be subtracted 0.5 per cent and section 9 of the Act shall be modified accordingly.

(2) The employment referred to in paragraph (1) is employment as a master or member of the crew of a ship where—

- (a) the employment is on a foreign-going ship and the payment of earnings is exclusively in respect of that employment; or
- (b) the employment is partly on a foreign-going ship and partly otherwise than on such a ship and the payment of earnings in respect of that employment is made during the employment on the foreign-going ship.

(3) In this regulation the word "employment" includes any period of leave, other than leave for the purpose of study, accruing from the employment.

**Earnings periods for mariners and apportionment of earnings**

**120.**—(1) For the purposes of liability for and calculation of earnings-related contributions, paragraphs (2) to (9) apply where earnings are paid to or for the benefit of a mariner in respect of his employment as such for a voyage period.

(2) In this regulation "a relevant change" means a change affecting the calculation of earnings-related contributions under the Act not being—

- (a) a change in the amount of the mariner's earnings; or
- (b) a change in one or more of the following figures applicable in respect of the mariner's employment—
  - (i) ►<sup>1</sup>the main primary percentage or the additional primary percentage◀ for a primary Class 1 contribution specified in section 8(2) of the Act (b) or the percentage rate for a secondary Class 1 contribution specified in section 9(2) of the Act,
  - (ii) the contracted-out rate applying in the case of a primary or secondary Class 1 contribution in section 41(1) of the Pension Act (c),
  - (iii) the amount by which the percentage rate of a secondary Class 1 contribution is reduced in accordance with regulation 119(1),

<sup>1</sup>Words in reg. 120(2)(b)(i) substituted by reg. 4 of S.I. 2003/964 as from 6.4.03.

(a) Section 9 was substituted by paragraph 5 of Part I of Schedule 9 to the Welfare Reform Act.  
 (b) Section 8 was substituted by paragraph 4 of Part I of Schedule 9 to the Welfare Reform Act.  
 (c) Section 41(1) was amended by paragraph 127 of Schedule 7 of the Social Security Act 1998 and paragraph 6(2) of Part II of Schedule 9 to the Welfare Reform Act.

- (iv) the lower or upper earnings limit for primary Class 1 contributions specified in section 5(1) of the Act<sup>(a)</sup>.
- (3) Where a voyage period falls wholly in one year, then—
- (a) if no relevant change occurs during the voyage period, the earnings period shall be the voyage period;
- (b) if one or more than one relevant change occurs during the voyage period the earnings shall be apportioned to such periods as comprise—
- (i) the day on which the voyage period began and the day immediately before which the change occurred, and for any subsequent change, the day on which the immediately preceding change occurred and the day before which the next succeeding change occurred, and
- (ii) so much of the voyage period as remains,
- according to the amounts earned in each period, and the earnings period in respect of each amount so apportioned shall be the length of the period to which it is apportioned.
- (4) Where a voyage period falls partly in one or more other years, then if no relevant change occurs during the voyage period—
- (a) the earnings shall be apportioned to those years according to the amounts earned in each year; and
- (b) the earnings period in respect of each amount shall be the length of the period to which that amount is apportioned.
- (5) Where a voyage period falls partly in one and partly in one or more other years and one or more than one relevant change occurs during the voyage period, then—
- (a) in respect of a year during which a relevant change or more than one relevant change occurs the earnings shall be apportioned to such periods as comprise—
- (i) the day on which the voyage period began, or where it began in another year, the beginning of the year in which the change occurred, and the day immediately before which the change occurred, and for any subsequent change, the day on which the immediately preceding change occurred and the day before which the next succeeding change occurred, and
- (ii) so much of the voyage period as remains in the year,
- according to the amounts earned in each period, and the earnings period in respect of each amount so apportioned shall be the length of the period to which it is apportioned; and
- (b) in respect of other years, the earnings shall be apportioned to those years according to the amounts earned in each year and the earnings period in respect of each amount so apportioned shall be the length of the period to which it is apportioned.
- (6) Where under paragraphs (3) to (5) an earnings period—
- (a) is less than a week, that period shall for the purposes of those paragraphs be treated as a week;
- (b) exceeds a week or a whole multiple of a week by a part of a week,
- (i) if that part of a week is a period in excess of 3 days, that part of a week shall be treated as a week for the purposes of paragraphs (3) to (5), and
- (ii) if that part of a week is a period of 3 days or less, it shall be disregarded for those purposes.
- (7) For the purposes of paragraphs (3) to (5)—
- (a) where a period of leave on pay immediately follows the day on which the termination of an entire voyage or series of voyages occurs—
- (i) the earnings for that period of leave shall be treated as if they were earned

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<sup>(a)</sup> Section 5 was substituted by paragraph 1 of Part I of Schedule 9 to the Welfare Reform Act.

during that period and shall be excluded from the earnings for any other period or periods, and

(ii) for the purpose of apportionment, the earnings for the period of leave shall be deemed to accrue from day to day by equal daily amounts; and

(b) “earned” includes treated as earned under this paragraph.

(8) Where under paragraphs (1) to (7) earnings are apportioned to a period—

(a) each amount so apportioned shall be treated as paid at the end of the period to which it is apportioned; and

(b) contributions paid in respect of the amount so apportioned shall be treated as paid in respect of the year in which the end of that period falls.

(9) Notwithstanding paragraphs (3) to (5) and (8), where a voyage period extends beyond the date on which the earnings are paid, any amount of earnings which, by virtue of paragraphs (1) to (8), would be apportioned to a period in the year following that in which the earnings are paid—

(a) shall be treated as paid at the end of the year in which the earnings are paid but shall not be aggregated with any other amount of earnings paid or treated as paid at the end of that year; and

(b) the earnings period in respect of that amount shall be a period of the same length as that to which it is apportioned.

#### Calculation of earnings-related contributions for mariners

**121.**—(1) For the purpose of the calculation of earnings-related contributions payable in respect of earnings paid to or for the benefit of a person in respect of that person’s employment as a mariner—

(a) regulation 12(1) shall apply, save that in the case of a contribution payable on earnings above the upper earnings limit or the prescribed equivalent of that limit, the appropriate contributions calculator prepared by the Board may be applied;

(b) in the alternative, paragraphs (2), (3) or (4) and (5) of that regulation shall, except in relation to secondary Class 1 contributions payable at a rate reduced in accordance with regulation 119, apply in respect of those earnings.

(2) Subject to paragraphs (3), (4) and (5) of regulation 12 where the secondary Class 1 contribution is payable at a rate reduced in accordance with regulation 119, that contribution may be calculated in accordance with the scale prepared by the Board appropriate to that rate or, in the case of such a contribution payable on earnings above the upper limit or the prescribed equivalent of that limit, a contributions calculator appropriate to that rate, prepared by the Board.

#### Prescribed secondary contributors

**122.** In relation to any payment of earnings to or for the benefit of a mariner in respect of employment to which the provisions of regulation 118 apply, where the person employing the mariner does not satisfy the conditions specified in regulation 117(1)(c), but the person who pays the mariner those earnings does satisfy either of those conditions, that person shall be treated as the secondary contributor, whether or not he makes the payment as agent for the employer.

**123.** ►<sup>1</sup>◄

<sup>1</sup>Reg. 123 omitted by reg. 7(2) of S.I. 2012/817 as from 6.4.12.

**Application of the Act and regulations**

**124.**—(1) Part I of the Act and so much of Part VI of the Act as relates to contributions and the regulations made under those provisions shall, insofar as they are not inconsistent with the provisions of this Case, apply to mariners with the modification set out in paragraph (2).

(2) The modification is that, where a mariner is, on account of his being at sea or outside Great Britain or Northern Ireland (as the case requires) by reason of his employment as a mariner, unable to perform an act required to be done either immediately or on the happening of a certain event or within a specified time, he shall be deemed to have complied with that requirement if he performs the act as soon as is reasonably practicable, although after the happening of the event or the expiration of the specified time.

**Modification in relation to share fishermen of Part I of the Act and so much of Part VI of the Act as relates to contributions**

**125.** Part I of the Act and so much of Part VI of the Act as relates to contributions shall apply to share fishermen with the modification that—

- (a) employment as a share fisherman shall be employment as a self-employed earner notwithstanding that it is not employment in the United Kingdom;
- (b) as respects liability of a share fishermen to pay Class 2 contributions in respect of his employment as a share fisherman, regulation 117(1)(a) and (b) and (2) shall apply as if the share fisherman were a mariner and as if the reference in regulation 117(1) to an employed earner were a reference to a self-employed earner and as if the words “or on behalf, or in respect, of” were omitted;
- (c) for the purposes of entitlement to a contribution-based job seeker’s allowance, the weekly rate of any Class 2 contribution payable by a share fisherman for any contribution week while he is ordinarily employed as a share fisherman shall, notwithstanding the provisions of section 11(1) of the Act (Class 2 contributions)(a), be ►<sup>1</sup>£3.40◀;
- (d) regulations 21, 100 and 108 shall apply to contributions payable at the weekly rate specified in paragraph (c) of this regulation as if references in those regulations to Class 2 contributions included, as may be appropriate, references to Class 2 contributions at that rate;
- (e) regulation 43 shall apply to a share fisherman as if there were included at the end of paragraph (1)(a) of that regulation the words “or is entitled to a contribution-based jobseeker’s allowance or, but for a failure to satisfy the contribution conditions for that benefit, would be so entitled”;
- (f) insofar as Class 4 contributions in respect of the profits or gains of a share fisherman in respect of his employment as such are not collected by the Board under section 16 of the Act(b) (assessment and collection, etc. of Class 4 contributions) regulations 103 to 110 shall apply as if the share fisherman were a person to whom section 18(1)(a) and (b) of the Act applied (Class 4 contributions for persons treated under section 2(2)(b) of the Act as self-employed earners)(c); and

<sup>1</sup>Amount in reg. 125(c) substituted by reg. 2 of S.I. 2014/634 as from 6.4.14.

(a) Section 11 was amended by paragraph 12 of Schedule 3 to the Transfer Act and by article 2 of S.I. 2000/755.

(b) Section 16 was amended by paragraph 16 of Schedule 3, and Schedule 10, to the Transfer Act.

(c) Section 18 was amended by paragraph 7 of Schedule 1 to the Transfer Act, paragraph 18 of Schedule 3 to that Act and article 4 of S.I. 2000/755.

- (g) for the purposes of section 12 of the Act(a) and for the purposes of that section as modified by regulations 63 to 65, where an earner was a share fisherman when liability for Class 2 contributions arose, any reference in section 12 to an ordinary contribution, and any reference in those regulations to the weekly applicable rate of a contribution, shall be a reference to the rate of Class 2 contributions prescribed for a share fisherman.

Case D – Married Women and Widows

**Interpretation**

**126.**—(1) In this Case, unless the context otherwise requires—

“personal death benefit” means any death benefit which, apart from any regulations made under section 73 of the Administration Act (overlapping benefits - general)(b), is payable to a person otherwise than in respect of another person who is a child or an adult dependant;

“Personal Injuries Scheme” means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939(c) or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(d);

“qualifying widow” has the meaning assigned to it in regulation 127(1);

“reduced rate” means the rate specified in regulation 131;

“regulation 91 of the 1975 Regulations” and “regulation 94 of the 1975 Regulations” mean respectively regulation 91 and regulation 94 of the Social Security (Contributions) Regulations 1975(e) before section 3(1) of the Social Security Pensions Act 1975(f) (married women and widows) came into force and sections 5(3) and 130(2) of the Social Security Act 1975(g) (Class 1 reduced rate and married women and widows) were repealed;

“Service Pensions Instrument” means those provisions and only those provisions of any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a death or disablement pension (not including a pension calculated by reference to length of service) and allowances for dependants payable with either such pension may be paid out of public funds in respect of any death or disablement, wound, injury or disease due to service in the naval, military or air forces of the Crown or in any nursing service or other auxiliary service of any of those forces or in the Home Guard or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council or the Air Council;

“1914-1918 War Injuries Scheme” means any scheme made under the Injuries in War (Compensation) Act 1914(h) or under the Injuries in War Compensation Act 1914 (Session 2)(i) or under any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as a result of hostilities during the 1914-1918 War.

(2) Where by any provision of this Case notice is required to be or may be given in writing it shall be given on a form approved by the Board or in such other manner, being in writing, as they may accept as sufficient in any case.

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(a) Section 12 was amended by paragraph 13 of Schedule 3 and paragraph 3 of Schedule 9 to the Transfer Act.

(b) Section 73 was amended by paragraph 49 of Schedule 2 to the Jobseekers Act 1995 (c. 18).

(c) 1939 c. 82.

(d) 1939 c. 83.

(e) S.I. 1975/492.

(f) 1975 c. 60.

(g) 1975 c. 14.

(h) 1914 c. 30.

(i) 5 & 6 Geo. 5 c. 18.



**Elections by married women and widows**

**127.**—(1) A woman who on 6th April 1977 (the date on which section 3(1) of the ►Social Security Pensions Act 1975(a)◄ (married women and widows) came into force) was married or was a widow who satisfied the conditions prescribed in paragraph (8) (“a qualifying widow”) may—

Words in reg. 127(1) substituted & para. (3) substituted by reg. 5 of S.I. 2003/964 as from 6.4.03.

- (a) elect that her liability in respect of primary Class 1 contributions shall be a liability to contribute at the reduced rate; and
- (b) elect that she shall be under no liability to pay Class 2 contributions.

(2) Any election made for the purpose of paragraph (1)(a) shall be treated as also made for the purpose of paragraph (1)(b) and any election made for the purpose of paragraph (1)(b) shall be treated as also made for the purpose of paragraph (1)(a) and any revocation of an election for the one purpose shall be treated also as a revocation of an election for the other purpose.

►(3) Where a woman has made an election to which this regulation applies—

- (a) any primary Class 1 contributions which are—
  - (i) attributable to section 8(1)(a) of the Act(b), and
  - (ii) payable in respect of earnings paid to her or for her benefit in the period during which the election has effect under the following provisions of this Case,
 

shall be payable at the reduced rate; and
- (b) she shall be under no liability to pay any class 2 contribution for any contribution week in that period.◄

(4) Subject to regulation 134, no woman shall be entitled to make an election specified in paragraph (1) after 11th May 1977.

(5) Every election shall be made by notice in writing to the Board and by notice in writing to the Board may be revoked by the woman who made the election.

(6) Any revocation may be cancelled by notice in writing to the Board before the date upon which the notice of revocation is to have effect, and upon cancellation the revocation shall cease to have effect.

(7) Every woman who makes an election under this regulation shall furnish such certificates, documents, information and other evidence for the purpose of enabling the Board to consider the validity of the election as the Board may require.

(8) The conditions referred to in paragraph (1) are that the widow—

- (a) was entitled to—
  - (i) widow’s benefit under the Social Security Act 1975,
  - (ii) any personal death benefit which was payable to her as a widow under the provisions of Chapter IV of Part II of that Act at a weekly rate which was not less than the basic pension specified for the time being in section 6(1)(a) of the Social Security Pensions Act 1975 (rate of Category A retirement pension),
  - (iii) any personal death benefit by way of pension or allowance payable to her as a widow under any Personal Injuries Scheme or Service Pensions Instrument or any 1914-1918 War Injuries Scheme (not being a pension or allowance calculated by reference to the needs of the beneficiary), the rate of which is as set out in head (ii) above, or
  - (iv) benefit under section 39(4) of the Social Security Act 1975 (retirement benefits for the aged), other than a Category C retirement pension; and
- (b) was not disentitled to payment of any such benefit by reason of her living with a man, to whom she was not married, as his wife.

(a) 1975 c. 60.

(b) Section 8 was substituted by section 1(1) of the National Insurance Contributions Act 2002 (c. 19).

## Regs. 128-130

**Duration of effect of election**

**128.**—(1) Subject to paragraph (2), any election made under regulation 127 shall have effect from and including 6th April 1977 (the date on which section 3(1) of the Social Security Pensions Act 1975 (married women and widows) came into force) until whichever of the following events first occurs after the date of the election, namely—

- (a) the date on which the woman ceases to be married otherwise than by reason of the death of her husband;
- (b) the end of the year in which she ceases to be a qualifying widow;
- (c) the end of any two consecutive years which begin on or after 6th April 1978 and in which the woman who made the election has no earnings in respect of which any primary Class 1 contributions are payable in those years and in which that woman is not at any time a self-employed earner;
- (d) in the case of a revocation which has not been cancelled in accordance with regulation 127(6), the end of the week in which the notice of revocation is given or, if the woman so wishes, the end of any subsequent week in the same year specified in the notice;
- (e) where in any year after 5th April 1982 a payment (“an erroneous payment”) is made by or on behalf of a woman on account of primary Class 1 contributions at the contracted-out rate and the woman wishes to pay contributions at the ►main primary percentage◄ from the beginning of the year next following that year, the end of the year in respect of which the erroneous payment is made; or
- (f) where—
  - (i) in any year after 5th April 1982 a payment is made by or on behalf of a woman on account of primary Class 1 contributions at the non-contracted-out rate, (“an erroneous payment”), or more than one such payment is made,
  - (ii) from the time of making that payment or, if there is more than one such payment, the first, to the time at which she notifies the Board in accordance with head (v), no contributions have been paid by her or on her behalf at the reduced rate and no contributions have been payable by her or on her behalf in respect of any contracted-out employment,
  - (iii) she has not procured a refund in respect of any erroneous payment,
  - (iv) she wishes to pay contributions at the ►main primary percentage◄ from the date on which the only or first erroneous payment was made, and
  - (v) after 5th April 1983 and on or before the 31st December in the next complete calendar year following the end of the year in which any erroneous payment was made, she notifies the Board of her wish to pay contributions at the ►main primary percentage◄ in accordance with head (iv),

the date on which the only or first erroneous payment was made.

(2) Where a woman, to whom paragraph (1)(b) applies, remarries or again becomes a qualifying widow before the end of the year in which she ceases to be a qualifying widow, that woman’s election shall, notwithstanding that sub-paragraph, but without prejudice to the application of paragraph (1)(c), (d), (e) or (f), continue to have effect from the end of that year.

**Continuation of elections under regulation 91 of the 1975 Regulations**

**129.** Where, but for regulation 91 of the 1975 Regulations ceasing to have effect on 6th April 1977 (the date on which section 130(2) of the Social Security Act 1975 was repealed) an election made under that regulation before that date would have continued to have effect on that date, that election shall be treated as made under regulation 127 and this Case shall apply accordingly.

**Continuation of elections on widowhood**

**130.**—(1) If on 6th April 1977 (the date on which section 3(1) of the Social Security Pensions Act 1975 came into force) a woman—

- (a) was married and subsequently becomes a widow; or
- (b) was a widow and subsequently remarries and again becomes a widow,

paragraph (2) applies to her.

Words in reg. 128(1)(e) & (f)(iv) & (v) substituted by reg. 9(2)(a) of S.I. 2003/964 as from 6.4.03.

- (2) Where this paragraph applies to a woman any election—
- (a) which she had made under regulation 127 before the death of the husband which renders a widow; or
  - (b) which she is, by virtue of regulation 129, treated as having made under regulation 127 before that death;

and which is still effective at the time of the husband's death, shall, subject to paragraphs (4) and (5) and notwithstanding regulation 128, continue to have effect until the end of the appropriate period.

- (3) For the purposes of this regulation the end of the appropriate period is—
- (a) the earliest of—
    - (i) the end of the second year specified in regulation 128(1)(c),
    - (ii) the end of the period specified in regulation 128(1)(d) or (e), or
    - (iii) the date specified in regulation 128(1)(f); or
  - (b) subject to sub-paragraph (a) and paragraphs (4) and (5)—
    - (i) where the husband's death occurs before 1st October in any year, the end of that year,
    - (ii) where the husband's death occurs after 30th September in any year, the end of the year next following that in which the death occurs.

(4) Subject to regulation 128(1)(c), (d), (e) and (f) and to paragraph (5), if at the end of the year specified in head (i) or head (ii) of paragraph (3)(b) there is pending a claim or application made by or on behalf of the woman as a widow within 182 days (including Sundays) of her husband's death for any benefit specified in head (i) or (iv) or, irrespective of its rate, in head (ii) or (iii) of regulation 127(8)(a), the end of the appropriate period shall be the end of the year in which the claim or application is determined.

(5) If at the end of the year specified in head (i) or (ii) of paragraph (3)(b) or, as the case may be, in paragraph (4) the woman is a qualifying widow or married, the election shall continue to have effect, unless she is then a person to whom regulation 128(1)(c), (d), (e) or (f) applies.

### ▶<sup>1</sup>Reduced rate of primary Class 1 contributions otherwise payable at the main primary percentage

**131.** On and after ▶<sup>2</sup>6th April 2011◀, the reduced rate of contribution for the purposes of section 19(4) of the Act (power to regulate liability in respect of certain married women and widows) in respect of so much of a married woman's liability for primary Class 1 contributions as is attributable to section 8(1)(a) of the Act shall be ▶<sup>2</sup>5.85◀ per cent.◀

<sup>1</sup>Reg. 131 substituted by reg. 6 of S.I. 2003/964 as from 6.4.03.

<sup>2</sup>Words & % substituted in reg. 131 by reg. 5(a)-(b) of S.I. 2011/940 as from 6.4.11.

### Class 3 contributions

**132.** A woman who has made, or is under the regulations 126 to 131 treated as having made, an election under regulation 127 shall be precluded from paying Class 3 contributions for any year in respect of the whole of which that election has effect.

### Certificates of election

**133.**—(1) As represents any election made, or by virtue of regulation 129 as treated as made, under regulation 127—

- (a) where a woman makes an election under regulation 127, the Board shall issue without charge, a certificate of election (“a certificate”) to her;
- (b) where a woman is treated as making such an election, the Board shall, on application without charge, issue a certificate to her; and
- (c) the certificate shall remain the property of the Board.

## Regs. 133-134

(2) A woman to whom a certificate has been issued shall be responsible for its custody unless and until it is delivered to a secondary contributor or returned to the Board.

(3) A woman in respect of whom an election has effect in accordance with regulations 126 to 132 shall, if any primary Class 1 contribution is payable by her or on her behalf, immediately deliver to the secondary contributor a certificate which is currently in force in respect of her and upon the delivery of the certificate, the secondary contributor shall become responsible for its custody unless and until it is delivered again to the woman or to the Board.

(4) Where a certificate has ceased to be in force, the woman in respect of whom the certificate was issued shall immediately return it to the Board and for that purpose, if at the time when the certificate ceases to be in force it is in the custody of a secondary contributor, that contributor shall immediately return it to the woman.

(5) The Board may at any time require the person for the time being responsible for the custody of a certificate to return it to the Board, and if at that time the election to which that certificate relates continues to have effect, the Board shall issue to that person a replacement certificate.

(6) Where a woman in respect of whom an election has effect has more than one employed earner's employment the Board shall issue to her without charge, on her application, such number of certificates as will enable her to comply with the requirements of paragraph (3) in relation to each secondary contributor.

(7) Where a certificate has been lost or destroyed the person responsible for its custody shall inform the Board of that loss or destruction.

(8) When a woman gives notice in writing to the Board that she revokes an election she shall—

- (a) if the certificate is with a secondary contributor, recover it from him; and
- (b) deliver the certificate to the Board.

(9) Where a secondary contributor holds a certificate and—

- (a) is informed by the woman to whom it was issued that she intends to revoke her election and is requested to return the certificate to her so that she may return it to the Board; or
- (b) the employment by him of the woman to whom the certificate was issued has terminated,

he shall immediately return the certificate to her.

(10) Where under the foregoing provisions of this Case an election has been made by a woman <sup>1</sup>to pay at the reduced rate in respect of so much of her liability for primary Class 1 contributions as is attributable to section 8(1)(a) of the Act<sup>2</sup> and that election ceases to have effect, it shall be the duty of that woman to inform the secondary contributor accordingly.

<sup>1</sup>Words in reg. 133(10) substituted by reg. 7 of S.I. 2003/964 as from 6.4.03.

(11) Any certificate issued for the purpose of an election made or deemed to have been made under the regulation 91 of the 1975 Regulations shall, if by virtue of regulation 124 the election is treated as made under regulation 127, continue in force for the purposes of that regulation.

### Special transitional provisions consequent upon passing of the Social Security Pensions Act 1975

134.—(1) Any woman to whom this regulation applies—

- (a) shall, in respect of <sup>2</sup>so much of her liability for primary Class 1 contributions as is attributable to section 8(1)(a) of the Act<sup>2</sup>, be liable to pay <sup>2</sup>those contributions<sup>2</sup> at the reduced rate; and
- (b) shall not be liable to pay any Class 2 contribution which, apart from the provisions of this paragraph, she would be liable to pay.

<sup>2</sup>Words in reg. 134(1)(a) substituted by reg. 8(2) of S.I. 2003/964 as from 6.4.03.

(2) Subject to paragraphs (3) to (7), this regulation applies to any woman—

- (a) to whom, before 6th April 1977 (the date on which section 3(1) of the Social Security Pensions Act 1975 came into force and sections 5(3) and 130(2) of the Social Security Act 1975 were repealed), the provisions of section 5(3) of the Social Security Act 1975 or of regulation 94 of the 1975 Regulations (newly widowed woman) applied and to whom those provisions would have continued to apply but for those provisions having been repealed or, as the case may be, having ceased to have effect on that date;
- (b) who, not being a person to whom regulation 130 applies—
  - (i) on 6th April 1977 was a married woman and became a widow during the period from and including that date to 6th April 1978, or
  - (ii) on 6th April 1977 was a qualifying widow, remarried after that date and again became a widow during that period; or
- (c) who on 6th April 1977 was married or a qualifying widow and had attained the age of 59.

(3) In the case of a woman specified in paragraph (2)(a) or (b), the provisions of paragraph (1) shall, subject to the provisions of paragraphs (4) and (5), apply only during the period which—

- (a) in the case of a woman specified in paragraph (2)(a)—
  - (i) began at the beginning of the year in which section 3(1) came into force; and
  - (ii) ended at the end of that year;
- (b) in the case of a woman specified in paragraph (2)(b)—
  - (i) began on the date on which that woman became or, as the case may be, again became a widow, and
  - (ii) ends at the end of whichever of the two periods specified in regulation 130(2)(b) is appropriate in her case in so far as that regulation relates to the date of the death of the husband.

(4) In the case of a woman to whom paragraph (3)(a) or (b) applies, those sub-paragraphs shall be subject to regulation 130(4) and paragraph (5) below with the modification that—

- (a) in regulation 130(4), the reference to sub-paragraphs (d) and (e) of regulation 128(1) shall be omitted;
- (b) in so far as the provisions of regulation 128(1)(c) are incorporated in regulation 130(4) as modified for the purposes of this regulation, references in regulation 128(1)(c) to any election made under regulation 127 and to a woman who made the election shall respectively be construed as references to the application of paragraph (1) and to the woman to whom that paragraph applies.

(5) Any woman—

- (a) who by virtue of paragraph (1)—
  - (i) was, in respect of ►so much of her liability for primary Class 1 contributions as is attributable to section 8(1)(a) of that Act◄, liable to pay that contribution at the reduced rate, or
  - (ii) was not liable to pay any Class 2 contribution which apart from the provisions of that paragraph she would have been liable to pay; but
- (b) to whom by virtue of paragraphs (2) to (4), paragraph (1) ceases so to apply; and
- (c) who has not, in relation to the application of paragraph (1), given the notice prescribed in paragraph (7),

Words in reg.  
134(5)(a)(i) substituted  
by reg. 8(3) of S.I.  
2003/964 as from  
6.4.03.

may, subject to the conditions prescribed in paragraph (6), make an election under and in accordance with regulation 127, notwithstanding that she has not done so before the date prescribed in that regulation, and regulations 126 to 133 shall apply

accordingly from the end of the year in which paragraph (1) ceases to apply to her.

- (6) The conditions referred to in paragraph (5) are that the woman—
- (a) shall make the election not later than 11th May next following the end of the year in which paragraph (1) ceases to apply to her; and
  - (b) is, at the beginning of the year next following the year in which paragraph (1) so ceases to apply, married or a qualifying widow.

(7) Any woman to whom, by virtue of paragraph (2)(a) or (b), paragraph (1) applies may give notice in writing to the Board that she does not wish paragraph (1) to apply to her and upon the giving of such notice it shall accordingly cease to apply.

#### **Deemed election of married women and widows excepted from contribution liability under the National Insurance Act 1965**

**135.** Where immediately before 6th April 1975 there was, or is deemed to have been, in issue a current certificate of exception under regulation 9(3) or (4A) of the National Insurance (Contributions) Regulations 1969(a) (exception for certain widows), or there was current an election under regulation 2(1)(a) of the National Insurance (Married Women) Regulations 1973(b) (married women who are employed persons), or a woman then was, or but for any exception under or by virtue of another provision of the National Insurance Act 1965(c) would have been, excepted under regulation 3(1)(a) of the 1973 Regulations (married women who are self-employed persons) from liability for contributions as a self-employed person under that Act and in any of these cases on that day the woman is a widow or, as the case may be, a married woman, that woman shall be deemed to have made an election under regulation 91 of the 1975 Regulations.

#### **Special transitional provisions regarding deemed elections**

**136.—(1)** If, under regulation 135 a woman is deemed to have made an election under regulation 91 of the 1975 Regulations, this regulation applies.

(2) Before the woman first becomes liable to pay a primary Class 1 contribution she may revoke any such election by notice in writing given to the Board and, if she so specified in that notice, the revocation shall have effect from and including the beginning of the year in which the notice is given.

(3) If no notice of revocation is given and—

- (a) in the first year (not being more than 2 years after 6th April 1978) in which the woman becomes liable to pay primary Class 1 contributions—
  - (i) she shall be entitled to choose whether with effect from the beginning of that year, to pay such contributions at the ►main primary percentage◄ or at the reduced rate,
  - (ii) she shall notify any secondary contributor whether he is to pay such contributions on her behalf at the ►main primary percentage◄ or the reduced rate, and
  - (iii) such secondary contributor shall pay those contributions in accordance with that notification until the woman notifies him to the contrary in accordance with the provisions of regulation 133(10);
- (b) in that first year (not being more than 2 years after 6th April 1978) any primary Class 1 contribution at the standard rate is paid by or on behalf of the woman, unless it is shown to the satisfaction of the Board that the woman did not intend, by the making of that payment, to revoke the election she shall be deemed to have revoked the election.

Words in reg. 136(3)(a)(i) & (ii) substituted by reg. 9(2)(b) of S.I. 2003/964 as from 6.4.03.

(a) S.I. 1969/1696; the relevant amending instrument is S.I. 1970/1580.

(b) S.I. 1973/693.

(c) 1965 c. 51.

**Application of regulations 126 to 134 to elections and revocation of elections deemed made under regulations 135 and 136**

**137.**—(1) Subject to paragraph (2), regulations 126 to 134, save only in so far as inconsistent with regulations 135 and 136, shall apply to any election deemed to have been made under regulation 91 of the 1975 Regulations by virtue of regulation 135 as if it had been made under, and in accordance with, regulation 127 except that the Board shall not be obliged to issue a certificate, and as if any revocation which is deemed to be made under regulation 136 were made under, and in accordance with, regulation 127(5).

(2) Where a woman who under regulation 135 is not liable for a primary Class 1 contribution otherwise than at the reduced rate and to whom no certificate of election under the Act has been issued becomes employed in employed earner's employment, she shall make application in writing to the Board for such a certificate and, notwithstanding paragraph (1), the Board shall issue such a certificate to her.

**Savings**

**138.** For the purpose of facilitating the introduction of the scheme of social security contributions within the meaning of paragraph 9(1)(a)(i) of Schedule 3 to the Social Security (Consequential Provisions) Act 1975(a) regulations 2(2) (married women who are employed persons), 3(2) (married women who are self-employed persons), 4(2) (married women who are non-employed persons) and 16 (notice of marriage) of the National Insurance (Married Woman) Regulations 1973 shall be saved.

**Modification of the Act**

**139.** ►<sup>1</sup>Part 1, Part 2 (except section 60(b), and Parts 3 and 4 of the Act◀ shall have effect as respects married women and widows subject to the modifications contained in this Case.

<sup>1</sup>Words in reg. 139 substituted by reg. 10 of S.I. 2003/964 as from 6.4.03

Case E – Members of the Forces(c)

**Establishments and organisations of which Her Majesty's forces are taken to consist**

**140.** Except in relation to the employment in any of the establishments or organisations specified in Part I of Schedule 6 of any person specified in Part II of that Schedule, Her Majesty's forces shall, for the purpose of the Act, be taken to consist of the establishments and organisations specified in Part I of that Schedule, and this Case shall be construed accordingly.

**Treatment of serving members of the forces as present in Great Britain**

**141.** For the purposes of regulation 145(1)(a) a serving member of the forces shall, in respect of his employment as such, be treated as present in Great Britain(d).

**Treatment of contributions paid after that date**

**142.** For the purpose of any entitlement to benefit, any earnings-related contributions paid after the due date in respect of earnings paid to or for the benefit of a person in respect of his employment as a member of the forces shall be treated as paid on that date.

(a) 1975 c. 18.

(b) Section 60 has been amended by paragraph 21(9) of Schedule 4 to the Pensions Act 1995 (c. 26) and paragraphs 2 and 8 of Part 1 of Schedule 8 to the Welfare Reform and Pensions Act 1999 (c. 30).

(c) This Case applies to Northern Ireland by virtue of the powers conferred by section 116 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 on the Treasury. These powers are exercisable, as in Great Britain, with the concurrence of the Secretary of State (and not the Department for Social Development).

(d) See however regulation 6 of S.I. 1975/493 as to the treatment of contributions paid by members of the forces for the purposes of entitlement to benefit in Northern Ireland.

## Regs. 143-145

**Special provisions concerning earnings-related contributions**

**143.**—(1) For the purposes of earnings-related contributions, there shall be excluded from the computation of a person's earnings as a serving member of the forces any payment in so far as it is—

- (a) a payment of or in respect of an Emergence Service grant;
- (b) a payment of any sum referred to in <sup>1</sup>sections 297 and 298 of ITEPA 2003 (armed forces' food, drink and mess allowances and reserve and auxiliary forces' training allowances) <sup>2</sup>; or
- (c) a payment of liability bounty in recognition of liability for immediate call-up in times of emergency.

(2) The earnings period for a person who is a serving member of the forces shall be as follows—

- (a) in the case of a person serving in the regular naval, military or air forces of the Crown, whatever is the accounting period from time to time applying in his case under the Naval Pay Regulations or, as the case may be, the Army Pay Warrant, Queen's Regulations for the Army or for the Royal Air Force or the Air Council Instructions; or
- (b) in the case of a person undergoing training in any of the establishments or organisations specified in paragraphs 2 to 9 of Part I of Schedule 6, a month.

<sup>1</sup>Words substituted in reg. 143(1)(b) by reg. 25 of S.I. 2004/770 as from 6.4.04.

**Application of the Act and regulations**

**144.**—(1) The provisions of Part I of the Act and so much of Part VI of the Act as relates to contributions and the regulations made under those provisions shall, in so far as they are not inconsistent and the provisions of this Case, apply in relation to persons who are serving members of the forces with the modification prescribed in paragraph (2).

(2) The modification is that where any such person is, on account of his being at sea or outside the United Kingdom by reason of his employment as a serving member of the forces, unable to perform an act required to be done either immediately or on the happening of a certain event or within a specified time, he shall be deemed to have complied with that requirement if he performs the act as soon as is reasonably practicable, although after the happening of the event or the expiration of the specified time,

## Case F – Residence and Persons Abroad

**Condition as to residence or presence in Great Britain or Northern Ireland**

**145.**—(1) Subject to <sup>2</sup>paragraph (2) <sup>1</sup>, for the purposes of section 1(6) of the Act (conditions as to residence or presence in Great Britain for liability or entitlement to pay Class 1 or Class 2 contributions, liability to pay Class 1A or Class 1B contributions or entitlement to pay Class 3 Contributions) (a) the conditions as to residence or presence in Great Britain or Northern Ireland (as the case requires) shall be—

- (a) as respects liability of an employed earner to pay primary Class 1 contributions in respect of earnings for an employed earner's employment, that the employed earner is resident or present in Great Britain or Northern Ireland (or but for any temporary absence would be present in Great Britain or Northern Ireland) at the time of that employment or is then ordinarily resident in Great Britain or Northern Ireland (as the case may be);
- (b) as respect liability to pay secondary Class 1 contributions, Class 1A contributions or Class 1B contributions that the person who, but for any conditions as to residence or presence in Great Britain or Northern Ireland (as the case may be and including the having of a place of business in Great Britain or Northern Ireland), would be the secondary contributor or the person

<sup>2</sup>Words in reg. 145(1) substituted by reg. 7(3) of S.I. 2012/817 as from 6.4.12.

(a) Section 1(6) was amended by paragraph 56(3) of Schedule 7 to the Social Security Act 1998 (c. 47).



liable for the payment of Class 1B contributions (in this Case referred to as “the employer”) is resident or present in Great Britain or Northern Ireland when such contributions become payable or then has a place of business in Great Britain or Northern Ireland (as the case may be), so however that nothing in this paragraph shall prevent the employer paying the said contributions if he so wishes;

- (c) as respects entitlement of a self-employed earner to pay Class 2 contributions, that that earner is present in Great Britain or Northern Ireland (as the case may be) in the contribution week for which the contribution is to be paid;
- (d) as respects liability of a self-employed earner to pay Class 2 contributions, that the self-employed earner is ordinarily resident in Great Britain or Northern Ireland (as the case may be), or, if he is not so ordinarily resident, that before the period in respect of which any such contributions are to be paid he has been resident in Great Britain (as the case may be) for a period of at least 26 out of the immediately preceding 52 contribution weeks under the Act, the Social Security Act 1975(a) or the National Insurance Act 1965(b) or under some or all of those Acts;
- (e) as respects entitlement of a person to pay Class 3 contributions in respect of any year, either that—
  - (i) that person is resident in Great Britain or Northern Ireland (as the case may be) throughout the year,
  - (ii) that person has arrived in Great Britain or Northern Ireland (as the case may be) during that year and has been or is liable to pay Class 1 or Class 2 contributions in respect of an earlier period during that year,
  - (iii) that person has arrived in Great Britain or Northern Ireland (as the case may be) during that year and was either ordinarily resident in Great Britain or Northern Ireland (as the case may be) throughout the whole of that year or became ordinarily resident during the course of it, or
  - (iv) that person not being ordinarily resident in Great Britain or Northern Ireland (as the case may be), has arrived in that year or the previous year and has been continuously present in Great Britain or Northern Ireland (as the case may be) for 26 complete contribution weeks, entitlement where the arrival has been in the previous year arising in respect only of the next year.

(2) Where a person is ordinarily neither resident nor employed in the United Kingdom and, in pursuance of employment which is mainly employment outside the United Kingdom by an employer whose place of business is outside the United Kingdom (whether or not he also has a place of business in the United Kingdom) that person is employed for a time in Great Britain or Northern Ireland (as the case may be) as an employed earner and, but for the provisions of this paragraph, the provisions of sub-paragraph (a) of paragraph (1) would apply, the conditions prescribed in that sub-paragraph and in sub-paragraph (b) of that paragraph shall apply subject to the proviso that—

- (a) no primary or secondary Class 1 contribution shall be payable in respect of the earnings of the employed earner for such employment;
- (b) no Class 1A contribution shall be payable in respect of something which is made available to the employed earner or to a member of his family or household by reason of such employment; and
- (c) no Class 1B contribution shall be payable in respect of any PAYE settlement agreement in connection with such employment, after the date of the earner’s last entry into Great Britain or Northern Ireland (as the case may be) and before he has been resident in Great Britain or Northern Ireland (as the case may be) for a continuous period of 52 contribution weeks from the beginning of the contribution week following that in which that date falls.

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(a) 1975 c. 14.

(b) 1965 c. 51.

**Regs. 145-147**

<sup>1</sup>Reg. 145(3) omitted by reg. 7(3)(b) of S.I. 2012/817 as from 6.4.12.

(3) ►<sup>1</sup>◄

**Payment of contributions for periods abroad**

**146.**—(1) Where an earner is gainfully employed outside the United Kingdom, and that employment, if it had been in Great Britain or Northern Ireland, would have been employed earner's employment, that employment outside the United Kingdom shall be treated as employed earner's employment for the period for which under paragraph (2)(a) contributions are payable in respect of the earnings paid to the earner in respect of that employment provided that—

- (a) the employer has a place of business in Great Britain or Northern Ireland (as the case may be);
- (b) the earner is ordinarily resident in Great Britain or Northern Ireland (as the case may be); and
- (c) immediately before the commencement of the employment the earner was resident in Great Britain or Northern Ireland (as the case may be).

(2) Where, under paragraph (1), the employment outside the United Kingdom is treated as an employed earner's employment, the following provisions shall apply in respect of the payment of contributions—

- (a) primary and secondary Class 1 contributions shall be payable in respect of any payment of earnings for the employment outside the United Kingdom during the period of 52 contribution weeks from the beginning of the contribution week in which that employment begins to the same extent as that to which such contributions would have been payable if the employment had been in Great Britain or Northern Ireland (as the case may be);
- (b) subject to ►<sup>2</sup>regulation 148 and 148A◄, any earner by or in respect of whom contributions are or have been payable under sub-paragraph (a) shall be entitled to pay Class 3 contributions in respect of any year during which the earner is outside the United Kingdom from and including that in which the employment outside the United Kingdom begins until that in which he next returns to Great Britain or Northern Ireland (as the case may be);
- (c) Class 1A contributions and Class 1B contributions shall be payable in respect of the period specified in sub-paragraph (a).

<sup>2</sup>Words in reg. 146(2)(b) & 147(1) substituted by regs. 4 & 5 of S.I. 2007/1838 as from 18.7.07.

**Class 2 and Class 3 contributions for periods abroad**

**147.**—(1) Subject to ►<sup>2</sup>regulation 148 and 148A◄, a person (other than a person to whom regulation 146(2)(a) applies) may, notwithstanding the provisions of regulation 145(1)(c) and (e), if he so wishes and if he satisfies the conditions specified in paragraph (3) below pay contributions in respect of periods during which he is outside the United Kingdom as follows—

- (a) in respect of any contribution week throughout which he is gainfully employed outside the United Kingdom in employment which is not employment in respect of earnings from which Class 1 contributions are payable, he may, if immediately before he last left Great Britain or Northern

Ireland (as the case may be), he was ordinarily an employed earner or a self-employed earner, pay a contribution as a self-employed earner;

- (b) in respect of any year which includes a period during which he is outside the United Kingdom he may pay Class 3 contributions.

(2) A person who is gainfully employed outside Great Britain and falls within the provisions of paragraph (1)(a) shall for the purposes of that paragraph be treated as being outside the United Kingdom for any period during which he is temporarily in the United Kingdom.

(3) Subject to paragraph (4), the conditions referred to in paragraph (1) are that—

- (a) the person has been resident in Great Britain or Northern Ireland (as the case may be) for a continuous period of not less than three years at any time before the period for which the contributions are to be paid;
- (b) there have been paid by or on behalf of that person contributions of the appropriate amount—
- (i) for each of 3 years ending at any time before the relevant period,
- (ii) for each of 2 years ending at any time before the relevant period and, in addition, 52 contributions under either or both the Social Security Act 1975 or the National Insurance Act 1965, or
- (iii) for any one year ending at any time before the relevant period and, in addition, 104 contributions under either or both the Social Security Act 1975 or the National Insurance Act 1965, or
- (c) there have been paid by or on behalf of that person 156 contributions under either or both the Social Security Act 1975 or the National Insurance Act 1965.

(4) In paragraph (3)—

“contributions of the appropriate amount” means contributions under the Act the earnings factor derived from which is not less than 52 times the lower earnings limit for the time being for primary Class 1 contributions;

“contributions under either or both the Social Security Act 1975 or the National Insurance Act 1965” means contributions of any class under section 4, 7 or 8 of the Social Security Act 1975 or section 3 of the National Insurance Act 1965 in respect of any period; and

“the relevant period” means the period for which it is desired to pay the Class 2 or Class 3 contributions specified in paragraph (1).

#### **Conditions of payment of Class 2 or Class 3 contributions for periods abroad**

**148.** Entitlement to pay Class 2 or Class 3 contributions under regulations 146 and 147 shall be subject to the following conditions—

- (a) that the payment is made within the period specified in regulation 48(3)(b)(i); and
- (b) that the payment is made only to the extent to which it could have been made if the contributor had been present in Great Britain or Northern Ireland (as the case may be) and otherwise entitled to make it.

#### **►<sup>1</sup>Conditions of payment of Class 3 contributions: transfers to the Communities’ pension scheme**

<sup>1</sup>Reg 148A inserted by reg. 6 of S.I. 2007/1838 as from 18.7.07.

**148A.**—(1) Entitlement to pay Class 3 contributions under regulations 146 and 147 is subject to the condition set out in paragraph (2).

(2) The condition is that a person may not pay a Class 3 contribution for any part of the period to which that person’s Communities transfer relates.

(3) For the purposes of this regulation—

a “Communities transfer” means a transfer to the Communities pension scheme of rights to relevant benefits;

“the Communities’ pension scheme” means the pension scheme provided for officials and other servants of Community institutions and bodies in accordance with regulations adopted by the Council of the European Communities<sup>(a)</sup>;

“relevant benefits” means benefits under—

- (a) Parts 2 to 5 and 10 of the Act,
- (b) sections 36 and 37 of the National Insurance Act 1965<sup>(b)</sup> (graduated retirement benefit), and
- (c) sections 1(2) and 2 of the Jobseekers Act 1995<sup>(c)</sup> (contribution-based jobseeker’s allowance).◀

#### Case G – Volunteer Development Workers

#### Interpretation

**149.**—(1) In this Case “volunteer development worker” means a person in respect of whom the Board has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of the conditions in paragraph (2), that person should be entitled to pay Class 2 contributions under regulation 151.

(2) The conditions are—

- (a) that that person is ordinarily resident in Great Britain or Northern Ireland (as the case may be); and
- (b) that he is employed ▶<sup>1</sup>outside the United Kingdom.◀

<sup>1</sup>Words substituted in reg. 149(2)(b) by reg. 17 of S.I. 2002/2366 as from 8.10.02.

#### Certain volunteer development workers to be self-employed earners

**150.** Any employment as a volunteer development worker, which is not employment in respect of earnings from which Class 1 contributions are payable, or, where section 6A of the Act applies<sup>(d)</sup>, are treated as having been paid, shall be employment as a self-employed earner notwithstanding that it is not employment in Great Britain or Northern Ireland.

#### Option to pay Class 2 contributions

**151.** Notwithstanding section 11(1) of the Act and regulation 150, a volunteer development worker who by virtue of that regulation is a self-employed earner—

- (a) shall be excepted from liability to pay a Class 2 contribution; but
- (b) shall be entitled to pay such a contribution if he so wishes at the rate prescribed in regulation 152(b).

#### Special provisions as to residence, rate, annual maximum and method of payment

**152.** In relation to the Class 2 contributions a volunteer development worker is entitled to pay by virtue of regulation 151—

- (a) the provision of Case F of these Regulations shall not apply;
- (b) the weekly rate of any Class 2 contributions payable by a volunteer development worker for any contribution week while he is ordinarily employed as a volunteer development worker shall, notwithstanding the

(a) Council Regulation (EEC, Euratom, ECSC) No. 259/68 of 29th February 1968 (OJ No. L56, 4.3.1968 p. 1 - Special Edition 1968, 1 December 1972). The Communities’ scheme is contained in Title V, Chapter 3, Articles 77 to 84 and Annex VIII.

(b) 1965 c. 51. Section 36 of that Act was repealed by the Social Security Act 1973 (c. 38) with effect from 6th April 1975, but continues in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1975 (c. 18) or under Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6).

(c) 1995 c. 18 Section 1(2) was amended by paragraph 2(2) of Schedule 7 to the Welfare Reform and Pensions Act 1999 (c. 30); and section 2 was amended by paragraph 3 of Schedule 7 to that Act.

(d) Section 6A was inserted by paragraph 3 of Part I of Schedule 9 to the Welfare Reform Act.

provisions of section 11(1) of the Act (Class 2 contributions) be 5 per cent. of the lower earnings limit for the year in which falls the week in respect of which the contribution is paid;

- (c) for the purpose of determining the extent of an earner's liability for contributions under regulation 21 the amount prescribed in that regulation shall be reduced by the amount of any contributions paid in respect of the year in question by virtue of regulation 151; and
- (d) regulation 89 shall not apply.

### Late paid contributions

**153.**—(1) This regulation applies to any Class 2 contribution a volunteer development worker is entitled to pay by virtue of regulation 151, which is paid in respect of a week falling within a tax year (“the contribution year”) earlier than the tax year in which it is paid.

(2) Section 12 of the Act (late paid Class 2 contributions) shall not apply.

(3) Subject to paragraph (4), the amount of a contribution to which this regulation applies shall be the amount which the volunteer development worker would have had to pay if he had paid the contribution in the contribution year.

(4) In any case where—

- (a) the volunteer development worker pays a contribution to which this regulation applies after the end of the tax year immediately following the contribution year; and
- (b) the weekly rate of contributions applicable under regulation 152(b), for the week in respect of which the contribution is paid, differs from the weekly rate so applicable at the time of payment,

the amount of the contributions shall be computed by reference to the highest weekly rate of contributions applicable in the period from the week in respect of which the contribution is paid to the day on which it is paid.

### Modifications of the Act and these Regulations

**154.** Part 1 of the Act and these Regulations shall have effect as respects volunteer development workers subject to the modification contained in this Case.

## PART 10

### MISCELLANEOUS PROVISIONS

#### Treatment of contribution week falling in two years

**155.** For the purposes of Class 2 contributions, where a contribution week falls partly in one year and partly in another, it shall be treated as falling wholly within the year in which it begins.

#### ►<sup>1</sup>Decisions taken by officers of the Inland Revenue in respect of contributions which are prescribed for the purposes of section 8(1)(m) of the Transfer Act

<sup>1</sup>Reg. 155A inserted by reg. 18 of S.I. 2002/2366 as from 8.10.02.

**155A.**—(1) For the purposes of section 8(1)(m) of the Transfer Act (a) the decisions specified in paragraphs (2) to (5) are prescribed.

(2) The decisions specified in this paragraph are—

- (a) whether a notice should be given under regulation 3(2B) and, if so, the terms of such a notice;

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(a) Regulation, 156(3) of the principal Regulations provides for the construction, in relation to Northern Ireland, of references in the principal Regulations to enactments applicable only to Great Britain.

## Reg. 155A

<sup>1</sup>Words substituted in reg. 155A(2)(e), (3)(a) & (3)(b) by reg. 26(a) & (b) of S.I. 2004/770 as from 6.4.04.

- (b) whether a notice given under regulation 3(2B) should cease to have effect;
  - (c) whether a direction should be given under regulation 31 and, if so, the terms of the direction;
  - (d) whether the condition in regulation 50(2) is satisfied;
  - (e) whether a late application under <sup>1</sup>regulation 52(8) for the refund of a contribution should be admitted;
  - (f) whether a late application under regulation 54(3) for the return of a Class 1 contribution paid at the wrong rate should be admitted;
  - (g) whether a late application under regulation 55(3) for the repayment of a Class 1A contribution should be admitted;
  - (h) whether, in a case where the secondary contributor has failed to pay a primary Class 1 contribution on behalf of the primary contributor, that failure was with the consent or connivance of the primary contributor or attributable to any negligence on the part of the primary contributor, as mentioned in regulation 60;
  - (i) whether the condition in regulation 61(2) is satisfied;
  - (j) whether, in the case of a Class 2 contribution remaining unpaid by the due date, the reason for the non-payment is the contributor's ignorance or error, and, if so, whether that ignorance or error was due to his failure to exercise due care and diligence, as mentioned in regulation 65(2);
  - (k) whether the reason for a contributor's failure to pay a Class 3 contribution within the period prescribed for its payment is his ignorance or error, and, if so, whether that ignorance or error was due to his failure to exercise due care and diligence, as mentioned in regulation 65(3);
  - (l) whether the reason for a contributor's failure to pay a Class 3 contribution falling to be computed under section 13(6) of the Act and which remains unpaid after the end of the second year following the contribution year, is his ignorance or error and if so whether that ignorance or error was due to his failure to exercise due care and diligence, as mentioned in regulation 65(4); and
  - (m) whether a late application under regulation 110(3) for the return of a special Class 4 contribution should be admitted.
- (3) The decisions specified in this paragraph are—
- (a) whether a contribution (other than a Class 4 contribution) has been paid in error as mentioned in <sup>1</sup>regulation 52(1); and
  - (b) whether there has been a payment of contributions in excess of the amount specified in regulation 21, as mentioned in <sup>1</sup>regulation 52A(1),

to the extent that they are not decisions falling within section 8(1)(c) or (d) (decisions as to liability and entitlement to pay contributions) of the Transfer Act.

- (4) The decisions specified in this paragraph are—
- (a) whether the delay in making payment of a contribution, payable by an employer on behalf of an insured person, was neither with the consent or connivance of the insured person nor attributable to any negligence on the part of the insured person, as mentioned in regulation 23 of the National Insurance (Contributions) Regulations 1969(a);
  - (b) whether, in the case of a contribution paid after the due date, the failure to pay the contribution before that time was attributable to ignorance or error on the part of the insured person, and, if so, whether that ignorance or error was due to the failure on the part of the insured person to exercise due care and diligence, as mentioned in regulation 24 of those Regulations; and

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(a) S.I. 1969/1696. The 1969 Regulations were revoked in 1979 by S.I. 1979/591 subject to savings contained in regulation 130(2) of, and Part 2 of Schedule 4 to, that instrument. By virtue of regulation 157(4) of the principal Regulations, the revocation of S.I. 1979/591 by regulation 157(1) of the principal Regulations does not preclude the continued operation of those savings. The functions of the Secretary of State under regulations 23, 24 and 32 of the 1969 Regulations as saved were transferred to the Board by virtue of Schedule 2 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

- (c) whether the failure to pay a contribution to which regulation 32 of those Regulations applies within the prescribed period was attributable to ignorance or error on the part of the person entitled to pay it and, if so, whether that ignorance or error was due to the failure of the person entitled to pay the contribution to exercise due care and diligence.
- (5) The decisions specified in this paragraph are—
- (a) whether the delay in making payment of a primary Class 1 contribution which is payable on a primary contributor's behalf by a secondary contributor was neither with the consent or connivance of the primary contributor nor attributable to any negligence on the part of the primary contributor, as mentioned in regulation 5 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(a) (treatment for the purpose of any contributory benefit of late paid primary Class 1 contributions where there was no consent, connivance or negligence by the primary contributor); and
- (b) whether, in the case of a contribution paid by or in respect of a person after the due date, the failure to pay the contribution before that time was attributable to ignorance or error on the part of that person or the person making the payment and if so whether that ignorance or error was due to the failure on the part of such person to exercise due care and diligence, as mentioned in regulation 6 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (treatment for the purpose of any contributory benefit of contributions under the Act paid late through ignorance or error).◀

### Northern Ireland

**156.**—(1) Except where otherwise provided, the provisions of these Regulations shall apply to Northern Ireland as they apply to Great Britain.

(2) Paragraph (1) does not apply to the provisions of Case B ▶<sup>1</sup>◀ of Part 9 of these Regulations.

<sup>1</sup>Words omitted from reg. 156(2) by reg. 11 of S.I. 2003/964 as from 6.4.03.

(3) In the application of these Regulations to Northern Ireland other than this regulation, a reference to a provision of an enactment, which applies only to Great Britain shall be construed so far as necessary as including a reference to the corresponding enactment applying in Northern Ireland.

(4) Schedule 7 contains a Table showing, in column (1) details of enactments applying in Great Britain for which the enactment shown in column (2) is the corresponding enactment in Northern Ireland.

Neither this paragraph nor Schedule 7 limits the operation of paragraph (3).

(5) The reference—

- (a) to an Order in Council under section 179 of the Administration Act shall be taken to include a reference to an order under section 155 of the Social Security Administration (Northern Ireland) Act 1992(b); and
- (b) to the Secretary of State in regulation 59(3)(b) shall be taken to include a reference to the Department of Health and Social Services for Northern Ireland, but any other reference to the Secretary of State shall be taken to include a reference to the Department for Social Development.

(6) The rate of interest prescribed for the purposes of regulations 75 and 76(1) and paragraphs 17(1) and 18(1) and (3) of Schedule 4, in their application to Northern Ireland, is the rate applicable under paragraph 6(3)(a) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992(c) for the purpose of

(a) S.I. 2001/769. These Regulations apply only to Great Britain: the corresponding enactment applying in Northern Ireland is S.R. 2001 No. 102. As the construction of references in the principal Regulations to legislation applying only in Great Britain to Northern Ireland, see footnote to reg. 155A(1).

(b) 1992 c. 8.

(c) 1992 c. 7.

paragraph 6(3) of Schedule 1 to the Social Security Contributions and Benefits Act 1992.

### Revocations

**157.**—(1) The Regulations specified in column (1) of Parts I and II of Schedule 8 are revoked to the extent mentioned in column (3) of that Schedule.

Part I of Schedule 8 contains revocations of provisions which extend either to Great Britain or to the whole of the United Kingdom, whilst Part II contains revocations of provisions which extend only to Northern Ireland.

(2) Anything done, permitted to be done or required to be done, under any provision of the instruments revoked by these Regulations shall be treated as though it had been done or were permitted or required to be done (as the case may be) under the corresponding provision of these Regulations.

(3) Without prejudice to the generality of paragraph (2), a person who would have been liable, immediately before the revocation of regulation 53A(4) of the Social Security (Contributions) Regulations 1979(a) by paragraph (1) to a penalty in respect of a failure which commenced before these Regulations come into force shall continue to be liable to that penalty.

(4) The revocation by these Regulations of an instrument which itself revoked an earlier instrument subject to savings does not prevent the continued operation of those savings, insofar as they are capable of continuing to have effect.

(5) In this regulation “instrument” includes a Statutory Rule of Northern Ireland.

*Clive Betts*  
*Greg Pope*

14th March 2001 Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State hereby concurs

*Jeff Rooker*

Minister of State,  
Department of Social Security

13th March 2001

The Department of Social Development hereby concurs

Sealed with the Official Seal of the Department for Social Development on 12th March 2001

**L.S.**

*John O’Neill*

Senior Officer of the Department for Social Development

*Nick Montagu*  
*Dave Hartnett*

15th March 2001

Two of the Commissioners of Inland Revenue

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(a) S.I. 1979/591; regulation 53A was inserted by regulation 4 of S.I. 1993/260 and paragraphs (4) to (9) were added by regulation 2 of S.I. 2001/45.



## SCHEDULE 1

Preamble

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING  
THESE REGULATIONS

In this Schedule—

- “the 1998 Act” means the Social Security Act 1998**(a)**;  
 “the 1988 Order” means the Social Security (Northern Ireland Order 1998**(b)**);  
 “the 2000 Act” means the Child Support, Pensions and Social Security Act 2000**(c)**;  
 “the Transfer Act” means the Social Security Contributions (Transfer of Functions, etc.) Act 1999**(d)**;  
 “the Transfer Order” means the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999**(e)**; and  
 “the Welfare Reform Act” means the Welfare Reform and Pensions Act 1999**(f)**.

## PART I

## POWERS EXERCISED BY THE TREASURY

<i>Column (1)</i> <i>Enabling power</i>	<i>Column (2)</i> <i>Relevant amendment</i>
Social Security Contributions and Benefits Act 1992 <b>(g)</b>	
Section 1(6) and (7)	Paragraph 56(3) of Schedule 7 to the 1998 Act and paragraph 1(3) of Schedule 3 to the Transfer Act.
Section 3(2), (2A), (3) and (5)	Section 48 and 49 of the 1998 Act and paragraph 3 of Schedule 3 to the Transfer Act.
Section 4(5), (6) and (7)	Section 50 of the 1998 Act, paragraph 4 of Schedule 3 to the Transfer Act and section 74(3) of the 2000 Act.
Section 5(1), (4) and (6)	Paragraph 1 of Schedule 9 to the Welfare Reform Act.
Section 6(3), (6) and (7)	Paragraph 2 of Schedule 9 to the Welfare Reform Act.
Section 6A(2) and (7) <b>(h)</b>	Paragraph 3 of Schedule 9 to the Welfare Reform Act.
Section 10(9) <b>(i)</b>	
Section 10A(7) <b>(j)</b>	Paragraph 11 of Schedule 3 to the Transfer Act.

**(a)** 1998 c. 14.**(b)** S.I. 1998/1506 (N.I. 10).**(c)** 2000 c. 19.**(d)** 1999 c. 2.**(e)** S.I. 1999/671.**(f)** 1999 c. 30.**(g)** 1992 c. 4.**(h)** Section 6A was inserted by paragraph 3 of Schedule 9 to the Welfare Reform Act.**(i)** Section 10 was substituted by section 74(2) of the 2000 Act.**(j)** Section 10A was inserted by section 53 of the 1998 Act.

## Sch. 1

<i>Column (1)</i> <i>Enabling power</i>	<i>Column (2)</i> <i>Relevant amendment</i>
Section 11(3), (4) and (5)	Paragraph 12 of Schedule 3 to the Transfer Act and article 3 of S.I. 2001/477.
Section 12(6)	Paragraph 13 of Schedule 3 to the Transfer Act.
Section 13(1) and (7)	Paragraph 14(2) and (4) of Schedule 3 to the Transfer Act, and article 4 of S.I. 2001/477.
Section 14(1), (2) and (5)	Paragraph 15 of Schedule 3 to the Transfer Act.
Section 19(1) to (5A)	Paragraph 19(2) of Schedule 3 to the Transfer Act.
Section 19A(2) and (3)(a)	Paragraph 20 of Schedule 3, and paragraph 4 of Schedule 9, to the Transfer Act.
Section 116(2) and (3)	Paragraph 28 of Schedule 2 to the Jobseekers Act 1995, paragraph 67 of Schedule 7 to the 1998 Act and paragraph 22 of Schedule 3, and paragraph 5 of Schedule 7 to the Transfer Act.(b)
Section 117	Paragraph 68 of Schedule 7 to the 1998 Act and paragraph 23 of Schedule 3 to, and paragraph 6 of Schedule 7 to, the Transfer Act.
Section 118	Paragraph 24 of Schedule 3 to the Transfer Act.
Section 119	Paragraph 69 of Schedule 7 to the 1998 Act and paragraph 25 of Schedule 3, and paragraph 7 of Schedule 7 to, the Transfer Act.
Section 120	Paragraph 70 of Schedule 7 to the 1998 Act and paragraph 26 of Schedule 3, and paragraph 8 of Schedule 7 to the Transfer Act.
Section 122(1)(c)	
Section 175(3), (4) and (5)	Paragraph 29(4) of Schedule 3 to the Transfer Act.
Schedule 1	
Paragraph 7A(d)	Paragraph 37 of Schedule 3 to, and paragraph 6 of Schedule 9 to, the Transfer Act.
Paragraph 7B(e)	Paragraph 38 of Schedule 3, and paragraph 7 of Schedule 9, and the relevant entry in Part I of Schedule 10, to the Transfer Act, and section 76(3) and (4) of the 2000 Act.

(a) Section 19A was inserted by section 54 of 1998 Act.

(b) 1995 c. 18.

(c) Section 122(1) is cited because of the meaning ascribed to “prescribe”.

(d) Paragraph 7A was inserted by section 56(2) of the 1998 Act.

(e) Paragraph 7B was inserted by section 57 of the 1998 Act.

<i>Column (1)</i> <i>Enabling power</i>	<i>Column (2)</i> <i>Relevant amendment</i>
Paragraph 8(1)(a), (c), (ca)(a), (e), (f), (g), (h), (ia)(b), (j), (k), (l), (m) and (q) and (1A)(c)	Paragraph 14 of Schedule 5 to the Pensions Act 1995 (d), paragraph 77(15) and (16) of Schedule 7 to the 1998 Act, paragraph 39 of Schedule 3 to the Transfer Act and section 74(5) and 77(4) and (5) of the 2000 Act.
Paragraph 11	Paragraph 41 of Schedule 3 to the Transfer Act.
Social Security Contributions and Benefits (Northern Ireland) Act 1992(e)	
Section 1(6) and (7)	Paragraph 38(3) of Schedule 6 to the 1998 Order and paragraph 2 of Schedule 3 to the Transfer Order.
Section 3(2), (2A), (3) and (5)	Articles 45 and 46 of the 1998 Order and paragraph 4 of Schedule 3 to the Transfer Order.
Section 4(5), (6) and (7)	Paragraph 5 of Schedule 3 to the Transfer Order and section 78(3) of the 2000 Act.
Section 5(1), (4) and (6)	Paragraph 1 of Schedule 10 to the Welfare Reform Act.
Section 6(3), (6) and (7)	Paragraph 2 of Schedule 10 to the Welfare Reform Act.
Section 6(A)(2) and (7)(f)	
Section 10(9)(g)	
Section 10A(7)(h)	Paragraph 12 of Schedule 3 to the Transfer Order.
Section 11(3), (4) and (5)	Paragraph 13 of Schedule 3 to the Transfer Order and article 3 of S.I. 2001/477.
Section 12(6)	Paragraph 14 of Schedule 3 to the Transfer Order.
Section 13(1) and (7)	Paragraph 15(2) and (4) of Schedule 3 to the Transfer Order and article 4 of S.I. 2001/477.
Section 14(1), (2) and (5)	Paragraph 16 of Schedule 3 to the Transfer Order.
Section 19(1) to (5A)	Paragraph 19(2) of Schedule 3 to the Transfer Order.
Section 116(2) and (3)	Paragraph 11 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995, paragraph 49 of Schedule 6 to the 1998 Order and paragraph 22 of Schedule 3, and paragraph 4 of Schedule 6 to the Transfer Order.(i)

(a) Paragraph 8(1)(ca) was inserted by paragraph 77(4) of the 2000 Act.

(b) Paragraph 8(1)(ia) was inserted by paragraph 77(15) of Schedule 7 to the 1998 Act.

(c) Paragraph 8(1A) was inserted by paragraph 39(3) of Schedule 3 to the Transfer Act.

(d) 1995 c. 26.

(e) 1992 c. 7.

(f) Section 6A was inserted by paragraph 3 of Schedule 10 to the Welfare Reform Act.

(g) Section 10 was substituted by section 78(2) of the 2000 Act.

(h) Section 10A was inserted by Article 50 of the 1998 Order.

(i) 1995/2705 (N.I. 15).

## Sch. 1

<i>Column (1)</i> <i>Enabling power</i>	<i>Column (2)</i> <i>Relevant amendment</i>
Section 117	Paragraph 50 of Schedule 6 to the 1998 Order and paragraph 23 of Schedule 3, and paragraph 5 of Schedule 6 to, the Transfer Order.
Section 118	Paragraph 24 of Schedule 3 to the Transfer Order.
Section 119	Paragraph 51 of Schedule 6 to the 1998 Order and paragraph 25 of Schedule 3, and paragraph 6 of Schedule 6 to the Transfer Order.
Section 121(1)(a)	
Section 171(3), (4), (5) (10)(b)	Paragraph 36 of Schedule 1 to the Social Security and (Incapacity for Work) (Northern Ireland) Order 1994.(c)
Schedule 1	
Paragraph 7A(d)	Paragraph 36 of Schedule 3, and paragraph 4 of Schedule 8, to the Transfer Order.
Paragraph 7B(e)	Paragraph 37 of Schedule 3, and paragraph 5 of Schedule 8, and the relevant entry in Part 1 of Schedule 9 to the Transfer Order and section 80(3) and (4) of the 2000 Act.
Paragraph 8(1)(a), (c), (ca)(f), (e), (f), (g), (h), (ia)(g), (j), (k), (l), (m) and (q) and (1A)(h)	Paragraph 11 of Schedule 3 to the Pensions (Northern Ireland) Order 1995(i), paragraph 58(15) and (16) of Schedule 6 to the 1998 Order, paragraph 38 of Schedule 3 to the Transfer Order and sections 78(5) and 81(4) and (5) of the 2000 Act.
Paragraph 10	Paragraph 19 of Schedule 21 to the Friendly Societies Act 1992 and paragraph 40 of Schedule 3 to the Transfer Order.(j)

(a) Section 121(1) is cited because of the meaning ascribed to “prescribe”.

(b) Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to the Transfer Order.

(c) S.I. 1994/1898 (N.I. 12).

(d) Paragraph 7A was inserted by Article 53(2) of the 1998 Order.

(e) Paragraph 7B was inserted by Article 54 of the 1998 Order.

(f) Paragraph 8(1)(ca) was inserted by section 81(4) of the 2000 Act.

(g) Paragraph 8(1)(ia) was inserted by paragraph 58(15) of Schedule 6 to the 1998 Order.

(h) S.I. 1995/3212 (N.I. 22).

(i) Paragraph 8(1A) was inserted by paragraph 38(3) of Schedule 3 to the Transfer Order.

(j) 1992 c. 40.

## PART II

POWERS EXERCISED BY THE COMMISSIONERS OF THE  
INLAND REVENUE

<i>Column (1)</i> <i>Enabling power</i>	<i>Column (2)</i> <i>Relevant amendment</i>
Social Security Contributions and Benefits Act 1992	
Section 17(1), (2), (3) and (4)	Paragraph 6 of Schedule 1, paragraph 17 of Schedule 3, and the relevant entry in Part I of Schedule 10 to, the Transfer Act.
Section 18	Paragraph 7 of Schedule 1, and paragraph 18 of Schedule 3, to the Transfer Act and article 5 of S.I. 2001/477.
Section 122(1)(a)	
Schedule 1	
Paragraph 1	Section 148(2), (3) and (4) of the Pensions Act 1995, paragraph 77(2), (3) and (4) of Schedule 7 to the 1998 Act, paragraph 31 of Schedule 3 to the Transfer Act and paragraph 78(2) to (5) of Schedule 12 to, and Part VI of Schedule 13, to the Welfare Reform Act.
Paragraph 2	Paragraph 32 of Schedule 3 to the Transfer Act.
Paragraph 3	Section 55 of, and paragraph 77(5) of Schedule 7 to the 1998 Act, paragraph 33 of Schedule 3 to the Transfer Act, section 77(1) of and Part VIII of Schedule 9 to the 2000 Act.
Paragraph 3B(1)(b)	
Paragraph 4	Paragraph 16 of Schedule 1 and paragraph 34 of Schedule 3 to the Transfer Act.
Paragraph 5	Paragraph 77(6) of Schedule 7 to the 1998 Act, paragraph 34 of Schedule 3 to the Transfer Act and section 74(4) of the 2000 Act.
Paragraph 5A(c)	Paragraph 34 of Schedule 3 to the Transfer Act.
Paragraph 6	Paragraph 77(8), (9), and (11) of Schedule 7 to, and the relevant entry in Schedule 8 to the 1998 Act and paragraph 17 of Schedule 1, paragraph 35 of Schedule 3, paragraph 9 of Schedule 7, paragraph 5 of Schedule 9, and the relevant entry in Part 1 of Schedule 10, to the Transfer Act.

(a) Section 122(1) is cited because of the meaning ascribed to "prescribe".

(b) Paragraph 3B was inserted by section 77(2) of the 2000 Act.

(c) Paragraph 5A was inserted by paragraph 77(7) of Schedule 7 to the 1998 Act.

## Sch. 1

<i>Column (1)</i> <i>Enabling power</i>	<i>Column (2)</i> <i>Relevant amendment</i>
Paragraph 7BA(a)	
The Social Security Administration Act 1992(b)	
Section 113	Section 60 of the 1998 Act, paragraph 5 of Schedule 5 to the Transfer Act and paragraph 7 of Schedule 6 to the 2000 Act.
Section 162(12)	Paragraph 52(11) of Schedule 3 to the Transfer Act.
Section 191(c)	
Social Security Contributions and Benefit (Northern Ireland) Act 1992	
Section 17	Paragraph 7 of Schedule 1, paragraph 17 of Schedule 3, and the relevant entry in Part I of Schedule 9 to, the Transfer Order.
Section 18	Paragraph 8 of Schedule 1 to, and paragraph 18 of Schedule 3 to the Transfer Order and article 5 of S.I. 2001/477.
Section 121(1)(d)	
Schedule 1	
Paragraph 1	Article 145(2), (3) and (4) of the Pensions (Northern Ireland) Order 1995, paragraph 58(1) to (4) of Schedule 6 to the 1998 Order, paragraph 30 of Schedule 3 to the Transfer Order and paragraph 86(2+ to (5) of Schedule 12, and the relevant entry in Part VI of Schedule 13 to, the Welfare Reform Act.
Paragraph 2	Paragraph 31 of Schedule 3 to the Transfer Order.
Paragraph 3	Article 52 of, and paragraph 58(5) of Schedule 6 to, the 1998 Order, paragraph 32 of Schedule 3 to the Transfer Order, section 81(1) of, and the relevant entry in Part VIII of Schedule 9 to, the 2000 Act.
Paragraph 3B(11)(e)	
Paragraph 4	Paragraph 16 of Schedule 1, and paragraph 33 of Schedule 3 to the Transfer Order.

(a) Paragraph 7BA was inserted by section 76(5) of the 2000 Act.

(b) 1992 c. 5.

(c) Section 191 is cited because of the meaning ascribed to "prescribe".

(d) Section 121(1) is cited because of the meaning ascribed to "prescribe".

(e) Paragraph 3B was inserted by section 81(2) of the 2000 Act.

<i>Column (1)</i> <i>Enabling power</i>	<i>Column (2)</i> <i>Relevant amendment</i>
Paragraph 5	Paragraph 58(6) of Schedule 7 to the 1998 Order, paragraph 34 of Schedule 3 to the Transfer Order and section 78(4) of the 2000 Act.
Paragraph 5A(a)	Paragraph 33 of Schedule 3 to the Transfer Order.
Paragraph 6	Paragraph 58(8), (9) and (11) of Schedule 6, and the relevant entry in Schedule 7, to the 1998 Order, paragraph 20 of Schedule 1, paragraph 34 of Schedule 3, paragraph 7 of Schedule 6, paragraph 3 of Schedule 8, and the relevant entry in Part I of Schedule 9 to the Transfer Order.
Paragraph 7BA(b)	
Social Security Administration (Northern Ireland) Act 1992(c)	
Section 107	Article 56 of the 1998 Order, paragraph 5 of Schedule 4 to the Transfer Order and paragraph 7 of Schedule 6 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.(d)
Section 142(12)	Paragraph 45(12) of Schedule 3 to the Transfer Order.
Section 167(1)(e)	
Finance Act 1999(f)	
Section 133(1)	

## SCHEDULE 2

Regulation 24

### CALCULATION OF EARNINGS FOR THE PURPOSES OF EARNINGS-RELATED CONTRIBUTIONS IN PARTICULAR CASES

#### Calculation of earnings

1. This Schedule contains rules for the calculation of earnings in the assessment of earnings-related contributions in particular cases.

#### Calculation of earnings in respect of beneficial interest in assets within Part IV of Schedule 3

2.—(1) Except where paragraph 3, 4, 5 or 6 applies, the amount of earnings comprised in any payment by way of the conferment of any beneficial interest in any asset specified in Part IV of Schedule 3, which falls to be taken into account in the

(a) Paragraph 5A was inserted by paragraph 58(7) of Schedule 6 to the 1998 Order.

(b) Paragraph 7BA was inserted by section 80(5) of the 2000 Act.

(c) 1992 c. 8.

(d) 2000 c. 4 (N.I.).

(e) Section 167(1) is cited because of the meaning ascribed to “prescribe”.

(f) 1999 c. 16.

## Sch. 2

computation of a person's earnings shall be calculated or estimated at a price which that beneficial interest might reasonably be expected to fetch if sold in the open market on the day on which it is conferred.

(2) For the purposes of sub-paragraph (1), where any asset is not quoted on a recognised stock exchange within the meaning of section 841 of the Taxes Act, it shall be assumed that, in the open market which is postulated, there is available to any prospective purchaser of the beneficial interest in the asset in question all the information which a prudent prospective purchaser might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm's length.

### Valuation of beneficial interest in units in a unit trust scheme

3. The amount of earnings which is comprised in any payment by way of the conferment of a beneficial interest in any units in a unit trust scheme (within the meaning of section 237 of the Financial Services and Markets Act 2000) having a published selling price and which falls to be taken into account in the calculation of a person's earnings shall be calculated or estimated by reference to the published selling price on the day in question.

Words substituted in para. 3 of Sch. 2 by article 191 of S.I. 2001/3629 as from 1.12.01.

Here "published selling price" means the lowest selling price published on the date on which the payment in question is made, and where no such price is published on that date, it means the lowest selling price published on the last previous date on which such a price was published.

### Conferment of a beneficial interest in an option to acquire asset falling within Part IV of Schedule 3

4. The amount of earnings which is comprised in a payment by way of the conferment of a beneficial interest in an option to acquire any asset falling within Part IV of Schedule 3 shall be calculated or estimated by reference to the amount which would be comprised in accordance with paragraph 2, or, if paragraph 3, 5 or 6 would apply in accordance with that paragraph, in a payment by way of the conferment of a beneficial interest—

- (a) in the asset which may be acquired by the exercise of the option; or
- (b) where that asset (the first asset) may be exchanged for another asset (the second asset) and the value of the beneficial interest in the second asset is greater than that in the first, in that second asset,

on the day on which the beneficial interest in the option is conferred.

The amount shall be reduced by the amount or value, or, if variable, the least amount or value, of the consideration for which the asset may be so acquired.

### Readily convertible assets

5.—(1) The amount of earnings which is comprised in—

- (a) any payment by way of the conferment of a beneficial interest in any asset falling within Part III of Schedule 3;
- (b) any payment by way of the conferment of a beneficial interest in any asset falling within Part IV of Schedule 3 which is a readily convertible asset;
- (c) any payment by way of—
  - (i) a voucher, stamp or similar document falling within paragraph 12 of Part IV of that Schedule where the asset for which it is capable of being converted is a readily convertible asset;
  - (ii) a non-cash voucher not falling within Part V (whether or not also falling within paragraph 12 of Part IV of that Schedule) which is capable of being exchanged for a readily convertible asset;



and which is to be taken into account in computing a person's earnings, shall be calculated in accordance with sub-paragraph (2) to (5).

(2) In the case of an asset falling within paragraph 1 of Part III of Schedule 3 the amount is the best estimate which can reasonably be made of ►the amount of general earnings◄ in respect of the provision of the asset.

Words substituted in para. 5 by reg. 7(2) of S.I. 2003/2085 as from 1.9.03.

(3) In the case of an asset falling within paragraph 2 of Part III of Schedule 3, the amount is the best estimate that can reasonably be made of ►the amount of general earnings◄ in respect of the enhancement of its value.

(4) In the case of a voucher, stamp or similar document falling within—

- (a) sub-paragraph(1)(c); or
- (b) paragraph 3 of Part III of Schedule 3,

the amount is the best estimate that can reasonably be made of ►the amount of general earnings◄ in respect of the provision of any asset for which the voucher is capable of being exchanged.

(5) In the case of an asset falling within sub-paragraph(1)(b), the amount is the best estimate that can reasonably be made of ►the amount of general earnings◄ in respect of the provision of the asset.

**Assets not readily convertible: beneficial interests in alcoholic liquor on which duty has not been paid, gemstones and certain vouchers and non-cash vouchers**

6. The amount of earnings comprised in any payment by way of the conferment of a beneficial interest in—

- (a) an asset which—
  - (i) falls within paragraph 9 or 10 of Part IV of Schedule 3 (payments by way of alcoholic liquor on which duty has not been paid or by way of gemstones not to be disregarded as payments in kind), and
  - (ii) is not a readily convertible asset;
- (b) a voucher, stamp or similar document which falls within paragraph 12 of Part IV of that Schedule and which is not capable of being exchanged for a readily convertible asset; or
- (c) a non-cash voucher not excluded by virtue of Part 5 of that Schedule and which falls within paragraph 12 of Part IV of that Schedule (assets not to be disregarded as payments in kind) which is not capable of being exchanged for a readily convertible asset;

shall be calculated or estimated on the basis of the cost of the asset in question.

Here “the cost of the asset” in relation to any voucher, stamp or similar document includes the cost of any asset for which that voucher, stamp or similar document is capable of being exchanged.

**Convertible and restricted interests in securities and convertible and restricted securities**

►7.—(1) The amount of earnings comprised in any payment by way of the conferment of—

Para. 7 substituted by reg. 5 of S.I. 2004/2096 as from 1.9.04.

- (a) a convertible interest in securities;
- (b) a restricted interest in securities; or
- (c) an interest in convertible or restricted securities,

falling to be taken into account in computing a person's earnings from employed earner's employment shall be computed in the same manner, and shall be taken into account at the same time, as applies under Chapters 1 to 5 of Part 7 of ITEPA 2003(a),

(a) Chapters 1 to 5 of Part 7 of ITEPA 2003 have been amended by Schedule 22 to the Finance Act 2003 (c. 14).

## Sch. 2

for the purpose of computing his employment income.

This is subject to the following qualification.

(2) For the purpose of sub-paragraph (1) no account shall be taken of any relief obtained under sections 428A or 442A of ITEPA 2003(a) (relief for secondary Class 1 contributions met by employee).◀

Paras. 8 to 10 omitted & para. 11 substituted by reg. 7(4) & (5) of S.I. 2003/2085 as from 1.9.03.

**8.-10. ▶◀****►Exercise of a replacement right to acquire shares, obtained as an earner before 6th April 1999**

**11.**—(1) This paragraph applies if—

- (a) an earner obtained, before 6th April 1999, a right to acquire shares in a body corporate;
- (b) the earner subsequently obtained a replacement right (within the meaning given in paragraph 16A(3) of Part 9 of Schedule 3(b));
- (c) the replacement right is exercised;
- (d) paragraph 11A of this Schedule(c) does not apply; and
- (e) paragraph 16A of Part 9 of Schedule 3 does not apply because sub-paragraph (4) of that paragraph is not satisfied.

(2) If this paragraph applies, the amount of earnings comprised in any payment realised by the exercise of the replacement right shall be calculated or estimated in accordance with sub-paragraph (3).

(3) The basis for calculating the amount of a gain realised by the exercise of the replacement right shall be the best estimate that can reasonably be made of the amount found as follows.

***Step One***

Find the amount (if any) by which the sum of—

- (a) the market value of the shares acquired by the exercise of the replacement right; and
- (b) the market value of any other benefit in money or money's worth obtained by the exercise of the replacement right;

exceeds the amount required to be paid for the exercise of that right.

***Step Two***

Find the amount (if any) by which the market value of the shares, which were the subject of the right assigned or released on the first occasion in respect of which the condition in paragraph 16A(4) of Part 9 of Schedule 3 is not satisfied, exceeds the amount required to be paid for the exercise of that right immediately before that time.

***Step Three***

Subtract the amount found by Step Two from the amount found by Step One.

***Step Four***

Subtract from the result of Step Three—

- (a) any amount taken into account in computing the earner's earnings for the purposes of Class 1 contributions at the time of the grant of the first right; and

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(a) Sections 428A and 442A of ITEPA 2003 were inserted by paragraphs 1(3) and 2(3) of Schedule 16 to the Finance Act 2004 (c. 12).

(b) Paragraph 16A is inserted by regulation 12(13) of this instrument as part of the substitution for the former paragraph 16.

(c) Paragraph 11A was inserted by regulation 3 of S.I. 2003/1059.

- (b) any amount given by or on behalf of the earner as consideration for the acquisition of the first right or any replacement right, but “consideration” does not include the value of any right assigned or released in exchange for the acquisition of a replacement right.

Subject to the following qualification, the result of this step is the amount of earnings referred to in sub-paragraph (2) above.

If the result of this step is a negative value, it is treated as nil for the purposes of computing the earner’s earnings.

(4) In this paragraph—

- (a) “market value” means the price which the shares which are the subject of the right in question might reasonably be expected to fetch on a sale in the open market;
- (b) neither the consideration given for the grant of any right to acquire shares, nor any entire consideration, shall be taken to include the performance of the duties in connection with the office or employment by reason of which the right was granted;
- (c) no amount or value of the consideration given for the grant of a right to acquire shares shall be taken into account more than once;
- (d) “shares” includes stock;
- (e) “body corporate” includes—
  - (i) a body corporate constituted under the law of a country or territory outside the United Kingdom; and
  - (ii) an unincorporated association wherever constituted; and
- (f) references to the release of a share option include agreeing to the restriction of the exercise of the option.◀

**▶<sup>1</sup>Exercise, assignment or release of share option - market value of option or resulting shares increased by things done otherwise than for genuine commercial purposes**

<sup>1</sup>Para. 11A inserted by reg. 3(3) of S.I. 2003/1059 as from 10.4.03.

**11A.**—(1) This paragraph applies for calculating or estimating the amount of earnings which is comprised in a payment which—

- (a) would be disregarded in the computation of earnings for the purposes of earnings-related contributions by virtue of paragraph 16 of Part 9 of Schedule 3; but
- (b) is not disregarded because paragraph 17 of that Part applies to it.

(2) If this paragraph applies, the amount of earnings to be taken into account for the purpose of earnings related contributions is the amount which would, but for paragraph 16 ▶<sup>2</sup>or 16A◀ of Part 9 of Schedule 3, have been taken into account by virtue of section 4(4)(a) of the Act(a).

<sup>2</sup>Words inserted in para. 11A(2) by reg. 7(6) of S.I. 2003/2085 as from 1.9.03.

This is subject to the following qualification.

(3) If—

- (a) the right to acquire shares in a body corporate is not capable of being exercised more than ten years after the date on which it was obtained,
- (b) an amount of earnings was taken into account for the purpose of earnings-related contributions in respect of the earner’s obtaining that right, at the time he obtained it (“the deductible amount”), and

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(a) Subsection (4) was substituted by section 50(1) of the Social Security Act 1998 (c. 14), and paragraph (a) was further substituted by paragraph 172(2) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1). As to the construction of references in the principal Regulations to enactments not applying in Northern Ireland, see regulation 156(3) of those Regulations.

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- (c) no exercise, assignment or release of the whole or any part of—
    - (i) that right,
    - (ii) any right replacing that right (“a replacement right”), or
    - (iii) any subsequent replacement right,
- has occurred on or after 10th April 2003,

the deductible amount may be deducted from the amount otherwise to be taken into account by virtue of this paragraph. ◀

<sup>1</sup>Para. 12 omitted by reg. 7(7) of S.I. 2003/2085 as from 1.9.03.

<sup>2</sup>Para. 13 omitted by reg. 7 of S.I. 2006/576 as from 6.4.06.

**12.** ▶<sup>1</sup>◀

**13.** ▶<sup>2</sup>◀

**Valuation of non-cash vouchers**

**14.**—(1) The amount of earnings comprised in any payment by way of a non-cash voucher which is not otherwise disregarded by these Regulations and which falls to be taken into account in calculating an employed earner's earnings shall be calculated on the basis set out in sub-paragraph (2).

(2) The basis referred to in sub-paragraph (1) is that of an amount equal to the expense incurred ("the chargeable expense")—

- (a) by the person at whose cost the voucher and the money, goods or services, for which it is capable or being exchanged, are provided;
- (b) in, or in connection with that provision,

and any money, goods or services obtained by the employed earner or any other person in exchange for the voucher shall be disregarded.

This is subject to the following <sup>1</sup>qualifications<sup>◀</sup>.

▶<sup>2</sup>(3) For the purposes of sub-paragraph (2) the chargeable expense shall be reduced by any part of that which the employed earner makes good to the person incurring it.◀

▶<sup>1</sup>(4) The valuation of qualifying childcare vouchers is determined in accordance with paragraph 7 of Part 5 of Schedule 3.◀

<sup>1</sup>Words substituted in sub-para. (2) & sub-para. (4) inserted in reg. 14 by reg. 8(a) & (b) of S.I. 2005/778 as from 6.4.05.

<sup>2</sup>Para. 14(3) substituted by reg. 39 of S.I. 2013/622 as from 6.4.13.

**Apportionment of earnings comprised in a cash or non-cash voucher provided for benefit of two or more employed earners**

**15.**—(1) The amount of earnings comprised in any payment by way of a cash voucher or a non-cash voucher provided for the benefit of two or more employed earners and which falls to be taken into account in computing the earnings of each of those earners shall be calculated or estimated on the basis set out in whichever of sub-paragraphs (2) or (3) applies.

(2) If the respective proportion of the benefit of the voucher to which each of those earners is entitled is known at the time of the payment, the basis is that of a separate payment equal to that proportion.

(3) In any case where the respective proportions are not known at the time of the payment, the basis is equal apportionment between all those earners.

(4) In this paragraph—

- (a) "chargeable expense" has the same meaning, and is calculated in the same way, as in paragraph 14; and
- (b) if an employed earner makes good any part of the chargeable expense to the person incurring it, that chargeable expense in relation to that employed earner shall be reduced by that part.

## SCHEDULE 3

Regulation 26

PAYMENTS TO BE DISREGARDED IN THE CALCULATION OF  
EARNINGS FOR THE PURPOSES OF EARNINGS-RELATED  
CONTRIBUTIONS

## PART I

## INTRODUCTORY

**Introduction**

1.—(1) This Schedule contains provisions about payments which are to be disregarded in the calculation of earnings for the purposes of earnings-related contributions.

(2) Part II contains provisions about the treatment of payments in kind.

(3) Part III and IV specifies payments by way of assets which are not to be disregarded by virtue of paragraph 1 of Part II.

(4) Part V specifies non-cash vouchers which are to be disregarded by virtue of paragraph 1 of Part II.

(5) In computing earnings there are also to be disregarded—

- (a) the pensions and pension contributions specified in Part VI;
- (b) the payments in respect of training and similar courses specified in Part VII;
- (c) the travelling, relocation and overseas expenses specified in Part VIII;
- (d) the <sup>1</sup>incentives by way of securities<sup>2</sup> specified in Part IX; and
- (e) the miscellaneous payments specified in Part X.

<sup>1</sup>Words substituted in para. 1(5)(d) by reg. 9 of S.I. 2003/2085 as from 1.9.03.

**Interpretation**

2.—(1) In this Schedule, unless the context otherwise requires—

- (a) a reference to a numbered Part is a reference to the Part of this Schedule which bears that number;
- (b) a reference in a Part, to a numbered paragraph is a reference to the paragraph of that Part which bears that number; and
- (c) a reference in a paragraph to a lettered or numbered sub-paragraph is a reference to the sub-paragraph of that paragraph which bears that letter or number.

## PART II

## PAYMENTS IN KIND

**Certain payments in kind to be disregarded**

1. A payment in kind, or by way of the provision of services, board and lodging or other facilities is to be disregarded in the calculation of earnings.

This is subject to the paragraph 2 and also to any provision about a payment in kind of a particular description or in particular circumstances in any other Part of this Schedule.

**Payments by way of assets not to be disregarded**

2. Payments falling within paragraph 1 do not include any payment by way of—
- (a) the conferment of any beneficial interest in—
    - (i) any asset mentioned in Part III or Part IV,
    - ▶<sup>1</sup>(ii) any contract, of long-term insurance which falls within paragraph I, III or VI of Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;◀
  - (b) a non-cash voucher not of a description mentioned in Part V or to which paragraph 4 of Part X applies.

<sup>1</sup>Sub para. 2(i)(ii) of Sch. 3 substituted by Art. 192 of S.I. 2001/3629 as from 1.12.01.

(2) Sub-paragraph (1)(a)(i) is subject to the qualification that an asset, which falls within either Part III or Part IV, shall nevertheless be disregarded under paragraph 1 if ▶<sup>2</sup>if no liability to income tax arises by virtue of section 323 of ITEPA 2003 (long service awards).◀

<sup>2</sup>Words substituted in para. 2(2) of Sch. 3 by reg. 28(2) of S.I. 2004/770 as from 6.4.04.

- (3) For the purposes of sub-paragraph (1)(a)(ii), if the ▶<sup>3</sup>contract—
- (a) falls within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and Part I of that Schedule; or
  - (b) is treated for the purposes of that Order as falling within Part II of that Schedule by Article 3(3) of that Order,

<sup>3</sup>Words in sub para. 2(3) substituted by Art. 192 of S.I. 2001/3629 as from 1.12.01.

that contract shall be treated as constituting long-term insurance.◀

## PART III

## PAYMENTS BY WAY OF READILY CONVERTIBLE ASSETS NOT DISREGARDED AS PAYMENTS IN KIND

▶<sup>4</sup>1. A readily convertible asset within the meaning of section 702 of ITEPA 2003(a).

<sup>4</sup>Paras. 1 & 2 of Part III substituted by reg. 10 of S.I. 2003/2085 as from 1.9.02.

2. An asset which, in accordance with section 697 of ITEPA 2003 (PAYE: enhancing the value of an asset), would be treated, for the purposes of section 696 of that Act, as a readily convertible asset.◀

3. Any voucher, stamp or similar document—
- (a) whether used singularly or together with other such vouchers, stamps or documents; and
  - (b) which is capable of being exchanged for an asset falling within paragraph 1 or 2.

▶<sup>5</sup>PART 3A

<sup>5</sup>Part 3A inserted in Sch.3 by reg. 2 of S.I. 2007/2068 as from 6.8.07.

## DEBTS OF MANAGED SERVICE COMPANIES

**Interpretation of this Part**

**29A.**—(1) In this Part of this Schedule—

“HM Revenue and Customs” means Her Majesty’s Revenue and Customs;

“lower amount” means the amount mentioned in paragraph 29C(5);

“managed service company” has the meaning given by section 61B of ITEPA(b);

“paragraph (b) associate” means a person who—

- (a) is within section 688A(2)(d)(c), and
- (b) is within that provision by virtue of a connection with a person who is within section 688A(2)(b);

(a) Subsections (5A) to (5D) were inserted, and subsection (6) amended, by paragraph 15(2) and (3) of Schedule 22.

(b) Section 61B was inserted by paragraph 4 of Schedule 3 to the Finance Act 2007 (c. 11).

(c) Section 688A was inserted by paragraph 6 of Schedule 3 to the Finance Act 2007.

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“paragraph (c) associate” means a person who—

- (a) is within section 688A(2)(d), and
- (b) is within that provision by virtue of a connection with a person who is within section 688A(2)(c);

“qualifying period” means a tax period beginning on or after 6th August 2007;

“relevant contributions debt” means a debt specified in paragraph 29B;

“specified amount” means the amount mentioned in paragraph 29C(1)(b);

“transfer notice” means the notice mentioned in paragraph 29C(4);

“transferee” means the person mentioned in paragraph 29C(4).

(2) In this Part of this Schedule references to section 688A, however expressed, are references to section 688A of ITEPA.

**Relevant contributions debts of managed service companies**

**29B.**—(1) A managed service company has a relevant contributions debt if—

- (a) a managed service company must pay an amount of contributions for a qualifying period, and
- (b) one of conditions A to E is met.

(2) Condition A is met if—

- (a) a decision has been made in accordance with section 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999(a) that an amount of Class 1 National Insurance contributions is due in respect of a qualifying period, and
- (b) any part of the amount has not been paid within 14 days from the date on which the decision became final and conclusive.

(3) Condition B is met if—

- (a) an employer delivers a return under paragraph 22(1) (return by employer at end of year) for the tax year 2007-08, or any later tax year, showing an amount of total contributions deducted by the employer for that tax year,
- (b) HM Revenue and Customs prepare a certificate under paragraph 22(5) (certificate that contributions specified in return under paragraph 22(1) remain unpaid) showing how much of that amount remains unpaid, and
- (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.

(4) Condition C is met if—

- (a) HM Revenue and Customs prepare a certificate under paragraph 14(1) (employer failing to pay earnings-related contributions) showing an amount of contributions which the employer is liable to pay for a qualifying period, and
- (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.

(5) Condition D is met if—

- (a) HM Revenue and Customs serve notice on an employer under paragraph 15(1) (specified amount of earnings-related contributions payable by the employer) requiring payment of the amount of Class 1 contributions which they consider the employer is liable to pay, and
- (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.

(6) Condition E is met if—

- (a) HM Revenue and Customs prepare a certificate under paragraph 26 (inspection of employer’s records) showing an amount of contributions which it appears that the employer is liable to pay for a qualifying period,

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(a) Regulation 156(3) of S.I. 2001/1004 provides a rule of construction for the application in Northern Ireland of references to enactments not applying there.



- (b) HM Revenue and Customs make a written demand for payment of that amount of contributions, and
- (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the written demand for payment is made.

#### **Transfer of debt of managed service company**

**29C.**—(1) This paragraph applies if—

- (a) a managed service company has a relevant contributions debt, and
- (b) an officer of Revenue and Customs is of the opinion that the relevant contributions debt or a part of the relevant contributions debt (the “specified amount”) is irrecoverable from the managed service company within a reasonable period.

(2) HM Revenue and Customs may make a direction authorising the recovery of the specified amount from the persons specified in section 688A(2) (managed service companies: recovery from other persons).

(3) Upon the making of a direction under sub-paragraph (2), the persons specified in section 688A(2) become jointly and severally liable for the relevant contributions debt, but subject to what follows.

(4) HM Revenue and Customs may not recover the specified amount from any person in accordance with a direction made under sub-paragraph (2) until they have served a notice (a “transfer notice”) on the person in question (the “transferee”).

(5) If an officer of Revenue and Customs is of the opinion that it is appropriate to do so, HM Revenue and Customs may accept an amount less than the specified amount (the “lower amount”) from a transferee; but this acceptance shall not prejudice the recovery of the specified amount from any other transferee.

(6) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, if the relevant contributions debt is incurred before 6<sup>th</sup> January 2008.

(7) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, unless an officer of Revenue and Customs certifies that, in his opinion, it is impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates.

(8) In determining, for the purposes of sub-paragraph (7), whether it is impracticable to recover the specified amount from the persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates the officer of Revenue and Customs may have regard to all managed service companies in relation to which a person is a person mentioned in paragraph (a) or (b) of section 688A(2) or a paragraph (b) associate.

(9) In determining which of the persons mentioned in section 688A(2)(c) and which of the paragraph (c) associates are to be served with transfer notices and the amount of those notices, HM Revenue and Customs must have regard to the degree and extent to which those persons are persons who (directly or indirectly) have encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.

#### **Time limits for issue of transfer notices**

**29D.**—(1) A transfer notice must be served before the end of the period specified in this paragraph.

(2) Sub-paragraphs (3) to (7) apply if the transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2) or on a paragraph (b) associate.

(3) In a case in which condition A in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the decision became final and conclusive.

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(4) In a case in which condition B in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs received the return delivered under paragraph 22.

(5) In a case in which condition C in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs prepare the certificate under paragraph 14(1).

(6) In a case in which condition D in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs serve notice to the employer under paragraph 15(1).

(7) In a case in which condition E in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs carry out the inspection of the employer's contribution records under paragraph 26.

(8) If the transfer notice is served on a person mentioned in paragraph (c) of section 688A(2), or on a paragraph (c) associate, the transfer notice must be served before the end of a period of three months beginning with the date on which the officer of Revenue and Customs certifies the matters specified in paragraph 29C(7).

**Contents of transfer notice**

**29E.**—(1) A transfer notice must contain the following information—

- (a) the name of the managed service company to which the relevant contributions debt relates;
- (b) the address of the managed service company to which the relevant contributions debt relates;
- (c) the amount of the relevant contributions debt;
- (d) the tax periods to which the relevant contributions debt relates;
- (e) if the tax periods to which the relevant contributions debt relates are comprised in more than one tax year, the apportionment of the relevant contributions debt among those tax years;
- (f) which of the conditions A to E specified in paragraph 29B is met;
- (g) the transferee's name;
- (h) the transferee's address;
- (j) whether the transferee is a person mentioned in paragraph (a), (b) or (c) of section 688A, a paragraph (b) associate or a paragraph (c) associate;
- (k) if the transferee is a person mentioned in paragraph (c) of section 688A or a paragraph (c) associate—
  - (i) the date on which the officer of Revenue and Customs certified the matters specified in paragraph 29C(7), and
  - (ii) the names of the persons from whom it has been impracticable to recover the specified amount;
- (l) the specified amount;
- (m) the tax periods to which the specified amount relates;
- (n) if the tax periods to which the specified amount relates are comprised in more than one tax year, the apportionment of the specified amount among those tax years;
- (o) the address to which payment must be sent;
- (p) the address to which an appeal must be sent.

(2) The transfer notice may specify the lower amount if HM Revenue and Customs are prepared to accept the lower amount from the transferee.

(3) The transfer notice must also contain a statement, made by the officer of Revenue and Customs serving the notice, that in his opinion the specified amount is irrecoverable from the managed service company within a reasonable period.

**Payment of the specified amount**

**29F.**—(1) If a transfer notice is served, the transferee must pay the specified amount to HM Revenue and Customs at the address specified in the transfer notice.

(2) The transferee must pay the specified amount within 30 days beginning with the date on which the transfer notice is served (the “specified period”).

(3) If a transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2), or on a paragraph (b) associate, the specified amount carries interest from the reckonable date until the date on which payment is made.

(4) If a transfer notice is served on a person mentioned in paragraph (c) of section 688A(2), or on a paragraph (c) associate, the specified amount carries interest from the day following the expiry of the specified period until the date on which payment is made.

**Appeals**

**29G.**—(1) A transferee may appeal against the transfer notice.

(2) A notice of appeal must—

- (a) be given to HM Revenue and Customs at the address specified in the transfer notice within 30 days beginning with the date on which the transfer notice was served, and
- (b) specify the grounds of the appeal.

(3) The grounds of appeal are any of the following—

- (a) that the relevant contributions debt (or part of the relevant contributions debt) is not due from the managed service company to HM Revenue and Customs;
- (b) that the specified amount does not relate to a company which is a managed service company;
- (c) that the specified amount is not irrecoverable from the managed service company within a reasonable period;
- (d) that the transferee is not a person mentioned in section 688A(2);
- (e) that the transferee was not a person mentioned in section 688A(2) during the tax periods to which the specified amount relates;
- (f) that the transferee was not a person mentioned in section 688A(2) during some part of the tax periods to which the specified amount relates;
- (g) that the transfer notice was not served before the end of the period specified in paragraph 29D;
- (h) that the transfer notice does not satisfy the requirements specified in paragraph 29E;
- (j) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that it is not impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) or from paragraph (b) associates;
- (k) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that the amount specified in the transfer notice does not have regard to the degree and extent to which the transferee is a person who (directly or indirectly) has encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.

(4) Sub-paragraph (3)(a) is subject to paragraph 29H(4).

(5) The appeal is to the Special Commissioners.

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**Procedure on appeals**

**29H.**—(1) On an appeal the Special Commissioners shall uphold or quash the transfer notice.

(2) The general rule in sub-paragraph (1) is subject to the following qualifications.

(3) In the case of the ground of appeal specified in paragraph 29G(3)(a), the Special Commissioners shall investigate the matter and shall—

- (a) uphold the amount of the relevant contributions debt specified in the transfer notice, or
- (b) reduce or increase the amount of the relevant contributions debt specified in the transfer notice to such amount as in their opinion is just and reasonable.

(4) If the Special Commissioners determine the amount of the relevant contributions debt of a managed service company under sub-paragraph (3), that amount is conclusive as to the amount of that relevant contributions debt in any later appeal relating to that debt.

(5) In the case of the ground of appeal specified in paragraph 29G(3)(f), the Special Commissioners may reduce the amount specified in the transfer notice to an amount determined in accordance with the equation—

$$RA = \frac{P}{TP} \times AS$$

(6) In paragraph (5)—

RA means the reduced amount;

P means the number of days in the tax periods specified in the transfer notice during which the transferee was a person mentioned in section 688A(2);

TP means the number of days in the tax periods specified in the transfer notice;

AS means the amount specified in the transfer notice.

(7) In the case of the ground of appeal specified in paragraph 29G(3)(k), the Special Commissioners may reduce the amount specified in the transfer notice to such amount as in their opinion is just and reasonable.

**Withdrawal of transfer notices**

**29J.**—(1) A transfer notice shall be withdrawn if the Special Commissioners quash it.

(2) A transfer notice may be withdrawn if, in the opinion of an officer of Revenue and Customs, it is appropriate to do so.

(3) If a transfer notice is withdrawn, HM Revenue and Customs must give written notice of that fact to the transferee.

**Application of Part 6 of the Taxes Management Act 1970**

**29K.**—(1) For the purposes of this Chapter, Part 6 of the Taxes Management Act 1970 (collection and recovery)(a) applies as if—

- (a) the transfer notice were an assessment of tax on employment income, and
- (b) the amount of earnings-related contributions specified in the transfer notice, and any interest payable on that amount under sub-paragraph (3) or (4) of paragraph 29F were income tax charged on the transferee;

and that Part of that Act applies with the modification specified in sub-paragraph (2) and any other necessary modifications.

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(a) 1970 c. 9.

(2) Summary proceedings for the recovery of the specified amount may be brought in England and Wales or Northern Ireland at any time before the end of a period of 12 months beginning immediately after the expiry of the period mentioned in paragraph 29F(2).

(3) The specified amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of the Taxes Management Act 1970 (magistrates' courts, county courts and inferior courts in Scotland).

(4) But sub-paragraph (3) does not prevent the bringing of separate proceedings for the recovery of each of the amounts which the transferee is liable to pay for any tax period.

#### Repayment of surplus amounts

**29L.**—(1) This paragraph applies if the amounts paid to HM Revenue and Customs in respect of a relevant contributions debt exceed the specified amount.

(2) HM Revenue and Customs shall repay the difference on a just and equitable basis and without unreasonable delay.

(3) Interest on any sum repaid shall be paid in accordance with paragraph 18 (payment of interest on repaid earnings-related contributions).◀

### PART IV

#### PAYMENTS BY WAY OF SPECIFIC ASSETS NOT DISREGARDED AS PAYMENTS IN KIND

##### ►<sup>1</sup>Securities

1. Securities.◀

2.-5. ►<sup>1</sup>◀

<sup>1</sup>In Part IV, para. 1 substituted, paras. 2-5 omitted, paras. 7-8 omitted by reg. 11(a)-(c) of S.I. 2003/2085 as from 1.9.03.

##### Options to acquire assets, currency, precious metals or other options

6. Options to acquire, or dispose of—

- (a) currency of the United Kingdom or any other country or territory;
- (b) gold, silver, palladium or platinum;
- (c) an asset falling within any other paragraph of this Part of this Schedule;
- (d) an option to acquire, or dispose of, an asset falling within sub-paragraph (a), (b) or (c).

7.-8. ►<sup>1</sup>◀

##### Alcoholic liquor on which duty has not been paid

9. Any alcoholic liquor, within the meaning of section 1 of the Alcoholic Liquor Duties Act 1979(a) in respect of which no duty has been paid under that Act.

##### Gemstones

10. Any gemstone, including stones such as diamond, emerald, ruby, sapphire, amethyst, jade, opal or topaz and organic gemstones such as amber or pearl, whether cut or uncut and whether or not having an industrial use.

(a) 1979 c. 4. Section 1 was amended by article 5 of S.I. 1979/241, section 1(5) of the Finance Act 1984 (c. 43), paragraph 1 of Part II of Schedule 1 and Part I of Schedule 14 to the Finance Act 1988 (c. 39) and section 3(1) and (3) of the Finance Act 1993 (c. 34).

**Sch. 3****Certificates etc. conferring rights in respect of assets**

<sup>1</sup>Words substituted in para. 11(a) by reg. 11(d) of S.I. 2003/2085 as from 1.9.03.

**11. Certificates or other instruments which confer—**

- (a) property rights in respect of any asset falling within paragraphs <sup>1</sup>1, 9 or 10;
- (b) any right to acquire, dispose of, underwrite or convert an asset, being a right to which the holder would be entitled if he held any such asset to which the certificate or instrument relates; or
- (c) a contractual right, other than an option, to acquire any such asset otherwise than by subscription.

**Vouchers****12. Any voucher, stamp or similar document—**

- (a) whether used singularly or together with other such vouchers, stamps or documents; and
- (b) which is capable of being exchanged for an asset falling within any other paragraph of this Part.

## PART V

## Sch. 3

## CERTAIN NON-CASH VOUCHERS TO BE DISREGARDED AS PAYMENTS IN KIND

**1.**—(1) Subject to sub-paragraph (2), a non-cash voucher provided, to or for the benefit of the employed earner, by the employer or any other person on his behalf is to be disregarded in the calculation of an employed earner's earnings by virtue of paragraph 1 of Part II only if it falls within any of paragraphs 2 to <sup>1</sup>9.

<sup>2</sup>(2) A non-cash voucher may also be disregarded—

- (a) by virtue of paragraph 7D of Part VIII (car fuel); <sup>3</sup> or
- <sup>3</sup>(aa) <sup>3</sup> by virtue of paragraph 7E of Part 8 (van fuel); or
- (b) in the circumstances specified in paragraph 4 of Part X (payments by way of <sup>4</sup> incidental overnight expenses).

**2.** A non-cash voucher which is not treated as <sup>4</sup> general earnings from employment for the purposes of <sup>5</sup> section 86 of ITEPA 2003 (transport vouchers under pre-26th March arrangements).

<sup>5</sup>This paragraph only applies in the case of an employee who is in lower paid employment, within the meaning of section 217 of ITEPA 2003.

<sup>6</sup>**3.** A non-cash voucher exempted from liability to income tax under Chapter 4 of Part 3 by virtue of sections 266(1)(a) or 269 of ITEPA 2003 (exemptions: non-cash vouchers and credit-tokens).

<sup>6</sup>**5.** A non-cash voucher in respect of which no liability to income tax arises by virtue of section 266(1) of ITEPA 2003(a) to the extent that the voucher is used to obtain anything the direct provision of which would fall within any of the following provisions of that Act—

- (a) section 246 (transport between work and home for disabled employees: general);
- (b) section 247 (provision of cars for disabled employees);
- (c) section 248 (transport home: late night working and failure of car-sharing arrangements)<sup>7</sup>;
- (d) section 320C (recommended medical treatment)(b).

**5A.** A non-cash voucher in respect of which no liability to income tax arises by virtue of section 266(2) of ITEPA 2003 if the voucher evidences entitlement to use anything the direct provision of which would fall within any of the following provisions of that Act—

- (a) section 242 (works transport services);
- (b) section 243 (support for public bus services);
- (c) section 244 (cycles and cyclist's safety equipment);

<sup>8</sup>(d) section 319(c) (mobile telephones).

**5B.** A non-cash voucher in respect of which no liability to income tax arises by virtue of section 266(3) of ITEPA 2003 if the voucher can be used only to obtain anything the direct provision of which would fall within any of the following provisions of that Act—

<sup>1</sup>Figure substituted in para. 1 by reg. 2 of S.I. 2007/2091 as from 14.8.07.

<sup>2</sup>Para. 1(2) substituted by reg. 6 of S.I. 2002/307 as from 6.4.02.

<sup>3</sup>Words omitted in para. 1(2) and para. 1(2)(aa) inserted by reg. 4(2)(a) & (b) of S.I. 2008/607 as from 6.4.08.

<sup>4</sup>Words substituted in paras. 1(2)(b) & 2 of Sch. 3 by reg. 28(3)(a) & (b) of S.I. 2004/770 as from 6.4.04.

<sup>5</sup>Words in para. 2 substituted and paras. 3 & 4 substituted by para. 3 by reg. 28(3)(b)(iii) & (c) of S.I. 2004/770 as from 6.4.04.

<sup>6</sup>Paras. 5 & 6 of Part V substituted by 5, 5A, 5B & 6 by reg. 5(2) of S.I. 2003/2958 as from 10.12.03.

<sup>7</sup>Para. 5(d) inserted by reg. 3 of S.I. 2014/3228 as from 1.1.15.

<sup>8</sup>Para. 5A(d) inserted by reg. 2(2) of S.I. 2006/2003 as from 14.8.06.

(a) I.e. the Income Tax (Earnings and Pensions) Act 2003 (c. 1): a definition of "ITEPA 2003" was inserted into section 122(1) of the Social Security Contributions and Benefits Act 1992 by paragraph 178(2) of Schedule 6 of ITEPA 2003 and into section 121(1) of the 1992 Northern Ireland Act by paragraph 199(2) of that Schedule.

(b) Section 320C of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) was inserted by section 12(2) of the Finance Act 2014 (c. 26).

(c) Section 319 (mobile telephones) of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") was substituted for section 319 (employment income exemption for mobile telephones) by section 60 of the Finance Act 2006 c. 25.

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- (a) section 245 (travelling and subsistence during public transport strikes);
- (b) section 261 (recreational benefits);
- (c) section 264 (annual parties and functions);
- (d) section 296 (armed forces' leave travel facilities);
- (e) section 317 (subsidised meals);
- ▶<sup>1</sup>(f) section 320A(a) (eye tests and special corrective appliances);◀

<sup>1</sup>Para. 5B(f) inserted by reg. 2(3) of S.I. 2006/2003 as from 14.8.06.

**6.** A non-cash voucher to the extent that no liability to income tax arises by virtue of any of the following sections of ITEPA 2003—

- (a) section 270 (exemption for small gifts of vouchers and tokens from third parties);
- (b) section 305 (offshore oil and gas workers: mainland transfers);
- (c) section 321 (suggestion awards);
- (d) section 323 (long service awards);
- (e) section 324 (small gifts from third parties).◀

**6A.** ▶<sup>2</sup>◀

<sup>2</sup>Para. 6A of Sch. 3 omitted by reg. 40(a)(i) of S.I. 2013/622 as from 6.4.13.

▶<sup>3</sup>**Interpretation - qualifying childcare vouchers**

**6B.** In paragraphs 7 and 7A—

- (a) “care”, “child” and “parental responsibility” have the same meaning as in section 318B of ITEPA 2003(b);
- (b) “chargeable expense” has the meaning given in paragraph 14 of Schedule 2;
- (c) “qualifying child care” has the same meaning as in section 318C of ITEPA 2003;
- (d) “qualifying week” means a tax week in respect of which a qualifying childcare voucher is received;
- (e) “relevant salary sacrifice arrangements” means arrangements (whenever made) under which the employees for whom the vouchers are provided give up the right to receive an amount of general earnings or specific employment income in return for the provision of the vouchers;
- (f) “relevant flexible remuneration arrangements” means arrangements (whenever made) under which the employees for whom the vouchers are provided agree with the employer that they are to be provided with the vouchers rather than receive some other description of employment income;
- (g) “relevant low-paid employees” means any of the employer’s employees who are remunerated by the employer at a rate such that, if the relevant salary sacrifice arrangements or relevant flexible remuneration arrangements applied to them, the rate at which they would then be so remunerated would be likely to be lower than the national minimum wage;
- (h) “scheme” means the manner by which an employer provides qualifying childcare vouchers and an employee is taken to join a scheme or have joined a scheme when the employer has agreed that vouchers will be provided to the employee under the scheme and there is a child falling within Condition A of paragraph 7(7); and
- (i) the administration costs for a voucher means the difference between the cost of provision of a voucher and its face value and the face value is the amount stated on or recorded in the voucher as the value of the provision of care for a child that may be obtained by using it.

<sup>3</sup>Paras. 6B, 7(1A) & (7)-(10) & 7A inserted & para. 7(1) substituted in Part V of Sch. 3 by regs. 3-5 of S.I. 2011/1000 as from 6.4.11.

(a) Section 320A (eye tests and special corrective appliances) of ITEPA was inserted by section 62 of the Finance Act 2006 c. 25.

(b) Sections 318B and 318C of ITEPA 2003 were inserted by paragraph 1 of Schedule 13 to the Finance Act 2004 (c. 12).



## Sch. 3

**►<sup>1</sup>Qualifying childcare vouchers for employees who joined a scheme before 6th April 2011**

- 7.—►<sup>2</sup>(1) A qualifying childcare voucher, where an employee joined a scheme—
- (a) before 6th April 2011;
  - (b) before 6th April 2011 but ceased to be employed by the employer and was subsequently re-employed by the employer and re-joined the scheme before 6th April 2011; or
  - (c) before 6th April 2011 and there was a continuous period of 52 weeks ending before 6th April 2011 throughout which vouchers were not being provided for the employee under the scheme,

subject to the qualifications in sub-paragraphs (2) and (5).◀

(1A) ►<sup>2</sup>◀◀

►<sup>3</sup>(2) Where the chargeable expense of the voucher exceeds the exempt amount, only that amount shall be disregarded by virtue of sub-paragraph (1).

- (3) The exempt amount is the amount found by the formula—

**E x QW**

Here—

E is the sum of—

- (a) ►<sup>4</sup>£55◀; and
  - (b) the administration costs for the qualifying childcare voucher;
- QW is the number of qualifying weeks—
- (a) for which the earner has been employed by the secondary contributor during the tax year in which the qualifying childcare voucher is provided; and
  - (b) for which no other qualifying childcare voucher has been provided by the secondary contributor.

(4) Where an earner has two or more employed earner's employments, the earnings from which fall to be aggregated in accordance with regulation 14 or 15, the reference to the secondary contributor in paragraph (b) of the definition of QW is a reference to the secondary contributor in respect of any of those employments.

(5) An earner is only entitled to one exempt amount even if childcare vouchers are provided in respect of more than one child.◀

►<sup>5</sup>(6) In this paragraph "qualifying childcare voucher" means a non-cash voucher in relation to which Conditions A to C are met.

(7) Condition A is that the voucher is provided to enable an employee to obtain care for a child who—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee's expense; or
- (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

(8) Condition B is that the voucher can only be used to obtain qualifying child care.

(9) Condition C is that the vouchers are provided under a scheme that is open—

- (a) to the employer's employees generally; or
- (b) generally to those at a particular location,

subject to sub-paragraph (10).

(10) Where the scheme under which the vouchers are provided involves—

- (a) relevant salary sacrifice arrangements; or
- (b) relevant flexible remuneration arrangements,

<sup>1</sup>Paras. 7(1) & (1A) substituted by reg. 4(a) & (b) of S.I. 2011/1000 as from 6.4.11.

<sup>2</sup>Para. 7(1) substituted & sub-para. (1A) omitted by reg. 4(a) & (b) of S.I. 2011/2700 as from 6.12.11.

<sup>3</sup>Words substituted in para. 7 by reg. 9(2) of S.I. 2005/778 as from 6.4.05.

<sup>4</sup>Amount in para. 7(3) substituted by reg. 2 of S.I. 2006/883 as from 6.4.06.

<sup>5</sup>Para. 7(6) substituted & paras. 7(7)-(10) & 7A inserted in Part V of Sch. 3 by reg. 4(c) & (d) of S.I. 2011/1000 as from 6.4.11.

## Sch. 3

Condition C is not prevented from being met by reason only that the scheme is not open to relevant low-paid employees.◀

<sup>1</sup>Para. 7A(1) substituted by reg. 5(a) of S.I. 2011/2700 as from 6.12.11.

▶<sup>1</sup>**Qualifying childcare vouchers for employees who joined a scheme on or after 6th April 2011, or before 6th April 2011 where there has been a break in employment or a 52 week break in receiving vouchers recommencing on or after 6th April 2011**

**7A.**—(1) A qualifying childcare voucher, where an employee joined a scheme—

- (a) on or after 6th April 2011;
- (b) before 6th April 2011 but ceased to be employed by the employer and was subsequently re-employed by the employer and re-joined the scheme on or after 6th April 2011; or
- (c) before 6th April 2011 and there was a continuous period of 52 weeks ending on or after 6th April 2011 throughout which vouchers were not being provided for the employee under the scheme,

subject to the qualifications in sub-paragraphs (3) and (6).◀

(2) In this paragraph a “qualifying childcare voucher” means a non-cash voucher in relation to which conditions A to D (see sub-paragraphs (7) to (11)) are met.

(3) Where the chargeable expense of the voucher exceeds the exempt amount, only that amount shall be disregarded by virtue of sub-paragraph (1).

(4) The exempt amount is the amount found by the formula—

$$E \times QW$$

Here—

E is, in the case of an employee the sum of—

- (a) ▶<sup>2</sup>£25◀, if the relevant earnings amount for the tax year, as estimated in accordance with Condition D, exceeds the higher rate limit for the tax year;
- (b) £28, if the relevant earnings amount for the tax year, as estimated in accordance with Condition D, exceeds the basic rate limit but does not exceed the higher rate limit for the tax year; or
- (c) £55, in any other case; and
- (d) the administration costs for the qualifying childcare voucher;

QW is the number of qualifying weeks—

- (a) for which the earner has been employed by the secondary contributor during the tax year in which the qualifying childcare voucher is provided; and
- (b) for which no other qualifying childcare voucher has been provided by the secondary contributor.

(5) Where an earner has two or more employed earner’s employments, the earnings from which fall to be aggregated in accordance with regulation 14 or 15, the reference to the secondary contributor in paragraph (b) of the definition of QW is a reference to the secondary contributor in respect of any of those employments.

(6) An earner is only entitled to one exempt amount even if childcare vouchers are provided in respect of more than one child.

(7) Condition A is that the voucher is provided to enable an employee to obtain care for a child who—

- (a) is a child or stepchild of the employee and is maintained (wholly or partly) at the employee’s expense; or
- (b) is resident with the employee and is a person in respect of whom the employee has parental responsibility.

(8) Condition B is that the voucher can only be used to obtain qualifying child care.

<sup>2</sup>Amount “£22” substituted in para. 7A(4)(a) of Sch. 3 by reg. 40(a)(ii) of S.I. 2013/622 as from 6.4.13.

(9) Condition C is that the vouchers are provided under a scheme that is open—

- (a) to the employer’s employees generally; or
- (b) generally to those at a particular location,

subject to sub-paragraph (10).

(10) Where the scheme under which the vouchers are provided involves—

- (a) relevant salary sacrifice arrangements; or
- (b) relevant flexible remuneration arrangements,

Condition C is not prevented from being met by reason only that the scheme is not open to relevant low-paid employees.

(11) Condition D is that the employer has, at the required time, made an estimate of the employee’s relevant earnings amount for the tax year in respect of which the voucher is provided.

(12) In sub-paragraph (11) “the required time”, in the case of an employee, means—

- (a) if the employee joins the scheme under which the vouchers are provided at a time during the tax year, that time, and
- (b) otherwise, the beginning of the tax year.

(13) In sub-paragraph (11) the “relevant earnings amount”, in the case of an employee provided with vouchers by an employer for any qualifying week in a tax year, and subject to sub-paragraph (14), means—

- (a) the aggregate of—
  - (i) the amount of any relevant earnings (see sub-paragraph (15)) for the tax year from employment by the employer; and
  - (ii) any amounts to be treated under Chapters 2 to 12 of Part 3 of ITEPA 2003(a) as earnings from such employment; less
- (b) the aggregate of any excluded amounts (see sub-paragraph (16)).

(14) But if the employee becomes employed by the employer during the tax year, what would otherwise be the amount of the aggregate mentioned in sub-paragraph (13)(a) is the relevant multiple of that amount; and the relevant multiple is—

$$\frac{365}{RD}$$

where—

RD is the number of days in the period beginning with the day on which the employee becomes employed by the employer and ending with the tax year.

(15) In sub-paragraph (13)(a) “relevant earnings” means—

- (a) salary, wages or fees; ▶<sup>1</sup>◀
- ▶<sup>1</sup>(b) guaranteed contractual bonuses;
- (c) contractual commission;
- (d) guaranteed overtime payments;
- (e) location or cost of living allowances;
- (f) shift allowances;
- (g) skills allowances;
- (h) retention and recruitment allowances; and
- (i) market rate supplements.◀

<sup>1</sup>Word in sub-para. (15)(a) omitted & para. (b) substituted for (b)-(i) by reg. 5(b)(i) & (ii) of S.I. 2011/2700 as from 6.12.11.

(16) For the purposes of sub-paragraph (13)(b) the following are “excluded amounts”—

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(a) 2003 c. 1.

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<sup>1</sup>Sub-para. (16)(za) inserted, words in para. (a) & (c) omitted & added & para. (e) substituted by reg. 5(c)(i)-(v) of S.I. 2011/2700 as from 6.12.11.

- ▶<sup>1</sup>(za) contributions under a pension scheme if the employee has authorised the employer to make the deductions from relevant payments (as defined by regulation 4 of the PAYE Regulations<sup>(a)</sup>) for which relief at source is given under section 192(1) of the Finance Act 2004<sup>(b)</sup> (relief at source);◀
- (a) contributions under a ▶<sup>1</sup>◀ pension scheme allowed under section 193(2) of Finance Act 2004<sup>(c)</sup> (relief under net pay arrangements) to be deducted by the employer from the employee's employment income for the tax year ▶<sup>1</sup>in accordance with the PAYE Regulations◀;
- (b) donations for which a deduction is made under section 713 of ITEPA 2003 (payroll giving) in calculating the employee's net taxable earnings from employment by the employer for the tax year;
- (c) expenses within Chapter 3 of Part 3 of ITEPA 2003 (expenses payments) which the employer is authorised to exclude from the employee's taxable earnings for the tax year in accordance with ▶<sup>1</sup>the◀ PAYE Regulations;
- (d) payments in respect of removal expenses to which section 271 of ITEPA 2003<sup>(d)</sup> applies (as defined in section 272) and which are taxable earnings of the employee from employment by the employer for the tax year;
- ▶<sup>1</sup>(e) amounts equivalent to the amount of the personal allowance under section 35(1) of the Income Tax Act 2007<sup>(e)</sup> and in addition if applicable, the amount of the blind persons allowance under section 38 of that Act.◀

**8.** A non-cash voucher provided to or for the benefit of an employed earner in respect of employed earner's employment by a person who is not the secondary contributor in respect of the provision of that voucher.

<sup>2</sup>Words substituted in para. 9 by reg. 7 of S.I. 2009/600 as from 6.4.09.

<sup>3</sup>Para. 9 inserted by reg. 2 of S.I. 2007/2091 as from 14.8.07.

▶<sup>2</sup>**9.** A non-cash voucher providing for health screening or medical check-ups to the extent that no liability to income tax arises in the provision of such health screening or medical check-ups ▶<sup>3</sup>by virtue of any provision of or under the Income Tax (Earnings and Pensions) Act 2003 which exempts from liability to income tax the provision by employers to employees of health screening and medical check-ups.◀◀

## PART VI

## PENSIONS AND PENSION CONTRIBUTIONS

<sup>4</sup>Paras. 1-3 substituted by reg. 8 of S.I. 2006/576 as from 6.4.06.

**▶<sup>4</sup>Pension payments and pension contributions disregarded**

**1.** The payments mentioned in paragraphs 2 to 11 are disregarded in the calculation of earnings for the purposes of earnings-related contributions.

**Contributions to, and benefits from, registered pension schemes****2.** A payment—

- (a) by way of employer's contribution towards a registered pension scheme to which section 308▶<sup>5</sup>◀ of ITEPA 2003<sup>(f)</sup> (exemption of contributions to registered pension scheme) applies;
- (b) by way of any benefit pursuant to a registered pension scheme to which—
  - (i) section 204(1) (authorised pensions and lump sums) of, and Schedule 31 (taxation of benefits under registered pension schemes) to, the Finance Act 2004<sup>(g)</sup> applies; or
  - (ii) section 208 or 209 of that Act (unauthorised payments) applies.

<sup>5</sup>Words omitted in para. 2(a) to part 6 of Sch. 3 by reg. 6(a) of S.I. 2012/817 as from 6.4.12.

(a) Regulation 1 of the Social Security (Contributions) Regulations 2001 defines "the PAYE Regulations".

(b) 2004 c. 12.

(c) 2004 c. 12.

(d) 2003 c. 1; section 271 was amended by paragraph 25 of Schedule 7 to the Finance Act 2008 (c. 9).

(e) 2007 c. 3. Section 35 was amended by sections 3 and 4 of the Finance Act 2009 (c. 10) and the figures in subsection (1) of sections 35 and 38 were last amended by S.I. 2010/2879

(f) 2003 c. 1. Section 308 was substituted by section 201(2) of the Finance Act 2004 (c. 12: "the 2004 Act").

(g) 2004 c. 12.

**Migrant member relief and corresponding relief <sup>1</sup>etc.****3.**<sup>1</sup>—(1) A payment by way of—

- (a) an employer's contribution to which paragraph 2 of Schedule 33 of the Finance Act 2004 (relief for employers' contributions) applies <sup>1</sup>and any benefit referable to that contribution;
- (b) an employer's contribution to which article 15(2) of the Taxation of Pension Schemes (Transitional Provisions) Order 2006<sup>(a)</sup> (employers with pre-commencement entitlement to corresponding relief) applies <sup>1</sup>and any benefit referable to that contribution;
- <sup>1</sup>(ba) an employer's contribution to a pension scheme established by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit, and any benefit referable to such a contribution (whenever made);
- (c) <sup>1</sup>;
- <sup>1</sup>(d) benefits from a pension scheme which are referable to contributions made before 6th April 2006, provided that section 386 of ITEPA 2003 did not apply to those contributions by virtue of section 390 of that Act; or
- (e) benefits subject to the unauthorised payment charge imposed by section 208 of the Finance Act 2004 as applied to a relevant non-UK scheme by virtue of paragraph 1 of Schedule 34 to that Act.

<sup>1</sup>(2) Expressions defined in Schedule 34 to the Finance Act 2004 have the same meaning in this paragraph as they have there.

<sup>1</sup>Para. 3 renumbered 3(1), words inserted, sub-para. (ba), (d) & (e) inserted, sub-para. (c) omitted & 3(2) inserted by reg. 3 of S.I. 2006/2829 as from 16.11.06.

**Funded unapproved retirement benefit schemes**

**4.** A payment by way of relevant benefits pursuant to a retirement benefits scheme which has not been approved by the Board for the purposes of Chapter I of Part XIV of the Taxes Act and attributable to payments prior to 6th April 1998.

Here "relevant benefits" has the meaning given in section 612 of the Taxes Act.

**Payments to pension previously taken into account in calculating earnings**

**5.** A payment by way of any benefit pursuant to a retirement benefits scheme which has not been approved by the Board for the purposes of Chapter I of Part XIV of the Taxes Act and attributable to payments on or after 6th April 1998 <sup>2</sup>and before 6th April 2006 which have previously been included in a person's earnings for the purpose of the assessment of his liability for earnings-related contributions.

**6.** <sup>2</sup>**<sup>3</sup>Payments to <sup>4</sup>and benefits from pension schemes exempt from UK taxation under double taxation agreements**

**7.**—(1) A payment to a pension scheme which is afforded relief from taxation by virtue of <sup>4</sup>any of the following provisions, and any benefit referable to that payment—

- (a) Article 25(8) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (France) Order 1968<sup>(b)</sup>;
- (b) Article 17A of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976<sup>(c)</sup>;
- <sup>2</sup>(bb) Article 27(2) of the convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Canada) Order 1980<sup>(d)</sup>;

<sup>2</sup>Words inserted in para. 5, paras. 7(1)(bb), (e), (f) & 8-11 inserted & paras. 6 & 7(2) omitted by reg. 8(3) of S.I. 2006/576 as from 6.4.06.

<sup>3</sup>Words substituted in heading to para. 7 & sub-para. (1)(d) inserted by reg. 9(3)(a) of S.I. 2005/778 as from 6.4.05.

<sup>4</sup>Words inserted in heading to para. 7 & sub-para. (1) by reg. 6(a) & (b) of S.I. 2011/2700 as from 6.12.11.

(a) S.I. 2006/572.

(b) S.I. 1968/1869: paragraph (8) was added to Article 25 by Article 16 of the Protocol set out in the Schedule to S.I. 1987/2055.

(c) S.I. 1976/2151: Article 17A was added by Article 1 of the Protocol set out in the Schedule to S.I. 1995/764.

(d) S.I. 1980/709. Article 27(7) was inserted by Article 13(3) of Part 1 of the Schedule in S.I. 2003/2619.

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<sup>1</sup>Sub-para. (1)(d) inserted by reg. 9(3) of S.I. 2005/778 as from 6.4.05.

<sup>2</sup>Words inserted in para. 5, paras. 7(1)(bb), (e), (f) & 8-11 inserted & paras. 6 & 7(2) omitted by reg. 8 of S.I. 2006/576 as from 6.4.06.

- (c) Article 28(3) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1980(a);
  - ▶<sup>1</sup>(d) Article 18 of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (The United States of America) Order 2002(b)◀;
  - ▶<sup>2</sup>(e) Article 17(3) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (South Africa) Order 2002(c);
  - (f) Article 17(3) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Chile) Order 2003(d)◀.
- (2) ▶<sup>2</sup>◀

**▶<sup>2</sup>Contributions to, and benefits from, employer-financed retirement benefits schemes**

- 8.** A payment by way of—
- (a) an employer’s contribution towards an employer-financed retirement benefits scheme; and
  - (b) benefits, pursuant to an employer-financed retirement benefits scheme, to which paragraph 10 applies.

Here and in paragraph 10 “employer-financed retirement benefits scheme” has the meaning given in section 393A(e) of ITEPA 2003.

**Contributions to, and pension payments from, employer-financed pension only schemes**

- 9.—**(1) A payment by way of—
- (a) an employer’s contribution towards an employer-financed pension only scheme; and
  - (b) a pension, pursuant to an employer-financed pension only scheme, which is income charged to tax pursuant to Part 9 of ITEPA 2003 to which paragraph 10 applies.
- (2) In this paragraph “employer-financed pension only scheme” means a scheme—
- (a) financed by payments made by or on behalf of the secondary contributor, and
  - (b) providing only a pension (and which is accordingly not an employer-financed retirement benefits scheme because it does not provide relevant benefits).

Here “relevant benefits” has the meaning given in section 393B of ITEPA 2003(f).

**Payments from employer-financed retirement benefits schemes and employer-financed pension only schemes**

- 10.—**(1) This paragraph applies to payments in paragraphs 8(b) and 9(1)(b) which—
- (a) if the scheme had been a registered pension scheme—
    - (i) would have been authorised member payments under any of the provisions of section 164 of the Finance Act 2004 (authorised member payments) listed in sub-paragraph (4); and
    - (ii) would satisfy any of the conditions in sub-paragraph (5); and
  - (b) are made after the employment of the employed earner by—

(a) S.I. 1980/1960: Paragraph (3) was substituted by Article X(2) of the Protocol set out in Part I of the Schedule in S.I. 1996/3165.

(b) S.I. 2002/2848.

(c) S.I. 2002/3138.

(d) S.I. 2003/3200.

(e) Section 393A was substituted for section 393 as originally enacted by section 249(3) of the 2004 Act.

(f) Section 393B was substituted for section 393 as originally enacted by section 249(3) of the 2004 Act.

- (i) the secondary contributor,
- (ii) a subsidiary of the secondary contributor, or
- (iii) a person connected with the secondary contributor or a subsidiary of the secondary contributor, has ceased.

For the purposes of this sub-paragraph—

“subsidiary” has the meaning given in section 838 of the Taxes Act 1988(a); and an employer is connected with any of the persons with respect to whom he would be a connected person by virtue of section 839 of that Act(b).

(2) In the following provisions of this paragraph—

- (a) “the Act” means the Finance Act 2004(c);
- (b) a reference to a numbered section or Schedule (without more) is a reference to the section or Schedule bearing that number in the Act; and
- (c) any reference to a numbered pension rule is to the pension rule contained in section 165 bearing that number.

(3) In applying any provision of the Act for the purposes of this paragraph, a reference to the scheme administrator is to be read as a reference to—

- (a) the responsible person, within the meaning of section 399A of ITEPA 2003(d), in relation to the employer-financed retirement benefits scheme, or
- (b) the person who would be the responsible person if the scheme were an employer-financed retirement benefits scheme.

(4) The provisions referred to in sub-paragraph (1)(a)(i) are—

- (a) ►<sup>1</sup>section 164(1)(a)◄ (pensions permitted by the pension rules (see section 165)),
- (b) ►<sup>1</sup>section 164(1)(b)◄ (lump sums permitted by the lump sum rule (see section 166)),
- (c) ►<sup>1</sup>section 164(1)(e)◄ (payments pursuant to a pension sharing order or provision), and
- (d) ►<sup>1</sup>section 164(1)(f)◄ (payments of a description prescribed by regulations made by the Commissioners for Revenue and Customs).

<sup>1</sup>Words in sub-paras. (4)(a)-(d) substituted & sub-para. (5)(a)(iii) omitted by reg. 6(c)(i)-(v) of S.I. 2011/2700 as from 6.12.11.

(5) The conditions referred to in sub-paragraph (1)(a)(ii) are that, if the scheme had been a registered pension scheme—

- (a) any pension payable under its rules would have satisfied—
  - (i) pension rules 1 and 3,
  - (ii) pension rule 4 or pension rule 6, and
  - (iii) ►<sup>1</sup>◄
- (b) in relation to any lump sum payable under its rules, section 166(1)(a) (pension commencement lump sum) and paragraphs 1 to 3 of Schedule 29, as modified by sub-paragraph (6) below, would have been satisfied;
- (c) in relation to any lump sum payable under its rules, section 166(1)(b) (serious ill-health lump sum) and paragraph 4 of Schedule 29, as modified by sub-paragraph (6) below, would have been satisfied; and
- (d) any pension is payable until the member’s death in instalments at least annually.

(6) The amount to be disregarded shall be computed in accordance with Part 1 of Schedule 29 (lump sum rule)(b) as if that Part were modified as follows—

(a) 1988 c. 1.

(b) Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 and by paragraph 341 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(c) 2004 c. 12.

(d) Section 399A was inserted by section 249(11) of the Finance Act 2004.

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- (a) in paragraph 1 (pension commencement lump sum)—
- (i) paragraphs (b) and (f) of sub-paragraph (1) were omitted,
  - (ii) for sub-paragraph (2) there were substituted—  
“(2) But if a lump sum falling within sub-paragraph (1) exceeds the permitted lump sum, no part of it shall be disregarded.”;
  - (iii) sub-paragraph (4) were omitted; and
  - (iv) for sub-paragraph (5) there were substituted—  
“(5) Paragraph 2 defines the permitted lump sum.”;
- (b) for paragraph 2 there were substituted—  
“2. The permitted lump sum is the higher of—

$$\frac{MVF}{4} \text{ and } \frac{LS + (MAP \times 20)}{4}$$

where—

MVF is the market value of the employee’s employer-financed retirement benefits scheme fund at the time the benefit is paid to the individual,  
LS is the amount of the lump sum, and  
MAP is the maximum annual pension which could be paid to the member under the arrangement.”;

- (c) paragraph 3 were omitted;
- (d) in paragraph 4, paragraphs (b) and (c) of sub-paragraph (1) and ►<sup>1</sup>sub-paragraphs (2) and (3)◄ were omitted.

<sup>1</sup>Words in sub-para. (6)(d) substituted by reg. 6(c)(vi) of S.I. 2011/2700 as from 6.12.11.

(7) No payment by way of benefits shall be disregarded by virtue of this paragraph if they are payable in respect of a period during which an earner is—

- (a) engaged as a self-employed earner under a contract for services with, or
- (b) re-employed as an employed earner by,

the secondary contributor from employment with whom the benefits were derived.

<sup>2</sup>Para. 10A. inserted by Reg. 40(b) of S.I. 2013/622 as from 6.4.13.

►<sup>2</sup>**Armed forces early departure scheme payments**

**10A.** A payment under a scheme established by the Armed Forces Early Departure Payments Scheme Order 2005 (S.I. 2005/437).◄

**Superannuation funds to which section 615(3) of the Taxes Act applies**

**11.** A payment by way of employer’s contribution to a superannuation fund to which section 615(3) of the Taxes Act applies, and a payment by way of ►<sup>3</sup>a pension or◄ an annuity paid by such a fund ►<sup>3</sup>◄.

<sup>3</sup>Words inserted & omitted in para. 11 by reg. 4 of S.I. 2006/2829 as from 16.11.06.

PART VII

PAYMENTS IN RESPECT OF TRAINING AND SIMILAR COURSES

**Payments in respect of training and similar payment disregarded**

**1.** The training payments and vouchers mentioned in this Part are disregarded in the calculation of an employed earner’s earnings.

►<sup>4</sup>Paragraphs 5 to 8◄ do not apply to Northern Ireland.

<sup>4</sup>In Part VII, words substituted in para. 1 reg. 2(2) of S.I. 2005/2422 as from 3.10.05.

**Work-related training**

**2.** A payment of, or contribution towards, expenditure incurred on providing work-related training which, by virtue of ►<sup>5</sup>sections 250 to 254 of ITEPA 2003 (exemption for work-related training)◄, is not to be taken as ►<sup>5</sup>general earnings◄ of the office or employment in connection with which it is provided.

<sup>5</sup>Words substituted in Part VII paras. 2 & 3 by reg. 28(5)(a) & (b) of S.I. 2004/770 as from 6.4.04.



**Education and training funded by employers**

**3.** A payment in respect of expenditure which, by virtue of <sup>1</sup>section 255 of ITEPA 2003 (exemption for contributions to individual learning account training)<sup>◀</sup>, is not to be taken as <sup>1</sup>general earnings<sup>◀</sup> of the office or employment in connection with which it is provided.

<sup>1</sup>Words substituted in Part VII paras. 2 & 3 by reg. 28(5)(a) & (b) of S.I. 2004/770 as from 6.4.04.

**New Deal 50plus: employment grant and training credit**

**4.** A payment to a person, as a participant in the scheme arranged under section 2(2) of the Employment and Training Act 1973 and known as New Deal 50plus, of an employment credit or a training grant under that scheme.

**Retraining courses for recipients of jobseeker's allowance**

**5.** A payment to a person as a participant in a scheme of the kind mentioned in section 60(1) of the Welfare Reform and Pensions Act 1999 (special schemes for claimants for jobseeker's allowances)(a).

**Payments to Jobmatch participants**

**6.** A payment made to a participant in a Jobmatch Scheme (including a pilot) arranged under section 2(1) of the Employment and Training Act 1973(b) in his capacity as such.

**Vouchers provided to Jobmatch participants**

**7.** A payment by way of the discharge of any liability by the use of a voucher given to a participant in a Jobmatch Scheme (including a pilot), arranged under section 2(1) of the Employment and Training Act 1973, in his capacity as such.

**►<sup>2</sup>Employment Retention and Advancement payments**

**8.** A payment made to a participant in an Employment Retention and Advancement Scheme, arranged under section 2(1) of the Employment and Training Act 1973(c), in his capacity as such.

<sup>2</sup>In Part VII, para. 8 inserted by reg. 2 of S.I. 2003/2340 as from 1.10.03.

**►<sup>3</sup>Return to Work Credit**

**9.** A payment made to a participant in a Return to Work Credit scheme, arranged under section 2(1) of the Employment and Training Act 1973(d) in his capacity as such.◀

<sup>3</sup>In Part VII, para. 9 substituted by reg. 5(3) of S.I. 2003/2958 as from 10.12.03.

**►<sup>4</sup>Working Neighbourhoods Pilot**

**10.** A payment made to a participant in a Working Neighbourhoods Pilot, arranged under section 2(1) of the Employment and Training Act 1973(e), in his capacity as such.

<sup>4</sup>Paras. 10 & 11 inserted in Part VII by reg. 28(5)(c) of S.I. 2004/770 as from 6.4.04.

**In-Work Credit**

**11.** A payment made to a participant in an In-Work Credit scheme, arranged under section 2(1) of the Employment and Training Act 1973, in his capacity as such.◀

(a) 1999 c. 30.

(b) 1973 c. 50: section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

(c) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

There are amendments to section 2 which are not relevant for present purposes.

(d) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

There are amendments to section 2 which are not relevant for present purposes.

(e) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

There are amendments to section 2 which are not relevant for present purposes.

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<sup>1</sup>Para. 12 insert in Part VII by reg. 4(2) S.I. 2005/728 as from 6.4.05.

**▶<sup>1</sup>Payments made by employers to earners in full-time attendance at universities & college**

**12.—(1)** A payment to an employed earner receiving full-time instruction at a university, technical college or similar educational establishment (within the meaning of section 331 of the Taxes Act) if the conditions in sub-paragraphs (2) to (6) are satisfied, but subject to the exclusion in sub-paragraph(7).

(2) The employed earner must have enrolled at the educational establishment for a course lasting at least one academic year at the time when payment is made.

(3) The secondary contributor must require the employed earner to attend the course for an average of at least twenty weeks in an academic year.

(4) The educational establishment—

(a) must be open to members of the public generally,

(b) must offer more than one course of practical or academic instruction.

(5) The educational establishment must not be run by—

(a) the secondary contributor, or a person who would be treated by section 839 of the Taxes Act as connected with him; or

(b) a trade organisation of which the secondary contributor is a member.

(6) The total amount of earnings payable to the earner in respect of his attendance, including lodging, travelling and subsistence allowances, but excluding any tuition fees, must not exceed ▶<sup>2</sup>£15,480◀ in respect of an academic year.

(7) This paragraph does not apply to any payment made by the secondary contributor to the employed earner for, or in respect of, work done for the secondary contributor by the earner (whether during vacations or otherwise).

(8) This paragraph has effect in respect of payments made in relation to the academic year beginning on 1st September 2005 and subsequent academic years.

(9) In this paragraph—

“academic year” means the period beginning on 1st September of one calendar year and ending on 31st August of the following calendar year.

“trade organisation” means an organisation of secondary contributors (in their capacity as employers) the members of which carry on a particular profession or trade for the purposes of which the organisation exists.◀

<sup>2</sup>Words substituted in para. 12(6) in Part VII by reg. 2 of S.I. 2007/2401 as from 5.9.07.

**PART VIII****TRAVELLING, RELOCATION AND OTHER EXPENSES AND ALLOWANCES OF THE EMPLOYMENT****Travelling, relocation and incidental expenses disregarded**

**1.** The travelling, relocation and other expenses and allowances mentioned in this Part are disregarded in the calculation of an employed earner’s earnings.

**Relocation expenses**

**2.—(1)** A payment of, or contribution towards, expenses reasonably incurred by a person in relation to a change of residence in connection with the commencement of, or an alteration in the duties of the person’s employment or the place where those duties are normally to be performed is disregarded if the conditions in sub-paragraphs (2) to (6) are met.

(2) The first condition is that—

(a) the payment or contribution—

- ▶<sup>1</sup>(i) is not, by virtue of section 271 of ITEPA 2003 (limited exemption of removal benefits and expenses) liable to income tax as general earnings under that Act; or◀
- (ii) would not have been so regarded, but is in fact disregarded ▶<sup>1</sup>by virtue of another provision of ITEPA 2003; ▶<sup>2</sup>◀
- (3) The second condition is that the change of residence must result from—
- the employee becoming employed by an employer;
  - an alteration of the duties of the employee's employment (where his employer remains the same); or
  - an alteration of the place where the employee is normally to perform the duties of his employment (where both the employer and the duties which the employee is to perform remains the same).
- (4) The third condition is that the change of residence must be made wholly or mainly to allow the employee to have his residence within a reasonable daily travelling distance of—
- the place where he performs, or is to perform, the duties of his employment (in a case falling within paragraph (3)(a);
  - the place where he performs, or is to perform, the duties of his employment (in a case falling within paragraph (3)(b); or
  - the new place where he performs, or is to perform, the duties of his employment (in a case falling within paragraph (3)(c).

<sup>1</sup>Sub-para. (2)(a)(i) & words in sub-para. (2)(a)(ii) substituted in Part VIII by reg. 28(6)(a)(i) & (ii) of S.I. 2004/770 as from 6.4.04.

<sup>2</sup>Paras. 2(2)(b) & (6) of part 8 to Sch. 3 omitted by reg. 7(4)(a) & (b) of S.I. 2012/817 as from 6.4.12.

References in this sub-paragraph and sub-paragraph (5) to the place where the employee performs, or is to perform, the duties of his employment are references to the place where he normally performs, or is normally to perform, the duties of the employment.

(5) The fourth condition is that the employee's former residence must not be within a reasonable daily travelling distance of the place where the employee performs or is to perform the duties of the employment.

(6) ▶<sup>2</sup>◀

▶<sup>3</sup>(7) For the purposes of this paragraph, Chapter 7 of Part 4 of ITEPA 2003 shall be read as if sections 272(1)(b), 272(3)(b), 274 and 287 were omitted.◀

<sup>3</sup>Sub-para. (7) and words in para. 3, 3(a) & 3(a)(ii) substituted by reg. 28(6)(a)(iii) & 28(6)(b)(i)-(iii) of S.I. 2004/770 as from 6.4.04.

### Travelling expenses - general

**3.** A payment of, or a contribution towards, ▶<sup>3</sup>travel expenses◀ which the holder of an office or employment is obliged to incur and ▶<sup>1</sup>pay as the holder of that office or employment◀.

For the purposes of this paragraph—

- ▶<sup>3</sup>“travel expenses”◀ means—
  - amounts necessarily expended on travelling in the performance of the duties of the office or employment; or
  - other expenses of travelling which are attributable to the necessary attendance at any place of the holder of the office or employment in the performance of the duties of the office or employment and are not expenses of ordinary commuting or private travel (within the meaning of ▶<sup>3</sup>section 338 of ITEPA 2003 (travel for necessary attendance)◀;
- ▶<sup>4</sup>(b) section 339 of ITEPA 2003 (meaning of “workplace” and “permanent workplace”) shall apply as it applies for the purposes of section 338 of that Act.◀;
- expenses of travel by the holder of an office or employment between two places at which he performs the duties of different offices or employments under or with companies in the same group are treated as necessarily expended in the performance of the duties which he is to perform at his destination; and
- for purpose of sub-paragraph (c) companies are to be taken to be members of the same group if and only if—
  - one is a 51 per cent subsidiary of the other; or
  - both are 51 per cent subsidiaries of a third company within the meaning of section 838(1)(a) of the Taxes Act (subsidiaries).

<sup>4</sup>Para. 3(b) substituted by reg. 28(6)(b)(iv) of S.I. 2004/770 as from 6.4.04.

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<sup>1</sup>Para. 3A, 3B & 3C of Part 8, Sch. 3 inserted by reg. 4 of S.I. 2014/608 as from 6.4.14.

**►<sup>1</sup>Travel by unpaid directors of not-for-profit companies**

**3A.**—(1) A payment of, or contribution towards, the expenses of the earner's employment if or to the extent that payment or contribution is paid wholly and exclusively for the purposes of paying or reimbursing travel expenses in respect of which conditions A to C are met.

(2) Condition A is that—

- (a) the earner is obliged to incur the expenses as holder of the employment, and
- (b) the expenses are attributable to the earner's necessary attendance at any place in the performance of the duties of the employment.

(3) Condition B is that the employment is employment as a director of a not-for-profit company.

(4) Condition C is that the employment is one from which the earner receives no earnings other than sums—

- (a) paid to the earner in respect of expenses, and
- (b) which are so paid by reason of the employment.

(5) In this paragraph—

- (a) "director" has the same meaning as in the benefits code (see section 67 of ITEPA 2003)(a), and
- (b) "not-for-profit company" means a company that does not carry on activities for the purpose of making profits for distribution to its members or others.

**Travel where directorship held as part of a trade or profession**

**3B.** A payment of or contribution towards, the expenses of the earner's employment to the extent that those expenses are travel expenses which are exempt from income tax in accordance with section 241B of ITEPA 2003(b) (travel where directorship held as part of a trade or profession).

**Travel between linked employments**

**3C.** A payment of, or contribution towards, the expenses of the earner's employment to the extent that those expenses are travel expenses deductible for income tax purposes in accordance with section 340A of ITEPA 2003(c) (travel between linked employments).◀

<sup>2</sup>Para. 4-5 substituted by reg. 28(6)(c) of S.I. 2004/770 as from 6.4.04.

**►<sup>2</sup>Travel at start or finish of overseas employment**

**4.** A payment of, or a contribution towards, the expenses of the earner's employment to the extent that those expenses—

- (a) are deductible for income tax purposes in accordance with section 341 of ITEPA 2003 (travel at start or finish of overseas employment); or
- (b) would be so deductible if—
  - (i) Conditions B and C were omitted from that section; and
  - (ii) the earnings of the employment were subject to income tax as employment income under that Act.

**Travel between employments where duties performed abroad**

**4A.** A payment of, or a contribution towards, the expenses of the earner's employment to the extent that those expenses—

- (a) are deductible for income tax purposes in accordance with section 342 of ITEPA 2003 (travel between employments where duties performed abroad), or
- (b) would be so deductible if—
  - (i) Conditions E and F were omitted from that section; and
  - (ii) the earnings of the employment were subject to income tax as employment income under that Act.

(a) Section 122 of the 1992 Act, as amended by paragraphs 169 and 178 of Schedule 6 to ITEPA 2003, defines "ITEPA" as meaning the Income Tax (Earnings and Pensions) Act 2003.

(b) Section 241B of ITEPA 2003 was inserted by Article 2 of S.I. 2014/211.

(c) Section 340A of ITEPA 2003 was inserted by Article 2 of S.I. 2014/2011.

**Travel costs and expenses where duties performed abroad: earner's travel**

**4B.**—(1) So much of an employed earner's earnings as equals the amount in sub-paragraph (2).

(2) The amount in this sub-paragraph is—

- (a) the included amount within the meaning of section 370 of ITEPA 2003 (travel costs and expenses where duties performed abroad: employee's travel); or
- (b) the amount which would be the included amount within the meaning of that section if the earner were resident and ordinarily resident in the United Kingdom.

**Travel costs and expenses where duties performed abroad: visiting spouse's ►<sup>1</sup>, civil partner's ◀ or child's travel**

<sup>1</sup>Words inserted & substituted in paras. 4C & 5 by reg. 5 of S.I. 2005/3130 as from 5.12.05.

**4C.**—(1) So much of an employed earner's earnings as equals the amount in sub-paragraph (2).

(2) The amount in this sub-paragraph is—

- (a) the included amount within the meaning of section 371 of ITEPA 2003 (travel costs and expenses where duties performed abroad: visiting spouse's ►<sup>1</sup>, civil partner's ◀ or child's travel); or
- (b) the amount which would be the included amount within the meaning of that section if the earner were resident and ordinarily resident in the United Kingdom.

**Foreign accommodation and subsistence costs and expenses (overseas employments)**

**4D.** So much of an employed earner's earnings as equals the amount of the deduction—

- (a) permitted for income tax purposes under section 376 of ITEPA 2003 (foreign accommodation and subsistence costs and expenses (overseas employments)); or
- (b) which would be so permitted if the earnings of the employment were subject to tax as employment income under ITEPA 2003.

**►<sup>1</sup>Travel costs and expenses of non-domiciled employee or the employee's spouse, civil partner or child where duties performed in the United Kingdom ◀**

**5.** So much of an employed earner's earnings as equals the aggregate amount of the deductions—

- (a) permitted for income tax purposes under sections 373 and 374 of ITEPA 2003 (travel costs and expenses of a non-domiciled employee or the employee's spouse ►<sup>1</sup>, civil partner ◀ or child where duties are performed in the United Kingdom); or
- (b) which would be so permitted if the earnings of the employment were subject to tax as employment income under ITEPA 2003. ◀

**Travelling expenses of workers on offshore gas and oil rigs**

**6.** A payment of, or a contribution towards, expenses where that payment or contribution is disregarded for the purposes of calculating ►<sup>2</sup>general earning under section 305 of ITEPA 2003 (offshore oil and gas workers: mainland transfers). ◀

<sup>2</sup>Words in para. 6 of Sch. 3 substituted by reg. 28(6)(d) of S.I. 2004/770 as from 6.4.04.

**►<sup>3</sup>Payments connected with cars and vans and exempt heavy goods vehicles provided for private use ◀**

<sup>3</sup>Heading & words in para. 7(a) & (b) substituted by reg. 28(6)(e)(i)-(v) of S.I. 2004/770 as from 6.4.04.

**7.** A payment—

- (a) by way of the discharge of any liability which by virtue of ►<sup>3</sup>section 239(1) of ITEPA 2003 (payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles) ◀; or
- (b) of expenses, which by virtue of ►<sup>3</sup>section 239(2) ◀ of that Act;

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<sup>1</sup>Words in para. 7(b) substituted & deleted by reg. 28(6)(e)(i)-(v) of S.I. 2004/770 as from 6.4.04.

<sup>2</sup>Paras. 7A, 7B & 7C inserted by reg. 7(2) of S.I. 2002/307 as from 6.4.02.

<sup>3</sup>Words substituted in paras. 7B(2) & (3) by reg. 28(6)(f) of S.I. 2004/770 as from 6.4.04.

<sup>4</sup>Words in paras. 7C(2)(a), (b) & (3) substituted, defn. of "qualifying passenger" omitted, para. 7D substituted & words substituted in para. 8 by reg. 28(6) of S.I. 2004/770 as from 6.4.04.

<sup>5</sup>Para. 7E inserted by reg. 4(3)(a) of S.I. 2008/607 as from 6.4.08.

<sup>6</sup>Reg. 9 renumbered & words added by reg. 7(3) of S.I. 2002/307 as from 6.4.02.

is not treated as ►<sup>1</sup>general earnings◄ of the employment chargeable to income tax ►<sup>1</sup>◄.

**►<sup>2</sup>Qualifying amounts of relevant motoring expenditure**

**7A.** To the extent that it would otherwise be earnings, the qualifying amount calculated in accordance with regulation 22A(4).

**Qualifying amounts of mileage allowance payment in respect of cycles**

**7B.—(1)** To the extent that it would otherwise be earnings, the qualifying amount of a mileage allowance payment in respect of a cycle.

(2) The qualifying amount is that which would be produced by the formula in regulation 22A(4) if the value for **R** were the rate for the time being approved under ►<sup>3</sup>section 230(2) of ITEPA 2003◄ in respect of a cycle.

(3) In this paragraph—

“cycle” has the meaning given in section 192(1) of the Road Traffic Act 1988; and

“mileage allowance payment” has the meaning given in ►<sup>3</sup>section 229(2) of ITEPA 2003◄.

**Qualifying amounts of passenger payment**

**7C.—(1)** To the extent that it would otherwise be earnings, the qualifying amount of a passenger payment.

(2) The qualifying amount is that which would be produced by the formula in regulation 22A(4) if—

(a) references to business travel were to business travel for which the employee ►<sup>4</sup>receives passenger payments within the meaning of section 233(3) of ITEPA 2003; and◄

(b) the value for **R** were the rate for the time being approved for a passenger payment under ►<sup>4</sup>section 234 if UTEPA 2003◄.

(3) In this paragraph—

“passenger payment” has the meaning given in ►<sup>4</sup>section 233(3) of ITEPA 2003◄; and

►<sup>4</sup>◄

**►<sup>4</sup>Car fuel**

**7D.** A payment by way of the provision of car fuel which is chargeable to income tax under section 149 of ITEPA 2003.◄

**►<sup>5</sup>Van fuel**

**7E.** A payment by way of the provision of van fuel which is chargeable to income tax under section 160 of ITEPA 2003.◄

**Car parking facilities**

**8.** A payment of, or a contribution towards, the provision of car parking facilities at or near the earner's place of employment which, by virtue of ►<sup>4</sup>section 237 of ITEPA 2003◄, is not regarded as ►<sup>4</sup>general earnings◄ of the earner's employment.

**Specific and distinct payments of, or towards, expenses actually incurred**

**9.►<sup>6</sup>—(1)◄** For the avoidance of doubt, these shall be disregarded any specific and distinct payment of, or contribution towards, expenses which an employed earner actually incurs in carrying out his employment. ►<sup>6</sup>This is subject to the following qualification.◄

►<sup>1</sup>(2) Sub-paragraph (1) does not authorise the disregard of any amount by way of relevant motoring expenditure, within the meaning of paragraph (3) of regulation 22A, in excess of that permitted by the formula in paragraph (4) of that regulation.◄

<sup>1</sup>Para. 9(2) inserted by reg. 7(3) of S.I. 2002/307 as from 6.4.02.

#### 10. ►<sup>2</sup>◄

<sup>2</sup>Para. 10 revoked by reg. 2(2) of S.I. 2007/2905 as from 30.10.07.

#### ►<sup>3</sup>Rates or water or sewerage charges◄ on accommodation provided for employee's use

<sup>3</sup>Words substituted & omitted in paras. 11 & 12 by reg. 28(6)(k)-(m) of S.I. 2004/770 as from 6.4.04.

11. A payment of, or a contribution towards meeting, a person's liability for ►<sup>3</sup>rates or water or sewerage charges◄ in respect of accommodation occupied by him and provided for him by reason of his employment if by virtue of ►<sup>3</sup>sections 99 or 100 of ITEPA 2003 (accommodation provided for performance of duties or as a result of a security threat)◄, he is not liable to income tax ►<sup>3</sup>◄ in respect of the provision of that accommodation.

This paragraph extends only to Northern Ireland.

#### Foreign service allowance

12. A payment by way of an allowance which is not regarded as income for any income tax purpose by virtue of ►<sup>3</sup>section 299 of ITEPA 2003 (Crown employee's foreign service allowance)◄.

#### ►<sup>4</sup>HM Forces' Operational Allowance

<sup>4</sup>Paras. 12A & 12B of Sch. 3 substituted & para. 12C inserted by reg. 9(a)-(c) of S.I. 2012/817 as from 6.4.12.

12A.—(1) A payment of the Operational Allowance to members of the armed forces of the Crown.

(2) The Operational Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006(a).

#### HM Forces' Council Tax Relief

12B.—(1) A payment of Council Tax Relief to members of the armed forces of the Crown.

(2) Council Tax Relief is a payment designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006.

#### HM Forces' Continuity of Education Allowance

12C.—(1) A payment of the Continuity of Education Allowance to or in respect of members of the armed forces of the Crown.

(2) The Continuity of Education Allowance is an allowance designated as such under a Royal Warrant made under section 333 of the Armed Forces Act 2006.◄

#### Commonwealth War Graves Commission and British Council: extra cost of living allowance

13. A payment by way of an allowance to a person in the service of the Commonwealth War Graves Commission or the British Council paid with a view to compensating him for the extra cost of living outside the United Kingdom in order to perform the duties of his employment.

#### Overseas medical treatment

14. A payment of, or a contribution towards, expenses incurred in—

- (a) providing an employee with medical treatment outside the United Kingdom (including providing for him to be an in-patient) in a case where the need for the treatment arises while the employee is outside the United Kingdom for the purposes of performing the duties of his employment; or

(a) 2006 c. 52, continued in force by S.I. 2007/2123, 2008/1780, 2009/1752, 2010/2475 and section 1 of the Armed Forces Act 2011 c. 18.

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- (b) providing insurance for the employee against the cost of such treatment in a case falling within sub-paragraph (a).

Here “medical treatment” includes all forms of treatment for, and all procedures for diagnosing, any physical or mental ailment, infirmity or defect.

<sup>1</sup>Para. 14A inserted by reg. 4 of S.I. 2014/3228 as from 1.1.15.

►<sup>1</sup>**Recommended medical treatment**

**14A.** A payment or reimbursement to which no liability to income tax arises by virtue of section 320C of ITEPA 2003 (recommended medical treatment).◀

<sup>2</sup>Para. 15 inserted by reg. 28(6)(n) of S.I. 2004/770 as from 6.4.04.

►<sup>2</sup>**Experts Seconded to European Commission**

**15.** A payment in respect of daily subsistence allowances paid by the European Commission to persons whose services are made available to the Commission by their employers under the detached national experts scheme which is exempt from income tax by virtue of section 304 of ITEPA 2003 (experts seconded to European Commission).◀

<sup>3</sup>Para. 15A to Part 8 of Sch. 3 inserted by reg. 7 of S.I. 2011/797 as from 6.4.11.

►<sup>3</sup>**Experts seconded to a body of the European Union**

**15A.** A payment in respect of subsistence allowances paid—

- (a) by a body of the European Union that is located in the United Kingdom and listed in the table below;
- (b) to persons who, because of their expertise in matters relating to the subject matter of the functions of the body, are seconded to the body by their employers.

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*Bodies of the European Union located in the United Kingdom*

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The European Medicines Agency(a)

The European Police college(b)

The European Banking Authority(c)◀

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<sup>4</sup>Para. 16 inserted in part 8 of Sch. 3 by reg. 3 of S.I. 2011/225 as from 28.2.11.

►<sup>4</sup>**Expenses of MPs and other representatives**

**16.** A payment to which no liability to income tax arises by virtue of any of the following provisions of ITEPA 2003—

- (a) section 292 (accommodation expenses of MPs)(d);
- (b) section 293 (overnight expenses of other elected representatives);
- (c) section 293A (UK travel and subsistence expenses of MPs)(e);
- <sup>5</sup>(ca) section 293B (UK travel expenses of other elected representatives)(f);◀
- (d) section 294 (European travel expenses of MPs and other representatives)(g).◀

<sup>5</sup>Sub-para. 16(ca) inserted in Sch. 3 by reg. 4(a) of S.I. 2013/1907 as from 1.9.13.

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- (a) The European Agency for the Evaluation of Medicinal Products was established by Council Regulation (EEC) No. 2309/93 OJ No. L 214, 24.8.93 p1. The name was changed to the European Medicines Agency by Regulation (EC) No. 726/2004 OJ No. L 136, 30.4.04, p1.
- (b) The European Police College was established by Council Decision 2005/681/JHA OJ No. L 256, 1.10.05, p63.
- (c) The European Banking authority was established by Regulation (EU) No. 1093/2010 OJ No. L 331, 15.12.10, p12.
- (d) Section 292 was substituted by paragraph 1 of Schedule 4 to the Finance (No. 2) Act 2010 (c. 31).
- (e) Section 293A was inserted by paragraph 2 of Schedule 4 to the Finance (No. 2) Act 2010.
- (f) Section 239B of ITEPA 2003 was inserted by section 10 of the Finance Act 2013.
- (g) Section 294 was amended by section 82 of the Finance Act 2004 (c. 12) and paragraph 3 to the Finance (No. 2) Act 2010 (c. 31).



## PART IX

▶<sup>1</sup>INCENTIVES BY WAY OF SECURITIES◀**▶<sup>1</sup>Certain payments by way of securities, restricted securities and restricted interests in securities, and gains arising from them, disregarded**

1.—(1) Payments by way of securities, restricted securities and restricted interests in securities, and gains arising from them, are disregarded in the calculation of an employed earner's earnings to the extent mentioned in this Part.◀

2. ▶<sup>1</sup>◀

**▶<sup>1</sup>Rights to acquire securities**

3. A payment by way of a right to acquire securities.◀

3A.- 4. ▶<sup>1</sup>◀

**▶<sup>2</sup>Priority share allocations**

5. A payment by way of an allocation of shares in priority to members of the public in respect of which no liability to income tax arises by virtue of section 542 of ITEPA 2003.◀

<sup>1</sup>In Part IX, heading & paras. 1, 3 & 7 substituted, paras. 2, 3A & 4 omitted & words in 6 substituted by reg. 12(2)-(9) of S.I. 2003/2085 as from 1.9.03.

<sup>2</sup>In Part IX, paras. 5, 7, 7A & 9 words in para. 6 substituted and paras. 8 & 10-15 omitted by reg. 12(7)-(12) of S.I. 2003/2085 as from 1.9.03.

**Partnership share agreements**

6. A payment that is deducted from the earnings of the employment under a partnership share agreement.

Here "partnership share agreement" has the meaning given in ▶<sup>2</sup>paragraph 44 of Schedule 2 to ITEPA 2003.◀

**▶<sup>2</sup>Shares under share incentive plans**

7. A payment by way of an award of shares under a share incentive plan within the meaning of Schedule 2 to ITEPA 2003.

**Securities and interests in securities which are not readily convertible assets**

7A. A payment by way of the acquisition of securities, interests in securities or securities options in connection with employed earner's employment if, or to the extent that, what is acquired is not a readily convertible asset.

Here "acquisition" includes acquisition pursuant to an employment-related securities option within the meaning of section 471(5) of ITEPA 2003 as substituted by the Finance Act 2003(a).◀

8. ▶<sup>2</sup>◀

**▶<sup>2</sup>Restricted securities and restricted interests in securities**

9.—(1) A payment by way of the acquisition of restricted securities, or a restricted interest in securities, where those securities are, or that interest is, employment-related, if no charge to income tax arises under section 425 of ITEPA 2003(b) other than by virtue of subsection (2) of that section.

This is subject to the following qualification.

(2) This paragraph does not apply if an election has been made as mentioned in subsection (3) of section 425 of ITEPA 2003.

(3) References in this paragraph to section 425 of ITEPA 2003 are to that section as substituted by paragraph 3(1) of Schedule 22 to the Finance Act 2003.◀

10.-15. ▶<sup>2</sup>◀

(a) Section 471(5) is substituted by paragraph 10(1) of Schedule 22.

(b) Section 425 is substituted by paragraph 3(1) of Schedule 22.

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<sup>1</sup>Para. 16 substituted by 16 & 16A of reg. 12(13) of S.I. 2003/2085 as from 1.9.03.

**►<sup>1</sup>Exercise of options acquired before 6th April 1999**

**16.**—(1) A gain realised by the exercise (in whole or in part) of a right, obtained before 6th April 1999, to acquire shares in a body corporate unless paragraph 17(a) applies, but only to the extent that the gain realised consists of the shares acquired.

(2) In this paragraph and paragraphs 16A and 17—

“shares” includes stock; and

“body corporate” includes—

- (a) a body corporate constituted under the law of a country or territory outside the United Kingdom; and
- (b) an unincorporated association wherever constituted.

**Exercise of replacement share options where original option acquired before 6th April 1999**

**16A.**—(1) A gain realised by the exercise of a replacement right to acquire shares in a body corporate where the original right was obtained before 6th April 1999 provided that—

- (a) sub-paragraph (4) is satisfied, and
- (b) paragraph 17 does not apply.

The disregard conferred by this paragraph is subject to the following limitation.

(2) Only the value of the shares acquired by the exercise of the replacement right shall be disregarded.

(3) In this paragraph and paragraph 17—

“the original right” means the right, acquired before 6th April 1999, to acquire shares in a body corporate; and

“replacement right” means a right to acquire shares, obtained, whether as the result of one transaction or a series of transactions, and whether directly or indirectly, in consequence of—

- (a) the assignment or release of the original right; or
- (b) the assignment or release of a right which was itself obtained in consequence of the assignment or release of that right.

(4) This sub-paragraph is satisfied in respect of a transaction through which the replacement right was obtained if **A** is not substantially greater than **R**.

Here—

**A** is the market value of the shares which may be obtained by the exercise of the right acquired on that occasion, less any consideration which would have to be given on that occasion by or on behalf of the earner if that right were to be exercised immediately after its acquisition (disregarding any restriction on its exercise); and

**R** is the market value of the shares subject to the right assigned or released on that occasion, immediately before that occasion, less any consideration which would have been required to be given by or on behalf of the earner for the exercise of that right, disregarding any restriction on its exercise, subject to the following qualification.

If a transaction involves only a partial replacement of an earlier right, the amount of the earlier consideration to be deducted in computing **R** shall be proportionately reduced.◀

<sup>2</sup>Para. 17 inserted by 4reg. 4 of S.I. 2003/1059 as from 10.4.03.

**►<sup>2</sup>Payments resulting from exercise, assignment or release of options which are not disregarded by virtue of paragraph 16**

**17.**—(1) This paragraph applies to a payment—

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(a) Paragraph 17 was inserted by regulation 4 of S.I. 2003/1059.

- (a) made on or after 10th April 2003, and  
 (b) which would otherwise fall to be disregarded by virtue of paragraph 16 <sup>1</sup>or 16A<sup>1</sup> of this Part,

where the market value of the shares has been increased by more than 10% by things done, on or after 6th April 1999, otherwise than for genuine commercial purposes.

<sup>1</sup>Words inserted in para. 17(1)(b), words in para. 17(2)(b) substituted by regs. 12(14)(a)-(b) of S.I. 2003/2085 as from 1.9.03.

- (2) For the purposes of sub-paragraph (1) “the shares” includes—  
 (a) the shares subject to the right currently being exercised; and  
 (b) where the right to acquire shares held on 6th April 1999 has been replaced by a <sup>1</sup>replacement right<sup>1</sup>, includes the shares subject to <sup>1</sup>a replacement right.<sup>1</sup>

(3) The following are among the things that are, for the purposes of this paragraph, done otherwise than for genuine commercial purposes—

- (a) anything done as part of a scheme or arrangement the main purposes, or one of the main purposes, of which is the avoidance of tax or of contributions under the Act; and  
 (b) any transaction between companies which, at the time of the transaction, are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm’s length.

(4) But sub-paragraph (3)(b) does not apply to a payment for group relief within the meaning given in section 402(6) of the Taxes Act(a).

(5) In sub-paragraph (3)(b) “group” means a body corporate and its 51% subsidiaries (within the meaning of section 838 of the Taxes Act), and other expressions used in this paragraph which are defined in, or for the purposes of, paragraph 16 have the same meaning here as they have in that paragraph.<sup>1</sup>

## PART X

### MISCELLANEOUS AND SUPPLEMENTAL

#### Other miscellaneous payments to be disregarded

1.—(1) The payments listed in <sup>2</sup>this Part<sup>2</sup> are disregarded in the calculation of earnings.

<sup>2</sup>Words substituted in para. 1(1) of Part X to Sch. 3 by reg. 4(a) of S.I. 2011/225 as from 28.2.11.

(2) Paragraph 4 contains additional rules about the way in which the components of a payment by way of expenses incidental to a qualifying absence from home are to be treated for the purpose of earnings-related contributions if the permitted maximum is exceeded.

#### Payments on account of sums already included in the computation of earnings

2. A payment on account of a person’s earnings in respect of his employment as an employed earner which comprises, or represents and does not exceed sums which have previously been included in his earnings for the purpose of his assessment of earnings-related contributions.

#### <sup>3</sup>Payments connected to amounts within regulation 22B

<sup>3</sup>Para. 2A inserted in Part X to Sch. 3 by reg. 7 of S.I. 2011/2700 as from 6.12.11.

2A.—(1) A payment (“A”) the subject to which represents, or arises or derives (whether wholly or partly or directly or indirectly) from, an amount (“B”) treated as remuneration under regulation 22B which has previously been included in an employed earner’s earnings for the purposes of assessing earnings-related contributions.

(2) Paragraph (1) does not apply to the extent that A exceeds B.

(a) Section 406(2) was amended by paragraph 5(1) of Schedule 7 to the Finance (No. 2) Act 1997 (c. 58).

## Sch. 3

(3) For the purposes of determining whether paragraph (1) applies, A is to be treated as including the value of any payment made before A which represents, or arises or derives (whether wholly or partly or directly or indirectly) from, B.◀

**Payments discharging liability for secondary Class 1 contributions following election under paragraph 3B of Schedule 1 to the Contributions and Benefits Act**

3. A payment by way of the discharge of any liability for secondary Class 1 contributions which has been transferred from the secondary contributor to the employed earner by election made jointly by them for the purposes of paragraph 3B(1) of Schedule 1 to the Contributions and Benefits Act (elections about contribution liability in respect of ▶<sup>1</sup>relevant employment income◀)(a).

<sup>1</sup>Words substituted in para. 3 by reg. 6 of S.I. 2004/2096 as from 1.9.04.

<sup>2</sup>Words in heading inserted and sub-paras. (1) & (2) of para. 4 substituted by reg. 28(7)(a)(i) & (ii) of S.I. 2004/770 as from 6.4.04.

**Payments by way of incidental ▶<sup>2</sup>overnight◀ expenses**

4.—▶<sup>2</sup>(1) A payment by way of incidental overnight expenses, in whatever form, which by virtue of section 240 of of ITEPA 2003 are not general earnings liable to income tax under that Act.

(2) If a payment is made by way of incidental overnight expenses in connection with a qualifying period, but the amount of that payment (calculated in accordance with section 241 of ITEPA 2003) exceeds the permitted amount, sub-paragraphs (3) to (6) apply.◀

(3) So much of the payment as is made by way of cash shall be included in the calculation of earnings.

(4) The amount of cash for which a cash voucher can be exchanged shall be included in the calculation of earnings.

(5) The cost of provision of any non-cash voucher shall be included in the calculation of earnings and anything for which the voucher can be exchanged shall be disregarded in that calculation.

(6) Any payment by way of a benefit in kind shall be disregarded in the calculation of earnings.

<sup>3</sup>Sub-para. (7) of para. 4 substituted by reg. 28(7)(a)(iii) of S.I. 2004/770 as from 6.4.04.

▶<sup>3</sup>(7) In this paragraph—

“the cost of provision” in relation to a non-cash voucher is the cost incurred by the person at whose expense the voucher is provided;

“the permitted amount” has the meaning given in section 241(3) of ITEPA 2003; and

“qualifying period” has the meaning given in section 240(1)(b) and (4) of ITEPA 2003.◀

**Gratuities and offerings**

5.—(1) A payment of, or in respect of, a gratuity or offering ▶<sup>4</sup>which—

(a) satisfies the condition in either sub-paragraph (2) or (3); and

(b) is not within sub-paragraph (4) or (5).◀

(2) ▶<sup>4</sup>The condition in this sub-paragraph◀ is that the payment—

(a) is not made, directly or indirectly, by the secondary contributor; and

(b) does not comprise or represent sums previously paid to the secondary contributor.

(3) ▶<sup>4</sup>The condition in this sub-paragraph◀ is that the secondary contributor does not allocate the payment, directly or indirectly, to the earner.

▶<sup>4</sup>(4) A payment made to the earner by a person who is connected with the secondary contributor is within this sub-paragraph unless—

(a) Paragraph 3B was inserted by section 77(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

<sup>4</sup>In para. 5 of Part X, words substituted & sub-paras. (4)-(6) inserted by reg. 2 of S.I. 2004/173 as from 23.2.04.

- (a) it is—
- (i) made in recognition for personal services rendered to the connected person by the earner or by another earner employed by the same secondary contributor; and
  - (ii) similar in amount to that which might reasonably be expected to be paid by a person who is not so connected; or
- (b) the person making the payment does so in his capacity as a tronc-master.

(5) A payment made to the earner is within this sub-paragraph if it is made by a trustee holding property for any persons who include, or any class of persons which includes, the earner.

In this sub-paragraph “trustee” does not include a tronc-master.

(6) A person is connected with the secondary contributor for the purposes of this paragraph if his relationship with the secondary contributor, or where the employer and secondary contributor are different, with either of them, is as described in subsection (2), (3), (4), (5), (6) or (7) of section 839 of the Taxes Act (connected persons)(a).◀

### Redundancy payments

6. For the avoidance of doubt, in calculating the earnings paid to or for the benefit of an earner in respect of an employed earner’s employment, any payment by way of a redundancy payment shall be disregarded.

### Sickness payments attributable to contributions made by employed earner

7. If the funds for making a sickness payment under arrangements of the kind mentioned in section 4(1)(b) of the Contributions and Benefits Act are attributable in part to contributions to those funds made by the employed earner, for the purposes of section 4(1) of that Act the part of that payment which is attributable to those contributions shall be disregarded.

### ▶<sup>1</sup>Expenses and other payments not charged to income tax under miscellaneous exemptions

8. A payment which is not charged to tax under any of the following provisions of ITEPA 2003(b)—

- (a) section 245 (travelling and subsistence during public transport strikes);
- (b) section 246 (transport between work and home for disabled employees: general);
- (c) section 248 (transport home: late night working and failure of car sharing arrangements);
- (d) section 290A(c) (accommodation outgoings of ministers of religion);
- (e) section 290B (allowances paid to ministers of religion in respect of accommodation outgoings);
- (f) section 321 (suggestion awards).◀

<sup>1</sup>Para. 8 of Part X of Sch. 3 substituted by reg. 2(2) of S.I. 2010/188 as from 6.4.10.

### VAT on the supply of goods and services by employed earner

9. If—

- (a) goods or services are supplied by an earner in employed earner’s employment;
- (b) earnings paid to or for the benefit of the earner in respect of that employment include the remuneration for the supply of those goods or services; and

(a) Section 839 has been amended. The relevant amendment is the substitution of subsection (3) by paragraph 20 of Schedule 17 to the Finance Act 1994 (c. 4).

(b) Section 122(1) of the Social Security Contributions and Benefits Act 1992, being the Act which confers the power to make these Regulations, defines “ITEPA 2003” as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1). The definition was inserted by paragraphs 169 and 178 of Schedule 6 to ITEPA 2003.

(c) Sections 290A & 290B were inserted by S.I. 2010/157.

## Sch. 3

(c) value added tax is chargeable on that supply;

an amount equal to the value added tax chargeable on that supply shall be excluded from the calculation of those earnings.

<sup>1</sup>Para. 10, of part 10 substituted by reg. 28(7)(c) of S.I. 2004/770 as from 6.4.04.

►<sup>1</sup>**Employee's liabilities indemnity insurance**

**10.** A payment which by virtue of section 346 of ITEPA 2003 (deduction for employee liabilities) is deductible from the general earnings of the employment chargeable to tax under that Act. ◀

**Fees and subscriptions to professional bodies, learned societies etc**

<sup>2</sup>Paras. 14 and words in para. 11 of part 10 substituted by reg. 28(7)(d)-(e) of S.I. 2004/770 as from 6.4.04.

**11.** A payment of, or a contribution towards any fee, contribution or annual subscription which, under ►<sup>2</sup>section 343 or 344 of ITEPA 2003 (deduction for professional membership fees or annual subscriptions) is deductible from the general earnings of any office or employment. ◀

**Holiday pay**

**12.** A payment in respect of a period of holiday entitlement where—

- (a) the sum paid is derived directly or indirectly from a fund—
  - (i) to which more than one secondary contributor contributes, and
  - (ii) the management and control of which are not vested in those secondary contributors; or
- (b) the person making the payment is entitled to be reimbursed from such a fund.

►<sup>2</sup>Para. 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. ◀

**Payments to ministers of religion**

**13.** A payment of a fee in respect of employment as a minister of religion which does not form part of the stipend or salary paid in respect of that employment.

►<sup>2</sup>**Payments to miners and former miners, etc. in lieu of coal**

**14.—(1)** A payment in lieu of the provision of coal or smokeless fuel, if the employee is—

- (a) a colliery worker; or
- (b) a former colliery worker;

and the condition in sub-paragraph (2) is met.

(2) The condition is that the amount of coal or fuel in respect of which the payment is made does not substantially exceed the amount reasonably required for personal use.

(3) That condition is assumed to be met unless the contrary is shown.

(4) In this paragraph, “colliery worker” means a coal miner or any other person employed at or about a colliery otherwise than in clerical, administrative or technical work, and “former colliery worker” shall be construed accordingly.

(5) This paragraph does not apply to Northern Ireland. ◀

**Sch. 3****►<sup>1</sup>Reward for assistance with lost or stolen cards**

**15.**—(1) A payment made by an issuer of charge cards, cheque guarantee cards, credit cards or debit cards, as a reward to an individual who assists in identifying or recovering lost or stolen cards in the course of his or her employment as an employed earner (other than employment by the issuer), together with any income tax paid by the issuer for the purpose of discharging any liability of the individual to income tax on the payment.

(2) In this paragraph—

“charge card” means a credit card, the terms of which include the obligations to settle the account in full at the end of a specified period;

“cheque guarantee card” means a card issued by a bank or building society for the purpose of guaranteeing a payment or supporting the encashment of a cheque up to a specified value;

“credit card” means a card which—

(a) may be used on its own to pay for goods or services or to withdraw cash, and

(b) enables the holder to make purchases and to draw cash up to a prearranged limit; and

“debit card” means a card linked to a bank or building society current account, used to pay for goods or services by debiting the holder’s account.◀

<sup>1</sup>Para. 15 inserted into Part X by reg. 5(4)(b) of S.I. 2001/2412 as from 26.7.01.

**►<sup>2</sup>Student loans**

**16.**—(1) A payment made in accordance with Regulations made under section 186 of the Education Act 2002(a) in respect of the repayment, reduction or extinguishing of the amounts payable in respect of a loan.

(2) A payment for the purpose of discharging any liability of the earner to income tax for any tax year where the income tax in question is tax chargeable in respect of—

(a) the payment referred to in paragraph (1), or

(b) the payment made for the purpose of discharging the income tax liability itself.◀

<sup>2</sup>Para. 16 inserted into Part X by reg. 4(b) of S.I. 2002/2924 as from 17.12.02.

**►<sup>3</sup>Payment of PAYE tax in respect of notional payment**

**17.** A payment by way of income tax for which the employer is required to account to the Board under section 710(1) of ITEPA 2003 (notional payments; accounting for tax).◀

<sup>3</sup>Para. 17 inserted in Part X of Sch. 3 by reg. 13(b) of S.I. 2003/2085 as from 1.9.03.

**►<sup>4</sup>Payments made from the In-Work Emergency Discretion Fund**

**18.** Any In-Work emergency Discretion Fund payment made to a person pursuant to arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973(b).

This paragraph does not apply in Northern Ireland.

<sup>4</sup>Paras. 18 & 19 inserted by reg. 4(4)(b) of S.I. 2008/607 as from 6.4.08.

**Payments made from the In-Work Emergency Fund**

**19.** Any In-Work Emergency Fund payment made to a person pursuant to arrangements made by the Department of Economic Development under section 1 of the Employment and Training Act (Northern Ireland) 1950(c).

This paragraph applies only in Northern Ireland.◀

**►<sup>5</sup>Up-Front Childcare Fund Payments**

**20.** Any Up-Front Childcare Fund payment made pursuant to arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973(d).

This paragraph does not apply to Northern Ireland.◀

<sup>5</sup>Para. 20 inserted by reg. 2(2)(b) of S.I. 2008/1431 as from 1.7.08.

(a) 2002 c. 32. The Education (Teacher Student Loans) (Repayment etc.) Regulations 2002 (S.I. 2002/2086) made under section 186 of that Act make provision for the repayment or reduction of the amounts payable in respect of certain loans.

(b) 1973 c. 50.

(c) 1950 c. 29 (N.I.).

(d) 1973 c. 50.

**Sch. 3**

<sup>1</sup>Para. 21 inserted in part X of Sch. 3 by reg. 2(2)(b) of S.I. 2008/2624 as from 27.10.08.

**►<sup>1</sup>Better off in Work Credit payments**

**21.** Any Better off in Work Credit payment made pursuant to arrangements made by the Secretary of State under section 2 of the Employment and Training Act 1973(a). ◀

<sup>2</sup>Para. 22 inserted in part X of Sch. 3 by reg. 4(b) of S.I. 2011/225 as from 28.2.11.

**►<sup>2</sup>Fees relating to the Protection of Vulnerable Groups (Scotland) Scheme**

**22.** A payment of a fee in respect of an application to join the scheme administered under section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007(b) (scheme to collate and disclose information about individuals working with vulnerable persons). ◀

<sup>3</sup>Para. 23 inserted in Part X of Sch. 3 by reg. 2 of S.I. 2013/1142 as from 10.6.13.

**►<sup>3</sup>Fees relating to the Disclosure and Barring Service**

**23.—(1)** A fee paid by virtue of section 116A(4)(b) or (5)(b) of the Police Act 1997(c) (“the Police Act”) (fee for up-dating certificates).

(2) A fee paid under—

- (a) section 113A(1)(b) of the Police Act(d) (fee for criminal record certificates);
- (b) section 113B(1)(b) of the Police Act(e) (fee for enhanced criminal record certificates);
- (c) section 114(1)(b) of the Police Act(f) (fee for criminal record certificates: Crown employment); or
- (d) section 116(1)(b) of the Police Act(g) (fee for enhanced criminal record certificates: judicial appointments and Crown employment);

where the application is made at the same time as an application under section 116A(4) or (5) of the Police Act for the certificate to be subject to up-date arrangements. ◀

<sup>4</sup>Para. 24 inserted in Sch. 3 by reg. 4(b) of S.I. 2013/1907 as from 1.9.13.

**►<sup>4</sup>Advice relating to proposed employee shareholder agreements**

**24.—(1)** A payment, or reimbursement, in accordance with section 205A(7) of the Employment Rights Act 1996 (employee shareholder status)(h), of any reasonable costs in obtaining relevant advice.

(2) “Relevant advice” has the same meaning as section 326B(2) of ITEPA 2003 (advice relating to proposed employee shareholder agreements)(i). ◀

<sup>5</sup>Para. 25 inserted in Part X of Sch. 3 by reg. 5(3) of S.I. 2014/3159 as from 6.12.14.

**►<sup>5</sup>Payments on which Class 1 or Class 1A contributions have been paid pursuant to the Social Security Contributions (Limited Liability Partnership) Regulations 2014**

**25.** A payment made by an employer to an employed earner which represents an amount on which Class 1 or Class 1A contributions are payable by a limited liability partnership in respect of that earner by virtue of regulation 3 or 4 of the Social Security Contributions (Limited Liability Partnership) Regulations 2014. ◀

(a) 1973 c. 50.

(b) 2007 asp. 14.

(c) 1997 c. 50; section 116A was inserted by section 83 of the Protection of Freedoms Act 2012/3006.

(d) Section 113A(1)(b) was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15) (“SOCPA 2005”).

(e) Section 113B(1)(b) was inserted by section 163(2) SOCPA 2005.

(f) Section 114(1)(b) was substituted in relation to Scotland by S.S.I. 2006/50.

(g) Section 116(1)(b) was substituted in relation to Scotland by S.S.I. 2006/50.

(h) 1996 c. 18. Section 205A(7) is inserted, with effect from 1st September 2013 (see The Growth and Infrastructure (Commencement No. 3 and Savings) Order 2013 (S.I. 2013/1766) (C. 72)), by section 31 of the Growth and Infrastructure Act 2013 (c. 27).

(i) Section 326B is inserted, with effect from 1st September 2013 (see S.I. 2013/1755 (C. 71)), by paragraph 37 of Schedule 23 to the Finance Act 2013.



SCHEDULE 4

Regulation 67(2)

►<sup>1</sup>PROVISIONS DERIVED FROM THE INCOME TAX ACTS AND THE INCOME TAX (PAY AS YOU EARN) REGULATIONS 2003◄

<sup>1</sup>Heading in Sch. 4 & paras. 1(1) & (2) substituted by regs. 29 & 30(2) of S.I. 2004/770 as from 6.4.04.

PART I

GENERAL

**Interpretation**

1.—►<sup>1</sup>(1) In this Schedule the “PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(a).

(2) In this Schedule, except where the context otherwise requires—

“aggregated” means aggregated and treated as a single payment under paragraph 1(1) of Schedule 1 to the Act;

“allowable pension contributions” means any sum paid by an employee by way of contribution towards a pension fund or scheme which is withheld from the payment of PAYE income and for which a deduction must be allowed from employment income under section 592(7) or 594(1) of the Taxes Act(b) (exempt approved schemes and exempt statutory schemes);

►<sup>2</sup>“closed tax year” means any year preceding the current year and cognate expressions shall be construed accordingly;◄

<sup>2</sup>Defn. of “closed tax year” inserted by reg. 8(2) of S.I. 2007/1056 as from 6.4.07.

(a) S.I. 2003/2682.

(b) Sections 592(7) and 594(1) were amended by paragraphs 72 and 73 of Schedule 6 to ITEPA 2003



“Compensation of Employers Regulations” means the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations 1994(a) ▶<sup>1</sup>◀;

“deductions working sheet” means any form of record on or in which are to be kept the matters required by this Schedule in connection with an employee’s general earnings and earnings-related contributions ▶<sup>2</sup>◀;

“earnings-related contributions” means contributions payable under the act by or in respect of an employed earner in respect of employed earner’s employment;

“employed earner” and “employed earner’s employment” have the same meaning as in the Act;

“employee” means any person in receipt of general earnings;

“employer” means the secondary contributor determined—

(a) by section 7 of the Act;

(b) under regulation 5 of, and Schedule 3 to, the Social Security (Categorisation of Earners) Regulations 1978(b); or

(c) under regulation 122;

▶<sup>3</sup>“general earnings” means so much of a person’s remuneration or profits derived from employed earner’s employment as constitutes earnings for the purposes of the Act;◀

▶<sup>4</sup>◀

“Inland Revenue” means any officer of the Board of Inland Revenue;

“mariner” has the same meaning as in regulation 115;

▶<sup>3</sup>“non-Real Time Information employer” means an employer other than one within sub-paragraph (4);

“Real Time Information employer” has the meaning given in sub-paragraph (4);◀

▶<sup>3</sup>◀

“tax month” means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

“tax period” means a tax quarter where paragraph 11 has effect, but otherwise means a tax month;

“tax quarter” means the period beginning on 6th April and ending on 5th July, or beginning on 6th July and ending on 5th October, or beginning on 6th October and ending on 5th January, or beginning on 6th January and ending on 5th April;

“voyage period” has the same meaning as in regulation 115;

“year” means tax year;

and other expressions have the same meaning as in the Income Tax Acts.◀

(3) For the purposes of paragraphs 7(13), 9, 10, 11 and 22, “primary Class 1 contributions” and “earnings-related contributions” shall, unless the context otherwise requires, include any amount paid on account of earnings-related contributions in accordance with the provisions of regulation 8(6).

▶<sup>3</sup>(4) The following are Real Time Information employers for the purposes of this Schedule—

(a) an employer who has entered into an agreement with HMRC to comply with the provisions of this Schedule which are expressed as relating to Real Time Information employers;

(b) an employer within sub-paragraph (5);

(c) ▶<sup>5</sup>◀; and

(d) on and after 6th October 2013, all employers.

(5) An employer is within this paragraph if the employer has been given a general or specific direction by the Commissioners for Her Majesty’s Revenue and Customs before 6th October 2013 to deliver to HMRC returns under paragraph 21A of this Schedule (real time returns of information about payments of general earnings).◀

<sup>1</sup>Words in defn. of “Compensation of Employers Regulations” omitted by reg. 3(2) of S.I. 2014/2397 as from 6.10.14.

<sup>2</sup>Words in defn. of “deductions working sheet” omitted by reg. 6 of S.I. 2014/608 as from 6.4.14.

<sup>3</sup>Defns. of “general earnings” substituted, “non” & “Real Time Information employer” inserted, “the Reimbursement Regulations” omitted & sub-para. (4) & (5) inserted by reg. 5(a), (b) & 20(a) & (b) of S.I. 2012/821 as from 6.4.12.

<sup>3</sup>Defn. of “HMRC” omitted by reg. 8(2) of S.I. 2009/600 as from 1.4.09.

<sup>5</sup>Para. 1(4)(c) omitted by reg. 6 of S.I. 2013/622 as from 6.4.13.

(a) S.I. 1994/1882.

(b) S.I. 1978/1689: Schedule 3 has been amended by S.I. 1984/1894, 1994/726, 1998/1728, 1999/3 and 2003/736 and 2420.

**Sch. 4**

<sup>1</sup>Para. 2 substituted by reg. 30(3) of S.I. 2004/770 as from 6.4.04.

**►<sup>1</sup>Multiple employers****2.—(1) If—**

- (a) an employer has made an election under regulation 98 of the PAYE Regulations to be treated as a different employer in respect of each group of employees specified in the election, and
- (b) no improper purpose notice has been given, or if one has been given it has been withdrawn,

he shall be treated as having made an identical election for the purposes of this Schedule.

(2) In this paragraph an “improper purpose notice” is a notice issued to the employer stating that it appears to the Inland Revenue that the election is made wholly or mainly for an improper purpose within the meaning of regulation 99(2) of the PAYE Regulations.◄

**Intermediate employers**

**3.—(1)** Where an employee works for a person who is not his immediate employer, that person shall be treated as the employer for the purpose of this Schedule, and the immediate employer shall furnish the principal employer with such particulars of the ►<sup>2</sup>employee’s general earnings◄ as may be necessary to enable the principal employer to comply with the provisions of this Schedule.

This is subject to the qualification in sub-paragraph (4).

**(2) In this paragraph—**

- “the principal employer” means the person specified as the relevant person in the direction referred to in sub-paragraph (4), and
- “the immediate employer” means the person specified as the contractor in that direction.

**(3)** If the ►<sup>2</sup>employee’s general earnings◄ are actually paid to him by the immediate employer—

- (a) the immediate employer shall be notified by the principal employer of the amount of earnings-related contributions which may be deducted when ►<sup>2</sup>those earnings◄ are paid to the employee, and may deduct the amount so notified to him accordingly; and
- (b) the principal employer may make a corresponding deduction on making to the immediate employer the payment out of which ►<sup>2</sup>those earnings◄ will be paid.

**(4)** This paragraph only applies if a direction has been given by the Board under ►<sup>2</sup>section 691 of ITEPA 2003◄ (PAYE: mobile UK workforce)(a).

**(5)** Where an employee is paid a sickness payment which by virtue of regulation 23 is not made through the secondary contributor in relation to the employment—

- (a) the person making that payment shall furnish the secondary contributor with such particulars of that payment as may be necessary to enable the secondary contributor to comply with this Schedule; and
- (b) for the purposes only of this Schedule the secondary contributor shall be deemed to have made the sickness payment.

**Employer’s earnings-related contributions**

**4.** If, under this Schedule, a person ►<sup>3</sup>pays◄ any earnings-related contributions which, under section 6(4) of the Act(b), another person is liable to pay, his payment of those contributions shall be made as agent for that other person.

**►<sup>2</sup>Intermediaries**

**4A.—(1)** Where any payment of ►<sup>2</sup>general earnings◄ of an employee is made by an intermediary of the employer, the employer shall be treated, for the purposes of this Schedule other than—

- (a) paragraph 7(1),
- (b) paragraph 7(3)(a),

(a) Section 203E was inserted by section 126 of the Finance Act 1994 (c. 9).

(b) This section was substituted by paragraph 2 of Part I of Schedule 9 to the Welfare Reform Act.

<sup>2</sup>Words in para. 3(1), (3), (4) and para. 4A(1) & (2) substituted by regs. 30(3), (4)(a)-(c), & (5) of S.I. 2004/770 as from 6.4.04.

<sup>3</sup>Words in para. 4 substituted in Sch. 4 by regs. 5 of S.I. 2002/2929 as from 28.11.02.

**Sch. 4**

- (c) the references to a subsequent payment of ►<sup>1</sup>general earnings◄ or of monetary earnings in paragraph 7(3) and (8), and
- (d) paragraph 7(11),

as making the payment of those ►<sup>1</sup>general earnings◄ to the employee.

(2) For the purposes of this paragraph, a payment of ►<sup>1</sup>general earnings◄ of an employee is made by an intermediary of the employer if it is made—

- (a) either—
  - (i) by a person acting on behalf of the employer and at the expense of the employer, or
  - (ii) by a person connected with him, or
- (b) by trustees holding property for any persons who include, or class of persons which includes, the employee.

(3) Section 839 of the Taxes Act (connected persons) applies for the purposes of this paragraph.◄

**►<sup>1</sup>Continuation of proceedings etc.**

5. Any legal proceedings or administrative act authorised by or done for the purposes of this Schedule and begun by one Inland Revenue officer may be continued by another officer, and any officer may act for any division or other area.◄

## PART II

## DEDUCTION OF EARNINGS-RELATED CONTRIBUTIONS

**Deduction of earnings-related contributions**

6.—(1) Every employer, on making during any year to any employee any payment of ►<sup>1</sup>general earnings◄ in respect of which earnings-related contributions are payable, or are treated as payable, or on making any payment of statutory maternity pay—

- (a) shall, if he has not already done so, prepare, or in the case of an employee to whom ►<sup>1</sup>regulation 35 of the PAYE Regulations (simplified deduction scheme)◄ applies, maintain a deductions working sheet for that employee, and
- (b) may deduct earnings-related contributions in accordance with this Schedule.

►<sup>2</sup>(1A) Where a liability to pay retrospective contributions has arisen in respect of an employee, an employer shall amend the relevant deductions working sheet or where necessary prepare one in respect of that employee.◄

(2) Subject to sub-paragraph (3), an employer shall not be entitled to recover any earnings-related contributions paid or to be paid by him on behalf of any employee otherwise than by deduction in accordance with this Schedule.

(3) Sub-paragraph (2) does not apply to secondary Class 1 contributions in respect of which an election has been made jointly by the secondary contributor and the employed earner for the purposes of paragraph 3B(1) of Schedule 1 to the Act (election in respect of transfer of secondary contribution liability on ►<sup>3</sup>relevant employment income◄)(a) if the election provides for the collection of the amount in respect of which liability is transferred.

**Calculation of deduction**

7.—(1) Subject to sub-paragraph (2), on making any payment of ►<sup>4</sup>general earnings◄ to the employee, the employer may deduct from those ►<sup>4</sup>general earnings◄ the amount of the earnings-related contributions based on those ►<sup>4</sup>general earnings◄ ►<sup>5</sup>◄ which the employee is liable to pay under section 6(4) of the Act ►<sup>5</sup>(the “section 6(4)(a) amount”)◄.

(2) Where two or more payments of ►<sup>4</sup>general earnings◄ fall to be aggregated, the employer may deduct the amount of the earnings-related contributions based on those ►<sup>4</sup>general earnings◄, which are payable by the employee, either wholly from one such payment or partly from one and partly from the other or any one or more of the others.

<sup>1</sup>Words in paras. 4A(1), (2), 6 & 6(1)(a) & para. 5 substituted by regs. 30(5), (6) & 31(2) of S.I. 2004/770 as from 6.4.04.

<sup>2</sup>Para. 6(1A) inserted by reg. 8(3) of S.I. 2007/1056 as from 6.4.07.

<sup>3</sup>Words substituted in para. 6(3) by reg. 7(a) of S.I. 2004/2096 as from 1.9.04.

<sup>4</sup>Words substituted in para. 7(1) & (2) by reg. 31(3)(a) of S.I. 2004/770 as from 6.4.04.

<sup>5</sup>Sch. 4, para. 7, words omitted & added in sub-para. (1) by reg. 7 of S.I. 2002/2929 as from 28.11.02.

(a) Paragraph 3B was inserted by section 77(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

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<sup>1</sup>Sub-para. (3) substituted, sub-para. (4)(e) inserted by reg. 7 of S.I. 2002/2929 as from 28.11.02.

<sup>2</sup>Words substituted in para. 7(3) & (4)(b), (c), (d) & (e) and words omitted in para. (4)(d) by reg. 31(3)(a), (b) & (c)(i) of S.I. 2004/770 as from 6.4.04.

<sup>3</sup>Words in para. 7(3) substituted, by reg. 2(2) of S.I. 2003/1337 as from 10.6.03.

<sup>4</sup>Para. 7(3A) inserted by reg. 8(4)(a) of S.I. 2007/1056 as from 6.4.07.

<sup>5</sup>Words added to para. 7(4)(e) & 7(5A)(a) and 7(4)(f) inserted by reg. 31(3)(c)(ii) & (d) of S.I. 2004/770 as from 6.4.04.

<sup>6</sup>Words inserted in sub-para. (5) & 5(b) by reg. 8(4)(b) of S.I. 2007/1056 as from 6.4.07.

<sup>7</sup>Sch. 4, para. 7, words added in sub-para. (5) by reg. 7(5) of S.I. 2002/2929 as from 28.11.02.

<sup>8</sup>Words in sub-para. (5), (5A) & (5B) inserted by reg. 2(3) & (4) of S.I. 2003/1337 as from 10.6.03.

<sup>9</sup>Words substituted in para. 7(5A)(b) by reg. 14(2) of S.I. 2003/2085 as from 1.9.03.

▶<sup>1</sup>(3) If the employer—

- (a) on making any payment of ▶<sup>2</sup>general earnings◀ to an employee does not deduct from those ▶<sup>2</sup>general earnings◀ the full section 6(4)(a) amount, or
- (b) is treated as making a payment of ▶<sup>2</sup>general earnings◀ by paragraph 4A,

he may recover, in a case falling within paragraph (a) the amount not so deducted or, in a case falling within paragraph (b) the section 6(4)(a) amount, by deduction from any subsequent payment of ▶<sup>2</sup>general earnings◀ made by the employer to that employee during ▶<sup>3</sup>the same year and, where the case falls within paragraph (b) ▶<sup>2</sup>or sub-paragraph 4(a) or (f)◀, during the following year◀.

This sub-paragraph is subject to sub-paragraphs (4) and (5).◀

▶<sup>4</sup>(3A) Where an amount has been treated as retrospective earnings paid to or for the benefit of an employee, the employer may deduct the retrospective contributions based on those earnings from any payment of general earnings made by him to that employee—

- (a) after the relevant retrospective contributions regulations come into force, and
- (b) during the same and the following year.

This sub-paragraph is subject to sub-paragraph (5).◀

(4) Sub-paragraph (3) applies only where—

- (a) the under-deduction occurred by reason of an error made by the employer in good faith;
- (b) the ▶<sup>2</sup>general earnings◀ in respect of which the under-deduction occurred are treated as earnings by virtue of regulations made under section 112 of the Act (certain sums to be earnings)(a);
- (c) the under-deduction occurred as a result of the cancellation, variation or surrender of the contracting-out certificate issued in respect of the employment in respect of which the payment of ▶<sup>2</sup>general earnings◀ is made; or
- (d) the ▶<sup>2</sup>general earnings◀ in respect of which the under-deduction occurred are, by virtue of regulation 23, not paid through the secondary contributor in relation to the employment ▶<sup>1</sup>; ▶<sup>2</sup>◀
- (e) the employer is treated as making a payment of ▶<sup>2</sup>general earnings◀ by paragraph 4A.◀▶<sup>5</sup>; or
- (f) the payment in question is made to a person whose place of employment is outside the United Kingdom and on whose general earnings Class 1 contributions are, but income tax is not, payable.◀

(5) For the purposes of sub-paragraphs (3), ▶<sup>6</sup>(3A),◀ (4), (8) and (11)—

- (a) the amount which by virtue of those sub-paragraphs may be deducted from any payment, or from any payments which fall to be aggregated, shall be an amount in addition to, but not in excess of, the amount deductible from those payments under the other provisions of this Schedule; and
- (b) for the purposes of Part III of this Schedule an additional amount which may be deducted by virtue of those sub-paragraphs ▶<sup>7</sup>in a case falling within paragraph (a) of any of those sub-paragraphs◀▶<sup>6</sup>except sub-paragraph (3A)◀ shall be treated as an amount deductible under this Schedule only in so far as the amount of the corresponding under-deduction has not been so treated.

▶<sup>8</sup>This is subject to the following qualification.◀

▶<sup>9</sup>(5A) Where a payment—

- (a) falls within sub-paragraph (4)(e) ▶<sup>5</sup>or (f)◀(b),
- (b) comprises a beneficial interest in ▶<sup>9</sup>securities◀, or
- (c) is treated as earnings within the meaning of Part 7 of the Income Tax (Earnings and Pensions) Act 2003(c),

sub-paragraph (5B) applies.

(a) Section 112 was amended by paragraph 51(4) of Schedule 1 to the Employment Rights Act 1996 (c. 18) and paragraph 21 of Schedule 3 to the Transfer Act.

(b) Sub-paragraph (4)(e) was inserted by regulation 7(4) of S.I. 2002/2929.

(c) 2003 c. 1.

(5B) If this sub-paragraph applies—

- (a) sub-paragraph (5)(a) shall have effect as if “, but not in excess of,” were omitted; and
- (b) sub-paragraph (8)(a) shall have effect as if at the end there were added “or the following year”<sup>1</sup>.

(6) Sub-paragraph (8) applies where an employer makes a payment consisting either solely of non-monetary earnings, or a combination of monetary and non-monetary earnings, to—

- (a) an employee;
- (b) an ex-employee,

and at the time of the payment of those earnings there are no, or insufficient, monetary earnings from which the employer could deduct the <sup>1</sup>section 6(4)(a) amount.◀

(7) In sub-paragraph (6)(b) “ex-employee” means a person who—

- (a) ceases to be employed by the employer in a particular year (“the cessation year”); and
- (b) receives such earnings from the employer after the cessation of employment but in the cessation year.

<sup>1</sup>(8) Where, in the circumstances specified in sub-paragraph (6), the employer—

- (a) does not deduct from the earnings referred to in that sub-paragraph the full section 6(4)(a) amount, or
- (b) is treated as making a payment of <sup>2</sup>general earnings◀ by paragraph 4A,

he may recover, in a case falling within paragraph (a) the amount not so deducted or, in a case falling within paragraph (b) the section 6(4)(a) amount, by deduction from any subsequent payment of monetary earnings to that employee, or ex-employee (as the case may be) during the same year.

This sub-paragraph is subject to sub-paragraph (5).◀

<sup>3</sup>(9) Sub-paragraph (11) applies where—

- (a) an employee receives non-monetary earnings comprising, or derived from, relevant securities; or
- (b) during the post-cessation period a former employee receives non-monetary earnings—
  - (i) comprising, or derived from, relevant securities; and,
  - (ii) in connection with the former employment.

Here “the post-cessation period” means the period beginning with the day on which the employment ceased and ending with the last day of the next tax year.◀

(10) <sup>2</sup>◀

<sup>3</sup>(11) Where this sub-paragraph applies, the employer or former employer may—

- (a) retain such of the relevant securities as is necessary to enable him to recover the whole or any part of the primary Class 1 contributions in respect of those securities; and
- (b) sell those securities.

This sub-paragraph is subject to sub-paragraphs (12) and (12A).

(11A) In sub-paragraphs (9), (11), (12) and (12A) “relevant securities” means securities in respect of which an amount is chargeable to income tax as employment income.

(12) The employer or former employer shall not retain or sell relevant securities without the prior written consent of the employee or former employee.

(12A) An employer or former employer who has retained relevant securities in accordance with sub-paragraph (11) shall account to the employee or former employee

<sup>1</sup>Words in sub-para. 6 and sub-para. (8) substituted by regs. 7(6) & (7) of S.I. 2002/2929 as from 28.11.02.

<sup>2</sup>Words substituted in para. 7(8)(b) & sub-para. (10) omitted by reg. 31(3)(a) & (f) of S.I. 2004/770 as from 6.4.04.

<sup>3</sup>Sub-para. (9), (11), (11A), (12) & (12A) substituted by reg. 2(2) & (3) of S.I. 2004/2246 as from 22.9.04.

(a) Sub-paragraph (8) was substituted by regulation 7(7) of S.I. 2002/2929.

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in respect of so much of the proceeds of sale as is not required to enable the employer or former employer to recover the primary Class 1 contributions in respect of those securities.◀

(13) Subject to sub-paragraph (14), the employer shall record on the deductions working sheet for that employee the name and national insurance number of the employee, the year to which the working sheet relates, the appropriate category letter in relation to the employee (being the appropriate category letter indicated by the Board) and, in so far as relevant to that category letter, the following particulars regarding every payment of ▶<sup>1</sup>general earnings◀ which he makes to the employee namely—

<sup>1</sup>Words substituted in para. 7(13) by reg. 31(3)(a) of S.I. 2004/770 as from 6.4.04.

- (a) the date of payment;
- (b) the amount of—
  - (i) earnings up to and including the current lower earnings limit where earnings equal or exceed that figure,
  - ▶<sup>2</sup>(ii) earnings which exceed the current lower earnings limit but do not exceed the current primary threshold,
  - (iii) earnings which exceed the current primary threshold but do not exceed the upper accrual point,◀
  - ▶<sup>3</sup>(iiia) earnings which exceed the upper accrual point but do not exceed the current upper earnings limit,◀
  - ▶<sup>4</sup>(iv) the sum of the primary Class 1 contributions and secondary Class 1 contributions payable on all the employee's earnings, other than contributions recovered under sub-paragraph (3); and
  - (v) the primary Class 1 contributions payable on the employee's earnings;◀
  - (vi) any statutory maternity pay;
  - ▶<sup>5</sup>(vii) any ▶<sup>6</sup>◀ statutory paternity pay;◀ and
  - (viiia) ▶<sup>6</sup>◀
  - ▶<sup>3</sup>(viii) any statutory adoption pay◀▶<sup>6</sup>; and
  - (ix) any statutory shared parental pay◀

<sup>2</sup>Para. 7(13)(b)(ii) & (iii) substituted by reg. 21(a) & (b) of S.I. 2012/821 as from 6.4.12.

<sup>3</sup>Sub-para. (iiia) inserted by reg. 4(2)(b) of S.I. 2009/111 as from 6.4.09.

<sup>4</sup>Sub-paras. (iv) & (v) substituted, & (viii) inserted & para. (c) omitted by reg. 16(2) of S.I. 2003/193 as from 6.4.03.

<sup>5</sup>Para. 7(13)(b)(vii) substituted by reg. 4(2) of S.I. 2010/2450 as from 14.11.10.

<sup>6</sup>Words in para. 7(13)(b) substituted by reg. 4(2) of S.I. 2015/175 as from 5.3.15.

<sup>7</sup>Words in para. 7(13)(b) of Sch. 4 omitted by reg. 5 of S.I. 2012/817 as from 6.4.12.

The amounts to be recorded under sub-paragraphs (iv) and (v) are the amounts of contributions after deducting the amount of any reduction calculated in accordance with section 41(1) to (1B) ▶<sup>7</sup>◀ of the Pensions Act(a) (“the reduction”), subject to the following qualification.

If the amount of the reduction exceeds the amount of the contributions in respect of which it falls to be made, the amount to be entered under sub-paragraph (v) is nil.◀

(c) ▶<sup>4</sup>◀

<sup>8</sup>Words substituted in paras. 7(14) & (15) by reg. 31(3)(a) & (h) of S.I. 2004/770 as from 6.4.04.

(14) Where 2 or more payments of ▶<sup>8</sup>general earnings◀ fall to be aggregated, the employer, instead of recording under heads (iv) and (v) of sub-paragraph (13)(b) separate amounts in respect of each such payment, shall under each head record a single amount, being the total of the contributions appropriate to the description specified in that head, in respect of the aggregated payments.

(15) When an employer pays ▶<sup>8</sup>general earnings◀ he shall record under the name of the employee to whom he pays the ▶<sup>8</sup>general earnings◀—

- (a) the date of payment;
- (b) the amount of the ▶<sup>8</sup>general earnings◀, excluding any allowable ▶<sup>8</sup>pension◀ contributions; and
- (c) any allowable ▶<sup>8</sup>pension◀ contributions;

and retain the record for a period of three years after the end of the tax year in which the ▶<sup>8</sup>general earnings◀ were paid.

(a) Section 41 was amended by paragraph 127 of Schedule 7 to the 1998 Act, paragraph 6 of Schedule 9 to the Welfare Reform Act and paragraph 36 of Schedule 1 to the Contributions Act. Section 42A was inserted by section 137(5) of the Pensions Act 1995 (c. 26): relevant amendments were made by paragraph 128 of Schedule 7 to the 1998 Act, paragraph 7 of Schedule 9 to the Welfare Reform Act and paragraph 37 of Schedule 1 to the Contributions Act.



**►<sup>1</sup>Records where liability transferred from secondary contributor to employed earner: relevant employment income**

<sup>1</sup>Para. 8 substituted by reg. 7(b) of S.I. 2004/2096 as from 1.9.04.

8. Where an election has been made for the purposes of paragraph 3B(1) of Schedule 1 to the Act (elections about transfer of liability for secondary contributions in respect of relevant employment income), the secondary contributor shall maintain records containing—

- (a) a copy of any such election;
- (b) a copy of the notice of approval issued by the Inland Revenue under paragraph 3B(1)(b) of that Schedule;
- (c) the name and address of the secondary contributor who has entered into the election;
- (d) the name of the employed earner; and
- (e) the national insurance number allocated to the employed earner.◄

**Certificate of contributions paid**

9.—(1) Where the employer is required to give the employee a certificate in accordance with ►<sup>2</sup>regulation 67 of the PAYE Regulations (information to employees about payments and tax deducted (Form P60))◄, the employer shall enter on the certificate, in respect of the year to which the certificate relates—

<sup>2</sup>Words substituted in para. 9(1) by reg. (4)(a)(i) of S.I. 2004/770 as from 6.4.04.

- (a) the amount of any earnings up to and including the current lower earnings limit where earnings equal or exceed that figure;
- (b) the amount of any earnings in respect of which primary Class 1 contributions were, by virtue of section 6A of the Act(a), treated as having been paid, which exceed the current lower earnings limit but do not exceed the current primary threshold, other than earnings from non-contracted-out employment in respect of which primary Class 1 contributions were, by virtue of that section and regulation 127, treated as having been paid at the reduced rate;
- (c) the amount of any earnings in respect of which primary Class 1 contributions were payable which exceed the current primary threshold but do not exceed the ►<sup>3</sup>upper accrual point◄, other than earnings from non-contracted-out employment in respect of which primary Class 1 contributions were payable at the reduced rate;
- <sup>3</sup>(ca) the amount of any earnings in respect of which primary Class 1 contributions were payable which exceed the upper accrual point but do not exceed the current upper earnings limit, other than earnings from non-contracted-out employment in respect of which primary Class 1 contributions were payable at the reduced rate;◄
- (d) the amount of the earnings, if any, recorded under paragraphs (b) and (c), above the current lower earnings limit, in respect of which primary Class 1 contributions were payable or, where section 6A of the Act and regulation 127 applies, were treated as having been paid, at the reduced rate;
- (e) the amount of primary Class 1 contributions paid by the employee;
- <sup>4</sup>(f) the amount of statutory maternity pay paid to the employee;
- <sup>5</sup>(g) the amount of ►<sup>6</sup>◄ statutory paternity pay paid to the employee;◄
  - (ga) ►<sup>6</sup>◄
  - (h) the amount of statutory adoption pay paid to the employee ►<sup>6</sup>; and
  - (i) the amount of statutory shared parental pay paid to the employee◄

<sup>3</sup>Words substituted in para. 9(1)(c) & sub-para. (ca) inserted by reg. 4(3)(a) & (b) of S.I. 2009/111 as from 6.4.09.

<sup>4</sup>Paras. (f) to (h) inserted in para. 9(1) and words in 9(1) substituted by reg. 16(3) of S.I. 2003/193 as from 6.4.03.

<sup>5</sup>Words in para. 9(1)(g) substituted by reg. 4(3) of S.I. 2010/2450 as from 14.11.10.

<sup>6</sup>Words in para. 9(1)(g) substituted & (1)(ga) omitted by reg. 4(3) of S.I. 2015/175 as from 5.3.15.

<sup>7</sup>Words substituted & inserted in paras. 9(1) by reg. 31(4)(a) of S.I. 2004/770 as from 6.4.04.

and shall enter the amounts under ►<sup>4</sup>paragraph (e)◄ under the appropriate category letter indicated by the ►<sup>7</sup>Inland Revenue◄.

(a) Section 6A was inserted by paragraph 3 of Part I of Schedule 9 to the Welfare Reform Act.

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<sup>1</sup>Words substituted & inserted in para. 9(2) by reg. 31(4)(b) of S.I. 2004/770 as from 6.4.04.

<sup>2</sup>Words substituted in para. 9(2) & sub-para. (3) inserted by reg. 22(a) & (b) of S.I. 2012/821 as from 6.4.12.

<sup>3</sup>Words omitted in para. 9(2) of Sch. 4 by reg. 10 of S.I. 2010/721 as from 6.4.10.

<sup>4</sup>Words in para. 9(2) substituted by reg. 3 of S.I. 2003/1337 as from 10.6.03.

<sup>5</sup>Words in para. 10(1) inserted and sub-para. (1A) added to 10 by reg. 8(5)-(6) of S.I. 2007/1056 as from 6.4.07.

<sup>6</sup>Words substituted, inserted & omitted in para. 10 by reg. 32(2) of S.I. 2004/770 as from 6.4.04.

<sup>7</sup>Words inserted & deleted in reg. 10 and sub-para. (3A) added to reg. 10 by reg. 6, 7, 23 & 24 of S.I. 2012/821 as from 6.4.12.

<sup>8</sup>Words inserted in para. 10(3A) by reg. 7 of S.I. 2013/622 as from 6.4.13.

<sup>9</sup>Para. 10(4) inserted by reg. 2(a) of S.I. 2014/1016 as from 6.5.14.

(2) Where the employer is not required to give the employee a certificate in accordance with ►<sup>1</sup>regulation 67 of the PAYE Regulations◄, because no tax has been deducted from the employee's ►<sup>2</sup>relevant payments◄ during the year concerned ►<sup>3</sup>◄, ►<sup>4</sup>but the employee—

(a) has paid, or

(b) is treated, by virtue of section 6A of the Act(a), as having paid,

primary Class 1 contributions in that year, the employer shall nevertheless give the employee such a certificate showing the information referred to in sub-paragraph (1)(b).◄

►<sup>2</sup>(3) In sub-paragraph (2), “relevant payments” has the meaning given in the PAYE Regulations.◄

## PART III

## PAYMENT AND RECOVERY OF EARNINGS-RELATED CONTRIBUTIONS, CLASS 1A CONTRIBUTIONS AND CLASS 1B CONTRIBUTIONS, ETC.

## Payment of earnings-related contributions monthly by employer

**10.**—(1) Subject to ►<sup>5</sup>sub-paragraph (1A) and◄ paragraph 11 and 15(8), the employer shall pay the amount specified in sub-paragraph (2) to the ►<sup>6</sup>Inland Revenue◄ within 14 days ►<sup>6</sup>or, if the payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, within 17 days◄ of the end of every ►<sup>6</sup>◄ tax month.

►<sup>5</sup>(1A) This paragraph does not apply in respect of amounts of retrospective earnings.◄

(2) The amount specified in this sub-paragraph is the total amount of earnings-related contributions due in respect of ►<sup>6</sup>general earnings◄ paid by the employer in that ►<sup>6</sup>◄ tax month ►<sup>7</sup>(and, where required, reported under paragraph 21A or 21D)◄, other than amounts deductible under paragraph 7(2) which he did not deduct and amounts which he deducted under the Compensation of Employers Regulations ►<sup>7</sup>◄.

(3) For the purposes of sub-paragraph (2), if two or more payments of ►<sup>6</sup>general earnings◄ fall to be aggregated, the employer shall be treated as having deducted from the last of those payments the amount of any earnings-related contributions deductible from those payments which he did not deduct from the earlier payments.

►<sup>7</sup>(3A) The amount specified in sub-paragraph (2) must be adjusted to take account of errors corrected under paragraph 21E(5), other than in cases where paragraph 21E(4) applies►<sup>8</sup>, or failures rectified under paragraph 21EA(2)(c)◄.◄

►<sup>9</sup>(4) Where the amount specified in sub-paragraph (2) has been adjusted to take account of an error as provided for in sub-paragraph (3A) and the value of the adjustment is a negative amount, that amount is treated as having been paid to HMRC(◄)–

(a) 17 days after the end of the tax month(e) in which the correction is made if payment is made using an approved method of electronic communications(f), and

(a) Section 6A was inserted by paragraph 3 of Part I of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c. 30). For the construction, in relation to Northern Ireland, of references in the principal Regulations to enactments not applying there, see regulation 156(3) of those Regulations.

(b) Sub-paragraph (1) was amended by regulation 16(3) of S.I. 2003/193.

(c) Paragraph 21EA is inserted by regulation 16 of these Regulations.

(d) The term “HMRC” is defined in regulation 1(2) of S.I. 2001/1004 as Her Majesty's Revenue and Customs which definition was inserted by regulation 3 of S.I. 2009/600.

(e) The term “tax month” is defined in paragraph 1(2) of Schedule 4 of S.I. 2001/1004.

(f) The term “approved method of electronic communication” is defined in regulation 1(2) of S.I. 2001/1004 and was inserted by regulation 36 of S.I. 2004/770. A method is an approved method of electronic communications if it has been approved by a direction issued by the Commissioners for Her Majesty's Revenue and Customs. The most recent direction was issued in March 2012 providing that approved methods of electronic communication are “the services known as Direct Debit, BACS Direct Credit (including telephone and internet banking), CHAPS, debit and credit card over the internet (BillPay), Government Banking Services (formerly known as Paymaster), Bank Giro and payments made through the Post Office.”. A copy of that direction is available at <http://www.hmrc.gov.uk/ebu/irboadir.htm>.

- (b) 14 days after the end of the tax month in which the correction is made, in any other case.◀

### Payments of earnings-related contributions quarterly by employer

**11.**—(1) Subject to <sup>1</sup>sub-paragraph (1A) and <sup>1</sup>paragraph 15(8), the employer shall pay the amount specified in sub-paragraph (2) to the <sup>1</sup>Inland Revenue◀ within 14 days of the end of every <sup>1</sup>◀ tax quarter <sup>1</sup>or, if payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, within 17 days of the end of every tax quarter◀ where—

- (a) the employer has reasonable grounds for believing that the condition specified in sub-paragraph (4) applies and chooses to pay the amount specified in sub-paragraph (2) quarterly; or
- (b) <sup>1</sup>◀

<sup>2</sup>(1A) This paragraph does not apply in respect of amounts of retrospective earnings.◀

(2) The amount specified in this sub-paragraph is the total amount of earnings-related contributions due in respect of <sup>3</sup>general earnings◀ paid by the employer in that <sup>3</sup>◀ tax quarter <sup>4</sup>(and, where required, reported under paragraph 21A or 21D)◀, other than amounts deductible under paragraph 7(2) which he did not deduct and amounts which he deducted under the Compensation of Employers Regulations <sup>4</sup>◀.

(3) For the purposes of sub-paragraph (2), where two or more payments <sup>3</sup>of general earnings◀ fall to be aggregated, the employer shall be deemed to have deducted from the last of those payments the amount of any earnings-related contributions deductible from those payments which he did not deduct from the earlier payments.

<sup>4</sup>(3A) The amount specified in sub-paragraph (2) must be adjusted to take account of errors corrected under paragraph 21E(5), other than in cases where paragraph 21E(4) applies<sup>5</sup>, or failures rectified under paragraph 21EA(2)◀.◀

<sup>6</sup>(3B) Where the amount specified in sub-paragraph (2) has been adjusted to take account of an error as provided for in sub-paragraph (3A) and the value of the adjustment is a negative amount, that amount is treated as having been paid to HMRC—

- (a) 17 days after the end of the tax quarter(a) in which the correction is made if payment is made using an approved method of electronic communications, and
- (b) 14 days after the end of the tax quarter in which the correction is made, in any other case.◀

<sup>7</sup>(4) The condition specified in this sub-paragraph is that for <sup>3</sup>◀ tax months falling within the current year, the average monthly amount found by the formula below will be less than £1500.

The formula is—

$$\sup 8(N+P+L+S) - (SP+CD)\text{◀}$$

The expressions used in the formula have the following values.

**N** is the amount which would be payable to the <sup>9</sup>Inland Revenue◀ under the Social Security Contributions and Benefits Act 1992 and these Regulations but disregarding—

- (a) any amount of secondary Class 1 contributions in respect of which liability has been transferred to the employed earner by an election made jointly by the employed earner and the secondary contributor for the purpose of paragraph 3B(1) of Schedule 1 to the Act(b) (transfer of liability to be borne by the earner); and

<sup>1</sup>Words substituted, inserted & omitted in para. 11 & para. 11(1)(b) omitted by reg. 32(3) of S.I. 2004/770 as from 6.4.04.

<sup>2</sup>Para. 11(1A) added by reg. 8(6) of S.I. 2007/1056 as from 6.4.07.

<sup>3</sup>Words substituted, inserted & omitted in para. 11(2) by reg. 32(3) of S.I. 2004/770 as from 6.4.04.

<sup>4</sup>Words inserted & deleted in reg. 11(2) and sub-para. (3A) added by reg. 6, 7, 23 & 24 of S.I. 2012/821 as from 6.4.12.

<sup>5</sup>Words inserted in para. 11(3A) by reg. 8 of S.I. 2013/622 as from 6.4.13.

<sup>6</sup>Para. 11(3B) inserted by reg. 2(b) of S.I. 2014/1016 as from 6.5.14.

<sup>7</sup>Para. 11(4) substituted by reg. 16(4) of S.I. 2003/193 as from 6.4.03.

<sup>8</sup>Formula substituted by reg. 9 of S.I. 2006/576 as from 6.4.06.

<sup>9</sup>Words substituted in para. 11(4) by reg. 32(3)(d) of S.I. 2004/770 as from 6.4.04.

(a) The term “tax period” is defined in paragraph 1(2) of Schedule 4 to S.I. 2001/1004.

(b) Paragraph 3B was inserted into Schedule 1 to the Benefits Act by section 77(2) of the 2000 Act and into Schedule 1 to the Northern Ireland Benefits Act by section 81(2) of the 2000 Act Child Support, Pensions and Social Security Act 2000 (c. 19).

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<sup>1</sup>Para. 11(4)(aa) inserted & defn. of “P”

substituted by regs. 8(6)-(7) of S.I. 2007/1056 as from 6.4.04.

<sup>2</sup>Text omitted in para. 11(4) by reg. 9 of S.I. 2006/576 as from 6.4.06.

<sup>3</sup>Words inserted in defn. of “P”, substituted in defn. of “L” and reg. 11ZA added by reg. 7(c), 8 & 25 of S.I. 2012/821 as from 6.4.12.

<sup>4</sup>Words substituted in para. 11(4) by reg. 32(3)(d) of S.I. 2004/770 as from 6.4.04.

<sup>5</sup>Words in para. 11(4) omitted by reg. 3(3) of S.I. 2014/2397 as from 6.10.14.

<sup>6</sup>Words in para. 11(4) substituted & inserted by reg. 4(4) of S.I. 2015/175 as from 5.3.15.

<sup>7</sup>Words inserted to 11ZA heading & 11ZA(1) by reg. 9 of S.I. 2013/622 as from 6.4.13.

<sup>8</sup>Para. 11ZA(3A) inserted by reg. 2(c) of S.I. 2014/1016 as from 6.5.14.

▶<sup>1</sup>(aa) any amount payable in respect of retrospective earnings;◀

(b) ▶<sup>2</sup>◀

▶<sup>1</sup>“P” is the amount which would be payable to HMRC under regulation ▶<sup>3</sup>67G or◀ 68 of the PAYE Regulations but disregarding any amount payable in respect of retrospective employment income (within the meaning of regulation 2 of those Regulations);◀

L is the amount which would be payable to the ▶<sup>4</sup>Inland Revenue◀ under ▶<sup>3</sup>regulation 54(1) of the Education (Student Loans) (Repayment) Regulations 2009 (payment of repayments deducted to HMRC)◀ if the reduction referred to in paragraph (3) of that regulation ▶<sup>4</sup>◀ were disregarded.

S is the sum of the amounts which the employer would be liable to deduct, under section 559 of the Taxes Act and the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(a), from payments made by him.

▶<sup>2</sup>◀

SP is the amount—

(a) recoverable by the employer from ▶<sup>2</sup>the Inland Revenue◀, or

(b) deductible from amounts for which the employer would otherwise be accountable to ▶<sup>2</sup>the Inland Revenue◀,

in respect of payments to his employees by way of ▶<sup>5</sup>◀ statutory maternity pay, ▶<sup>6</sup>statutory paternity pay◀<sup>6</sup>, statutory shared parental pay◀ and statutory adoption pay.

CD is the amount which would be deducted by others from sums due to the employer, in his position as a sub-contractor, under section 559 of the Taxes Act.◀

▶<sup>3</sup>Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under paragraph 21E(6) ▶<sup>7</sup>or 21EA(3)◀

**11ZA.**—(1) This paragraph applies if, during any tax period, an employer makes a return under paragraph 21E(6) (returns under paragraph 21A and 21D: amendments) other than by virtue of paragraph 21E(4)▶<sup>7</sup>, or paragraph 21EA(3) (failure to make a return under paragraph 21A or 21D of Schedule 4)◀.

(2) The amount specified in paragraph 10(2) or, as the case may be, 11(2) for the final tax period in the year covered by the return is to be adjusted to take account of the information in the return.

(3) If the value of the adjustment required by paragraph (2) is a negative amount, the employer may recover that amount—

(a) by setting it off against the amount the employer is liable to pay under paragraph 10(2) or, as the case may be, 11(2) for the tax period the return is made in; or

(b) from the Commissioners for Her Majesty’s Revenue and Customs.

▶<sup>8</sup>(3A) Where sub-paragraph (3) applies the negative amount is treated as having been paid to HMRC—

(a) 17 days after the end of the final tax period(b) in the year covered by the return where payment is made using an approved method of electronic communication, and

(b) 14 days after the end of the final tax period in the year covered by the return in any other case.◀

(4) But paragraph (3) does not apply in relation to primary Class 1 contributions in a case where those contributions were deducted in error and the excess deduction has not been refunded to the employee.◀

(a) S.I. 1993/743.

(b) The term “tax period” is defined in paragraph 1(2) of Schedule 4 to S.I. 2001/1004.

**▶<sup>1</sup>Payments of earnings-related contributions in respect of retrospective earnings**

**11A.**—(1) This paragraph applies where there are retrospective earnings in respect of which contributions (whether primary or secondary contributions) are payable.

(2) The employer shall pay the contributions referred to in sub-paragraph (1) to HMRC within 14 days or, if payment is made in respect of the current year by an approved method of electronic communications, 17 days of the end of the tax month immediately following the tax month in which the relevant retrospective contributions regulations came into force.◀

<sup>1</sup>Para. 11A inserted & words in 12(1) & (2) substituted by regs. 8(6)-(8) of S.I. 2007/1056 as from 6.4.04.

**Payment of earnings-related contributions by employer (further provisions)**

**12.**—▶<sup>2</sup>(1) The Inland Revenue shall give a receipt to the employer for the total amount paid under paragraph ▶<sup>1</sup>10, 11 or 11A◀ if so requested, but if a receipt is given for the total amount of earnings-related contributions and any tax paid at the same time, a separate receipt need not be given for earnings-related contributions.◀

(2) Subject to sub-paragraph (3), if the employer has paid to the ▶<sup>2</sup>Inland Revenue◀ on account of earnings-related contributions under paragraph ▶<sup>1</sup>10, 11 or 11A◀ an amount which he was not liable to pay, or which has been refunded in accordance with regulation 2 of the Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations 1990 (refunds of contributions)(a), the amounts which he is liable to pay subsequently in respect of other payments of ▶<sup>2</sup>general earnings◀ made by him during the same year shall be reduced by the amount overpaid, so however that if there was a corresponding over-deduction from any payment of ▶<sup>2</sup>general earnings◀ to an employee, this paragraph shall apply only in so far as the employer has reimbursed the employee for that over-deduction.

<sup>2</sup>Para. 12(1) substituted & words in 12(2) substituted by reg. 32(4) of S.I. 2004/770 as from 6.4.04.

(3) Sub-paragraph (2) applies only if—

- (a) the over-deduction occurred by reason of an error by the employer in good faith;
- (b) the over-deduction occurred as a result of the employment in respect of which the payment on account of earnings-related contributions is made being or, as the case may be, becoming contracted-out employment; or
- (c) a refund has been made under regulation 2 of the Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations 1990.

**Payment of Class 1B contributions**

**13.**—(1) A person who is liable to pay a Class 1B contribution (“the employer”), shall pay that Class 1B contribution to the Collector not later than 19th October ▶<sup>3</sup>or, if payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, not later than 22nd October◀ in the year immediately following the end of the year in respect of which that contribution is payable.

(2) If the employer has paid to the ▶<sup>3</sup>Inland Revenue◀ under this paragraph an amount in respect of Class 1B contributions which he was not liable to pay, he shall be entitled to deduct the amount overpaid from any payment in respect of secondary earnings-related contributions which he is liable to pay subsequently to the ▶<sup>1</sup>Inland Revenue◀ under paragraph 10 or 11 for any ▶<sup>3</sup>◀ tax period in the same year.

<sup>3</sup>Words inserted in para. 13(1), substituted & omitted in paras. 13(2), 14 by regs. 32(5) & (6) of S.I. 2004/770 as from 6.4.04.

**Employer failing to pay earnings-related contributions**

**14.**—(1) If within ▶<sup>3</sup>17 days◀ of the end of any ▶<sup>3</sup>◀ tax period ▶<sup>4</sup>a non-Real Time Information employer◀ has paid no amount of earnings-related contributions to the

<sup>4</sup>Words substituted in para. 14(1) of Sch. 4 by reg. 9 of S.I. 2012/821 as from 6.4.12.

(a) 1990/536.

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<sup>1</sup>Words substituted & omitted in paras. 14 & 15 by regs. 32(6)-(7) of S.I. 2004/770 as from 6.4.04.

▶<sup>1</sup>Inland Revenue◀ under paragraph 10 or 11 for that ▶<sup>1</sup>◀ tax period and the ▶<sup>1</sup>Inland Revenue◀ is unaware of the amount, if any, which the employer is liable so to pay, the ▶<sup>1</sup>Inland Revenue◀ may give notice to the employer requiring him to render, within 14 days, a return in the prescribed form showing the amount of earnings-related contributions which the employer is liable to pay to the ▶<sup>1</sup>Inland Revenue◀ under that paragraph in respect of the ▶<sup>1</sup>◀ tax period in question.

(2) Where a notice given by the ▶<sup>1</sup>Inland Revenue◀ under sub-paragraph (1) extends to two or more consequent ▶<sup>1</sup>◀ tax periods, the provisions of this Schedule shall have effect as if those ▶<sup>1</sup>◀ tax periods were one ▶<sup>1</sup>◀ tax period.

(3) If the ▶<sup>1</sup>Inland Revenue◀ is not satisfied that an amount of earnings-related contributions paid ▶<sup>1</sup>◀ under paragraph 10 or 11 for any ▶<sup>1</sup>◀ tax period is the full amount which the employer is liable to pay ▶<sup>1</sup>◀, the Inland Revenue may give a notice under sub-paragraph (1) despite the payment of that amount.

**Specified amount of earnings-related contributions payable by the employer**

<sup>2</sup>Words substituted, inserted, omitted & sub-para. (1A) added to para. 15 by reg. 4(1)-(9) of S.I. 2008/636 as from 6.4.08.

**15.**—(1) If after ▶<sup>1</sup>17 days◀ following the end of any ▶<sup>1</sup>◀ tax period the employer has paid no amount of earnings-related contributions to the ▶<sup>2</sup>HMRC(a)◀ under paragraph 10 or 11 for that ▶<sup>1</sup>◀ period and there is reason to believe that the employer is liable to pay such contributions, the ▶<sup>2</sup>HMRC◀, upon consideration of the employer's record of past payments, ▶<sup>2</sup>whether of earnings-related contributions or of combined amounts,◀ may to the best of ▶<sup>1</sup>their judgment◀ specify the amount of earnings-related contributions ▶<sup>2</sup>or of a combined amount◀ which ▶<sup>1</sup>they consider◀ the employer is liable to pay and give notice to him of that amount.

▶<sup>2</sup>(1A) For the purposes of this paragraph “combined amount” is an amount which includes earnings-related contributions due under these regulations and one or more of the following—

- (a) tax due under the PAYE Regulations;
- (b) amounts due under the Income Tax (Construction Industry Scheme) Regulations 2005(b);
- (c) payments of repayments of student loans due under the ▶<sup>3</sup>Education (Student Loans) (Repayment) Regulations 2009◀.

<sup>3</sup>Words substituted in para. 15(1A)(c), para. 15(1B) inserted by reg. 10 & 26(a) of S.I. 2012/821 as from 6.4.12.

▶<sup>3</sup>(1B) In arriving at an amount under paragraph (1), HMRC may also take into account any returns made by the employer under this Schedule in the tax period in question or earlier tax periods.◀

(2) If, on the expiration of the period of 7 days allowed in the notice, the specified amount ▶<sup>3</sup>◀ or any part thereof is unpaid, the amount so unpaid—

- (a) shall be treated for the purposes of this Schedule as an amount of earnings-related contributions ▶<sup>2</sup>or as including an amount of earnings-related contributions◀ which the employer was liable to pay for that ▶<sup>1</sup>◀ tax period in accordance with paragraph 10 or 11; and
- (b) may be certified by the ▶<sup>2</sup>HMRC◀.

(3) The provisions of sub-paragraph (2) shall not apply if, during the period allowed in the notice, the employer pays to the ▶<sup>2</sup>HMRC◀ the full amount of earnings-related contributions which the employer is liable to pay under paragraph 10 or 11 for that ▶<sup>1</sup>◀ tax period, or the employer satisfies the ▶<sup>2</sup>HMRC◀ that no amount of such contributions is due.

(4) The production of a certificate such as is mentioned in sub-paragraph (2) shall, until the contrary is established, be sufficient evidence that the employer is liable to pay to the ▶<sup>2</sup>HMRC◀ the amount shown in it; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

(a) The definition of “HMRC” in paragraph 1(2) of Schedule 4, meaning Her Majesty's Revenue and Customs, was inserted by S.I. 2007/1056.

(b) S.I. 2005/2045.

Paragraph 16 shall apply, with any necessary modifications, to the amount shown in the certificate.

(5) Where the employer has paid no amount of earnings-related contributions under paragraph 10 or 11 for any ►<sup>1</sup>◄ tax periods, a notice may be given by the ►<sup>2</sup>HMRC◄ under sub-paragraph (1) which extends to two or more consecutive ►<sup>1</sup>◄ tax periods, and this Schedule shall have effect as if those ►<sup>1</sup>◄ tax periods were the latest ►<sup>1</sup>◄ tax period specified in the notice.

<sup>1</sup>Words substituted & omitted in paras. (15) & (16) by reg. 32(6)-(8) of S.I. 2004/770 as from 6.4.04.

(6) A notice may be given by the ►<sup>2</sup>HMRC◄ under sub-paragraph (1) notwithstanding that an amount of earnings-related contributions has been paid ►<sup>1</sup>◄ by the employer under paragraph 10 or 11 for any ►<sup>1</sup>◄ tax period, if, after seeking the employer's explanation as to the amount of earnings-related contributions paid, the ►<sup>2</sup>HMRC◄ is not satisfied that the amount so paid is the full amount which the employer is liable to pay ►<sup>1</sup>◄ for that period, and this paragraph shall have effect accordingly, save that sub-paragraph (2) shall not apply if, during the period allowed in the notice, the employer satisfies the ►<sup>2</sup>HMRC◄ that no further amount of earnings-related contributions is due for the relevant ►<sup>1</sup>◄ tax period.

<sup>2</sup>Words substituted, inserted & omitted by reg. 4(1)-(9) of S.I. 2008/636 as from 6.4.08.

(7) Where, during the period allowed in a notice given by the ►<sup>2</sup>HMRC◄ under sub-paragraph (1), the employer claims, but does not satisfy the ►<sup>2</sup>HMRC◄, that the payment ►<sup>2</sup>◄ made in respect of any ►<sup>1</sup>◄ tax period specified in the notice is ►<sup>1</sup>◄ or includes◄ the full amount of earnings-related contributions he is liable to pay to the ►<sup>2</sup>HMRC◄ for that period, the employer may require the ►<sup>2</sup>HMRC◄ to inspect the employer's documents and records as if the ►<sup>2</sup>HMRC◄ had called upon the employer to produce those documents and records in accordance with ►<sup>3</sup>Schedule 36 to the Finance Act 2008 (information and inspection powers) and the provisions of paragraph 26(A)◄ shall apply in relation to that inspection, and the notice given by the ►<sup>2</sup>HMRC◄ under sub-paragraph (1) shall be disregarded in relation to any subsequent time.

<sup>3</sup>Words substituted in para. 15(7) by reg. 8(3) of S.I. 2009/600 as from 6.4.09.

(8) Notwithstanding anything in this paragraph, if the employer pays any amount of earnings-related contributions certified by the ►<sup>2</sup>HMRC◄ under it ►<sup>2</sup>◄ whether separately or as part of a combined amount◄ and that amount exceeds the amount which he would have been liable to pay in respect of that ►<sup>1</sup>◄ tax period apart from this paragraph, he shall be entitled to set off such excess against any amount which he is liable to pay to the ►<sup>2</sup>HMRC◄ under paragraph 10 or 11 for any subsequent ►<sup>1</sup>◄ tax period.

(9) If, after the end of the year, the employer renders the return required by paragraph 22(1) and the total earnings-related contributions he has paid in respect of that year in accordance with this Schedule exceeds the total amount of such contributions due for that year, any excess not otherwise recovered by set-off shall be repaid.

### Recovery of earnings-related contributions or Class 1B contributions

**16.**—(1) The Income Tax Acts and any regulations under ►<sup>4</sup>section 684 of ITEPA 2003 (PAYE regulations)◄ relating to the recovery of tax shall apply to the recovery of—

<sup>4</sup>Words substituted & omitted in para. 16 by reg. 32(8) of S.I. 2004/770 as from 6.4.04.

- (a) any amount of earnings-related contributions which an employer is liable to pay the ►<sup>5</sup>HMRC◄ for any ►<sup>4</sup>◄ tax period in accordance with paragraph 10 or 11 or which he is treated as liable to the ►<sup>5</sup>HMRC◄ ►<sup>4</sup>◄ whether separately or as part of a combined amount◄ for any ►<sup>4</sup>◄ tax period under paragraph 15; or
- (b) any amount of Class 1B contributions which an employer is liable to pay to the ►<sup>5</sup>HMRC◄ in respect of any year in accordance with paragraph 13(1),

<sup>5</sup>Words substituted, omitted, & inserted in para. 16 by regs. 5(1)-(4) of S.I. 2008/636 as from 6.4.08.

as if each of those amounts had been charged to tax by way of an assessment on the employer ►<sup>4</sup>◄ as employment income under ITEPA 2003◄.

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(2) Sub-paragraph (1) is subject to the qualification that, in the application to any proceedings taken, by virtue of this paragraph, of any of the relevant provisions limiting the amount which is recoverable in those proceedings, there shall be disregarded any ►<sup>1</sup>other component of a combined amount◄ which may, by virtue of sub-paragraphs (3) to (5), be included as part of the cause of action or matter of complaint in those proceedings.

<sup>1</sup>Words substituted, omitted, & inserted in para. 16 by regs. 5(1)-(4) of S.I. 2008/636 as from 6.4.08.

(3) Proceedings may be brought for the recovery of the total amount of—

- (a) earnings-related contributions which the employer is liable to pay to the ►<sup>1</sup>HMRC◄ for any ►<sup>1</sup>◄ tax period;
- (b) Class 1B contributions which the employer is liable to pay to the ►<sup>1</sup>HMRC◄ in respect of any year;
- (c) a combination of those classes of contributions as specified in heads (a) and (b); or
- (d) any of the contributions as specified in heads (a), (b), or (c) in addition to any ►<sup>1</sup>other component of a combined amount◄ which the employer is liable to pay to the ►<sup>1</sup>HMRC◄ for any ►<sup>2</sup>◄ tax period,

<sup>2</sup>Words substituted & omitted in para. 16 by reg. 32(8) of S.I. 2004/770 as from 6.4.04.

without specifying the respective amount of those contributions and of ►<sup>1</sup>other component of a combined amount◄, or distinguishing the amounts which the employer is liable to pay in respect of each employee and without specifying the employees in question.

(4) For the purposes of—

- (a) proceedings under section 66 of the Taxes Management Act 1970(a) (including proceedings under that section as applied by the provisions of this paragraph);
- (b) summary proceedings (including in Scotland proceedings in the sheriff court or in the sheriff's small debt court),

the total amount of contributions, in addition to any ►<sup>1</sup>other component of a combined amount◄ which the employer is liable to pay to the ►<sup>1</sup>HMRC◄ for any ►<sup>2</sup>◄ tax period, referred to in sub-paragraph (3) shall, subject to sub-paragraph (2), be one cause of action or one matter of complaint.

(5) Nothing in sub-paragraph (3) or (4) shall prevent the bringing of separate proceedings for the recovery of each of the several amounts of—

- (a) earnings-related contributions which the employer is liable to pay for any ►<sup>3</sup>◄ tax period in respect of each of his several employees;
- (b) Class 1B contributions which the employer is liable to pay in respect of any year in respect of each of his several employees; ►<sup>4</sup>◄
- (c) tax which the employer is liable to pay for any ►<sup>3</sup>◄ tax period in respect of each of his several employees.
- <sup>4</sup>(d) amounts due under the Income Tax (Construction Industry Scheme) Regulations 2005; or
- (e) payments of repayments of student loans due under the ►<sup>5</sup>Education (Student Loans) (Re-payment) Regulations 2009◄.

<sup>3</sup>Words in para. 16 omitted by reg. 32(8) of S.I. 2004/770 as from 6.4.04.

<sup>4</sup>Words substituted, inserted & omitted in para. 16 by reg. 5(3)-(6) of S.I. 2008/636 as from 6.4.08.

<sup>5</sup>Words substituted in para. 16(5)(e) by reg. 26(b) of S.I. 2012/821 as from 6.4.12.

(6) For the purposes of this paragraph “combined amount” has the meaning given in paragraph 15(1A).◄

#### Interest on overdue earnings-related contributions or Class 1B contributions

17.—(1) ►<sup>6</sup>Subject to ►<sup>7</sup>sub-paragraph (4A) and◄ paragraph 21◄, where, in relation to the year ended 5th April 1993 or any subsequent year, an employer has not—

<sup>6</sup>Words substituted in para. 17(1) & (3)(b) by reg. 329(a) & c of S.I. 2004/770 as from 6.4.04.

<sup>7</sup>Words inserted in para. 17(1) by reg. 8(9) of S.I. 2007/1056 as from 6.4.07.

- (a) 1970 c. 9. Section 66 was amended by Part II of the Schedule 1 to the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3)), section 57(2) of the Finance Act 1984 (c. 43) and the Schedule to the High Court and County Courts Jurisdiction Order 1991 (S.I. 1991/724).



- (a) within 14 days <sup>1</sup>or, if payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, 17 days <sup>1</sup>of the end of the year paid an earnings-related contribution which he is liable to pay in respect of that year; or
- (b) paid a Class 1B contribution by 19th October <sup>1</sup>or, if payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, not later than 22nd October <sup>1</sup>next following the year in respect of which it was due,

<sup>1</sup>Words substituted in para. 17(1) & (3)(b) by reg. 329(a) & c of S.I. 2004/770 as from 6.4.04.

any contribution not so paid shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Act from the reckonable date until payment.

(2) Interest payable under this paragraph shall be recoverable as if it were an earnings-related contribution or a Class 1B contribution, as the case may be, in respect of which an employer is liable under paragraph 10, 11, or 13 to pay to the <sup>2</sup>HMRC <sup>2</sup>.

<sup>2</sup>Words substituted in para. 17(2) added by reg. 6(2) of S.I. 2008/636 as from 6.4.08.

(3) For the purposes of this paragraph—

- (a) “employer” means, in relation to a Class 1B contribution, the person liable to pay such a contribution in accordance with section 10A of the Act<sup>(a)</sup>;
- (b) “the reckonable date” means, in relation to—
- (i) an earnings-related contribution, the 14th day <sup>1</sup>or, if payment was made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, the 17th day <sup>1</sup>after the end of the year in respect of which it was due;
- (ii) a Class 1B contribution, the 19th October <sup>1</sup>or, if payment was made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, the 22nd October <sup>1</sup>next following the year in respect of which it was due<sup>3</sup>;
- (iii) a contribution payable in respect of retrospective earnings relating to a tax year which is closed at the time that the relevant retrospective contributions regulations come into force, the 14th day after the end of the tax month immediately following the tax month in which those regulations came into force.<sup>4</sup>

<sup>3</sup>Para. 17(3)(b)(iii) inserted by reg. 8(9)(b) of S.I. 2007/1056 as from 6.4.07.

(4) A contribution to which sub-paragraph (1) applies shall carry interest from the reckonable date even if the date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882<sup>(b)</sup>.

<sup>4</sup>(4A) Where an employer has not paid contributions in respect of retrospective earnings relating to a closed tax year by the date set out in paragraph 11A, any contribution not so paid shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Act from the reckonable date until payment.<sup>4</sup>

<sup>4</sup>Para. 17(4A) inserted by reg. 8(9)(c) of S.I. 2007/1056 as from 6.4.07.

<sup>5</sup>(5) A certificate of the <sup>6</sup>HMRC <sup>6</sup>that, to the best of their knowledge and belief, any amount of interest payable under this paragraph has not been paid by an employer or employee is sufficient evidence that the amount mentioned in the certificate is unpaid and due to be paid, and any document purporting to be such a certificate shall be presumed to be a certificate until the contrary is proved.<sup>5</sup>

<sup>5</sup>Para. 17(5) substituted by reg. 32(9)(d) of S.I. 2004/770 as from 6.4.04.

<sup>6</sup>(6) HMRC may prepare a certificate certifying the total amount of interest payable in respect of the whole or any component of a combined amount without specifying what component of the combined amount the interest relates to.

<sup>6</sup>Words substituted in para. 17(5) & sub-paras. (6) & (7) added by regs. 6(2) & (3) of S.I. 2008/636 as from 6.4.08.

Sub-paragraph (5) shall apply, with any necessary modifications, to the certificate.

(7) For the purposes of this paragraph “combined amount” has the meaning given in paragraph 15(1A).<sup>6</sup>

(a) Section 10A was inserted by section 53 of the Social Security Act 1998 (c. 14).

(b) 1882 c. 61. Section 92 was amended by sections 3(1) and (3) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

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<sup>1</sup>Para. 17A inserted by reg. 32(10) of S.I. 2004/770 as from 6.4.04.

**▶<sup>1</sup>Application of paragraphs 16 and 17 in cases of wilful failure to pay**

**17A.**—(1) If regulation 86(1)(a) applies paragraphs 16 and 17 shall apply to the employed earner to the extent of the primary contribution which the secondary contributor wilfully failed to pay.

(2) For the purpose of sub-paragraph (1) any reference in paragraph 16 and 17 to an employer shall be construed as a reference to the employed earner.◀

**Payment of interest on repaid earnings-related contributions or Class 1B contributions**

**18.**—(1) Where an earnings-related contribution paid by an employer in respect of the year ended 5th April 1993 or any subsequent year not later than the year ended 5th April 1999 is repaid to him and that repayment is made after the relevant date, any such repaid contribution shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Act from the relevant date until the order for the repayment is issued.

(2) For the purposes of sub-paragraph (1) “the relevant date” is—

- (a) in the case of an earnings-related contribution overpaid more than 12 months after the end of the year in respect of which the payment was made, the last day of the year in which it was paid; and
- (b) in any other case, the last day of the year after the year in respect of which the contribution in question was paid.

(3) Where an earnings-related contribution or a Class 1B contribution paid by an employer in respect of the year ended 5th April 2000 or any subsequent year is repaid to him and that repayment is made after the relevant date, any such repaid contribution shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Act from the relevant date until the order for the repayment is issued.

(4) For the purpose of sub-paragraph (3) “the relevant date” is—

- (a) in the case of—
  - (i) an earnings-related contribution, the 14th day after the end of the year in respect of which that contribution was paid; or
  - (ii) a Class 1B contribution, the 19th October next following the year in respect of which that contribution was paid; or
- (b) the date on which the earnings-related contribution or Class 1B contribution was paid if that date is later than the date referred to in paragraph (a).

**Repayment of interest**

**19.** Where a secondary contributor or a person liable to pay a Class 1B contribution has paid interest on an earnings-related contribution or a Class 1B contribution, that interest shall be repaid to him ▶<sup>2</sup>if◀—

- (a) the interest paid is found not to have been due to be paid, although the contribution in respect of which it was paid was due to be paid;
- (b) the earnings-related contribution or Class 1B contribution in respect of which interest was paid is returned or repaid to him in accordance with the provisions of regulation ▶<sup>3</sup>52, 52A or 55◀.

<sup>2</sup>Words inserted in para. 19 by reg. 8(10) of S.I. 2007/1056 as from 6.4.07.

<sup>3</sup>Words in para. 19(b) substituted by reg. 32(11) of S.I. 2004/770 as from 6.4.04.

**Remission of interest for official error**

**20.**—(1) Where interest is payable in accordance with paragraph 17 it shall be remitted for the period commencing on the first relevant date and ending on the second relevant date in the circumstances specified in sub-paragraph (2).

(2) For the purposes of sub-paragraph (1), the circumstances are that the liability, or a greater liability, to pay interest in respect of an earnings-related contribution or a Class 1B contribution arises as the result of an official error being made.

(3) In this paragraph—

- (a) “an official error” means a mistake made, or something omitted to be done, by an officer of the Board, where the employer or any person acting on his behalf has not caused, or materially contributed to, that mistake or omission;

- (b) “the first relevant date” means the reckonable date as defined in paragraph 17(3) or, if later, the date on which the official error occurs;
- (c) “the second relevant date” means the date 14 days after the date on which the official error has been rectified and the employer is advised of its rectification.

#### Application of paragraphs 10, 12, 16, 17, 18, 19 and 20

21.—(1) This paragraph applies where—

- (a) secondary Class 1 contributions are payable in respect of <sup>1</sup>relevant employment income; and
- (b) an amount or proportion (as the case may be) of the liability of the secondary contributor to those contributions is transferred to the employed earner by an election made jointly by them for the purposes of paragraph 3B(1) of Schedule 1 to the Act<sup>(a)</sup>.

<sup>1</sup>Words substituted in para. 21(1)(a) by reg. 7(c) of S.I. 2004/2096 as from 1.9.04.

(2) Paragraphs 10, 12, 16, 17, 18, 19 and 20 shall apply to the employed earner to the extent of the liability transferred by the election and, to that extent, those paragraphs shall not apply to the employer.

(3) For the purposes of sub-paragraph (2)—

- (a) any reference in paragraphs 10, 12, 16, 17, 18 and 20 to an employer; and
- (b) the reference in paragraph 19 to a secondary contributor,

shall be construed as a reference to the employed earner to whom the liability is transferred by the election.

#### <sup>2</sup>Real time returns of information about payments of general earnings

21A.—(1) <sup>3</sup>Subject to <sup>4</sup>sub-paragraph (1A)<sup>(a)</sup>, on or before making any payment of general earnings to an employee a Real Time Information employer must deliver to HMRC the information specified in Schedule 4A (real time returns) in accordance with this paragraph <sup>5</sup>unless—

- (a) the employer is not required to maintain a deductions working sheet for any employees, or
- (b) an employee’s earnings are below the lower earnings limit and the employer is required to make a return under regulation 67B(1), regulation 67D(3), regulation 67E(6) or regulation 67EA(3) of the PAYE Regulations<sup>(b)</sup>.

<sup>2</sup>Para. 21A-F inserted in Sch. 4 by reg. 11 of S.I. 2012/821 as from 6.4.12.

<sup>3</sup>Words inserted in para. 21A of Sch. 4 by reg. 3(a) of S.I. 2013/2301 as from 6.10.13.

<sup>4</sup>Para. 21A(1A) and (1B) substituted by reg. 7(b) of S.I. 2014/608 as from 6.4.14.

<sup>5</sup>Words substituted in para. 21A of Sch. 4 by reg. 10(2) as from 6.4.13.

<sup>4</sup>(1A) But a Real Time Information employer—

- (a) which for the tax year 2014-15 meets Conditions A and B, or
- (b) which for the tax year 2015-16 meets Conditions A and C,

may instead for that tax year deliver to HMRC the information specified in Schedule 4A (real time returns) in respect of every payment of general earnings made to an employee in tax month on or before making the last payment of general earnings in that month.

(1B) Condition A is that at 5th April 2014 the employer is one to whom HMRC has issued an employer’s PAYE reference.

(1C) Condition B is that at 6th April 2014 the Real Time Information employer employs no more than 9 employees.

(1D) Condition C is that at 6th April 2015 the Real Time Information employer employs no more than 9 employees.

(1E) In this paragraph “employer’s PAYE reference” means—

- (a) the combination of letters, numbers, or both, used by HMRC to identify an employer for the purposes of the PAYE Regulations, and
- (b) the number which identifies the employer’s HMRC office.<sup>(a)</sup>

(a) Paragraph 3B was inserted into Schedule 1 by section 77(2) of the Child Support, Pensions and Social Security Act 2000.

(b) Regulations 67B, 67D and 67E were inserted into the PAYE Regulations by regulation 27 of S.I. 2012/822 and regulation 67EA was inserted by regulation 23 of S.I. 2013/521.

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(2) The information must be included in a return.

(3) Subject to paragraph (4), if payments of general earnings are made to more than one employee at the same time, the return under sub-paragraph (2) must include the information required by Schedule 4A in respect of each employee to whom a payment of general earnings is made at that time.

(4) If payments of general earnings are made to more than one employee at the same time but the employer operates more than one payroll, the employer must make a return in respect of each payroll.

(5) The return is to be made using an approved method of electronic communications and regulation 90N(2) (mandatory use of electronic communications) applies as if the return was a paragraph 22 return within the meaning given by regulation 90M (paragraph 22 return and specified payments).

(6)—(7) ►<sup>1</sup>◄

(8) Schedule 24 to the Finance Act 2007(a) (penalties for errors), as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (2).

<sup>1</sup>Paras. 21A(6) & (7) omitted & paras. 21AA-21AD inserted in Sch. 4 by regs. 10(3) & 11 of S.I. 2013/622 as from 6.4.13.

**►<sup>1</sup>Employees in respect of whom employer is not required to maintain a deductions worksheet**

**21AA.**—(1) This paragraph applies if an employer makes a payment of general earnings to an employee in respect of whom the employer is not required to maintain a deductions working sheet.

(2) The employer need not deliver the information required by paragraph 21A in respect of that employee on or before making the payment.

(3) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

**Employees paid in specified circumstances**

**21AB.**—(1) This paragraph applies if—

- (a) an employer makes a payment of general earnings to an employee, and
- (b) all of the circumstances in sub-paragraph (2) apply.

(2) The circumstances are that—

- (a) the payment includes an amount of general earnings which is for work undertaken by the employee on—
  - (i) the day the payment is made, or
  - (ii) provided that the payment is made before the employee leaves the place of work at the end of the employee's period of work, the day before the payment is made,
- (b) in respect of the work mentioned in paragraph (a), it was not reasonably practicable for the employer to calculate the payment due before the completion of the work, and
- (c) it is not reasonably practicable for the employer to deliver the information required by paragraph 21A on or before making the payment.

(3) The employer need not deliver the information required by paragraph 21A on or before making the payment.

(4) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

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(a) 2007 c. 11.

**Paragraphs 21AA and 21AB: supplementary**

**21AC.** Where paragraph 21AA or 21AB applies, the information required by paragraph 21A in respect of the payment of general earnings may be included in a return with the information for any other payment of general earnings.

**Benefits and expenses - returns under regulations 85 to 87 of the PAYE Regulations**

**21AD.**—(1) This paragraph applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax, falls to be included in a return under—

- (a) regulations 85 and 86 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) - information which must be provided for each employee), or
- (b) regulations 85 and 87 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) - information which must also be provided for benefits code employees) or would fall to be so included if the employee's employment was subject to the benefits code for the purposes of regulation 85 of the PAYE Regulations.

(2) If the employer is unable to comply with the requirement in paragraph 21A(1) to deliver the information required by that paragraph on or before making the payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than 14 days after the end of the tax month in which the payment is made.◀

**Modification of the requirements of paragraph 21A: notional payments**

**21B.**—(1) This ▶<sup>1</sup>paragraph◀ applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax, is a notional payment within the meaning given by section 710(2) of ITEPA 2003 (including a notional payment arising by virtue of a retrospective tax provision).

<sup>1</sup>Word in para. 21B(1) substituted, para. 21B(2)(b) omitted & para. 21CA inserted to Sch. 4 by regs. 12 & 13 of S.I. 2013/622 as from 6.4.13.

(2) If the employer is unable to comply with the requirement in paragraph 21A(1) to deliver the information required by that paragraph on or before making the payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than—

- (a) the time at which the employer delivers the information required by regulation 67B of the PAYE Regulations(a) (real time returns of information about relevant payments) in respect of the payment;
- (b) ▶<sup>1</sup>◀; or
- (c) 14 days after the end of the tax month the payment is made in,

whichever is earliest.

**Relationship between paragraph 21A and aggregation of earnings**

**21C.**—(1) Where an employee's earnings are aggregated, a Real Time Information employer or, as the case may be, Real Time Information employers must make such arrangements as are necessary to ensure that the information specified in paragraph (2) in respect of all the aggregated earnings is included in the information given in respect of one of the employee's employments only.

(2) The information specified in this paragraph is the information specified in paragraphs 7 and 10(b) and (d) of Schedule 4A (real time returns).

**▶<sup>1</sup>Notifications of payments of general earnings to and by providers of certain electronic payment methods**

**21CA.**—(1) A Real Time Information employer who makes a payment of general earnings using an approved method of electronic communications which falls to be included in a return under paragraph 21A must—

- 
- (a) The "PAYE Regulations" is defined by regulation 1(2) of S.I. 2001/1004 as meaning the Income Tax (Pay as You Earn) Regulations 2003 (S.I. 2003/2682).

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- (a) generate a reference and include it in that return,
- (b) notify the service provider that the payment is a payment of general earnings, and
- (c) generate a sub-reference in respect of the payment of general earnings and notify the service provider of that sub-reference.

(2) A service provider who receives a notification under paragraph (1)(b) must notify HMRC of the information it holds that is required for generating a reference in relation to the payment of general earnings.

(3) In sub-paragraphs (1) and (2), “service provider” means the provider of the approved method of electronic communications by which the payment is made.

(4) For the purposes of sub-paragraphs (1) and (3), an “approved method of electronic communications” is any method of electronic communications which has been approved for the purposes of regulation 90H (mandatory electronic payment).

(5) Any direction given under regulation 67CA of the PAYE Regulations (notification of relevant payments to and by providers of certain electronic payment methods)(a) applies for the purposes of the obligations in this paragraph as if it referred to payments of general earnings.◀

**Exceptions to paragraph 21A**

**21D.**—(1) This paragraph applies to—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications;
- (b) a partnership, if all the partners fall within sub-paragraph (a);
- (c) a company, if all the directors and the company secretary fall within sub-paragraph (a);
- (d) a care and support employer▶<sup>1</sup>;
- (e) an employer to whom a direction has been given under sub-paragraph (12).◀▶<sup>2</sup>but this is subject to sub-paragraph (2B).◀

(2) A Real Time Information employer to whom this paragraph applies may proceed in accordance with this paragraph instead of paragraph 21A.

▶<sup>1</sup>(2A) Before 6th April 2014, a Real Time Information employer to whom this paragraph applies may proceed as if the employer were a non-Real Time Information employer and accordingly the provisions of this Schedule apply to such an employer.◀

▶<sup>2</sup>(2B) This paragraph does not apply if a Real Time Information employer within sub-paragraph (1) makes a return using an approved method of electronic communications.◀

(3) ▶<sup>1</sup>On and after 6th April 2014, the◀ Real Time Information employer must deliver to HMRC the information specified in Schedule 4A in respect of each employee to whom a payment of general earnings is made in a tax ▶<sup>2</sup>quarter◀ unless the employer is not required to maintain a deductions working sheet for any employees and, for the purposes of this paragraph, references in Schedule 4A to a payment of general earnings shall be read as if they were references to all the payments made to the employee in the tax ▶<sup>2</sup>quarter◀.

(4) The information must be included in a return in such a form as HMRC may approve or prescribe.

(5) The return required under sub-paragraph (4) must be delivered within 14 days after the end of the tax ▶<sup>2</sup>quarter◀ the return relates to.

(6) If payments of general earnings have been made to more than one employee in the tax ▶<sup>2</sup>quarter◀, the return under sub-paragraph (4) must include the information required by Schedule 4A in respect of each employee to whom a payment of general earnings has been made.

(7)—(8)▶<sup>1</sup>◀

(9) Schedule 24 to the Finance Act 2007, as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (4).

(a) Regulation 67CA of the PAYE Regulations was inserted by regulation 2 of S.I. 2012/1895.

<sup>1</sup>Paras. 21D(1)(e) & (2A) inserted, words substituted in para. 21D(3) & paras. 21D(7) & (8) omitted in Sch. 4 by reg. 14(1)-(5) of S.I. 2013/622 as from 6.4.13.

<sup>2</sup>Words in para. 21D(1), and (2B) inserted and substituted in sub-paras. (3), (5) and (6) by reg. 8(c) of S.I. 2014/608 as from 6.4.14.

(10) In sub-paragraph (1)(c), “company” means a body corporate or unincorporated association but does not include a partnership.

(11) In sub-paragraph (1)(d), “care and support employer” means an individual (“the employer”) who employs a person to provide domestic or personal services at or from the employer’s home where—

- (a) the services are provided to the employer or a member of the employer’s family;
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm; and
- (c) it is the employer who delivers the return (and not some other person on the employer’s behalf).

▶<sup>1</sup>(12) Where the Commissioners for Her Majesty’s Revenue and Customs are satisfied that—

- (a) it is not reasonably practicable for an employer to make a return using an approved method of electronic communications, and
- (b) it is the employer who delivers the return (and not some other person on the employer’s behalf),

<sup>1</sup>Para. 21D(12) inserted in Sch. 4 by reg. 14(6) of S.I. 2013/622 as from 6.4.13.

they may make a direction specifying that the employer is not required to make a return using an approved method of electronic communications.◀

### Returns under paragraphs 21A and 21D: amendments

**21E.**—(1) This paragraph applies where ▶<sup>2</sup>there is an inaccuracy in a return, whether careless or deliberate◀ made under paragraph 21A (real time returns of information about payments of general earnings) or 21D (exceptions to paragraph 21A) and sub-paragraph (2), (3) or (4) applies.

<sup>2</sup>Words in para. 21E(1), (2), (3) & (5) substituted by reg. 9(a)-(c) of S.I. 2014/608 as from 6.4.14.

(2) This sub-paragraph applies where the ▶<sup>2</sup>inaccuracy◀ relates to the information given in the return in respect of an employee under ▶<sup>3</sup>one or more of paragraphs 3A, 7(a)◀, 10(b), 10(d), 13, 14, 15, 16 or 18 of Schedule 4A (real time returns).

<sup>3</sup>Words substituted and omitted in para. 21E(2) & (7)(i) & (ii) of Sch. 4 by reg. 15(2)-(3)(b).

(3) This sub-paragraph applies where the ▶<sup>2</sup>inaccuracy◀ was the omission of details of a payment of general earnings to an employee.

(4) This sub-paragraph applies where retrospective earnings increase the total amount of the general earnings paid to the employee for any tax year in which the employer was a Real Time Information employer.

▶<sup>2</sup>(5) When the employer becomes aware of an inaccuracy in a return under paragraph 21A or 21D, the employer must provide the correct information in the next return for the tax year in question.◀

(6) But if the information given has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this sub-paragraph.

(7) A return under sub-paragraph (6)–

- (a) must include the following–
  - (i) the information specified in paragraphs ▶<sup>3</sup>2 to 7 and 10 to 12◀ of Schedule 4A,
  - (ii) ▶<sup>3</sup>◀
  - (iii) the value of the adjustment, if any, to the information given under each of the paragraphs of Schedule 4A referred to in sub-paragraph (2) in the final return under paragraph 21A or 21D containing information in respect of the employee in the tax year in question,
  - (iv) if an adjustment is made to the information given under paragraph 7 or 10(b) or (d) of Schedule 4A, the information specified in paragraph 6 of that Schedule,
  - (v) if an adjustment is made to the information given under paragraph 10(d) of Schedule 4A that decreases the amount reported under that paragraph, an indication of whether the employer has refunded the primary Class 1 contributions paid in error to the employee, and

(a) Paragraph 3A of Schedule 4A is inserted by regulation 26 of these Regulations.

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(vi) if an adjustment is made to the information given under paragraph 16 of Schedule 4A, the information specified in paragraph 17 of that Schedule if it has not already been provided;

<sup>1</sup>Words in para. 21E(7)(b) substituted by reg. 9(d) of S.I. 2014/608 as from 6.4.14.

<sup>2</sup>Words in 21D(7)(c) & para. 21EA inserted in Sch. 4 by regs. 15(3)(c) & 16 of S.I. 2013/622 as from 6.4.13.

(b) must be made as soon as reasonably practicable after the ►<sup>1</sup>employer becomes aware of the inaccuracy◄; and

(c) must be made using an approved method of electronic communications ►<sup>2</sup>and regulation 90N(2) (mandatory use of electronic communications) applies as if the return was a paragraph 22 return within the meaning given by regulation 90M (paragraph 22 return and specified payments)◄.

(8) In the application of sub-paragraphs (6) and (7) to cases within sub-paragraph (3), if no information was given in any returns under paragraph 21A or 21D in respect of the employee in the tax year, the value of any adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(9) Sub-paragraph (7)(c) does not apply if the employer is one to whom paragraph 21D applies but in those circumstances the return must be in such a form as HMRC may approve or prescribe.

### ►<sup>3</sup>Failure to make a return under paragraph 21A or 21D

**21EA.**—(1) This paragraph applies where an employer does not make a return required by paragraph 21A (real time returns of information about payments of general earnings) or 21D (exceptions to paragraph 21A).

(2) The employer must provide the information in the next return made under paragraph 21A or 21D for the tax year in question.

(3) But if the information has not been provided before 20th April following the end of the tax year in question, the employer must submit a return under this sub-paragraph ►<sup>3</sup>◄.

<sup>3</sup>Words omitted in para. 21EA(3), inserted & substituted in 21EA(6) by reg. 4(a) & (b) of S.I. 2013/2301 as from 6.10.13.

(4) A return under sub-paragraph (3) must—

(a) include the information specified in Schedule 4A,

(b) be made as soon as reasonably practicable after the discovery of the failure to make the return, and

(c) be made using an approved method of electronic communications and regulation 90N(2) (mandatory use of electronic communications) applies as if the return were a paragraph 22 return within the meaning given by regulation 90M (paragraph 22 return and specified payments).

(5) Sub-paragraph (4)(c) does not apply if the employer is one to whom paragraph 21D applies but in those circumstances the return must be in such a form as HMRC may approve or prescribe.

(6) ►<sup>3</sup>If a return under sub-paragraph (3) is not made before 20th May following the tax year in question◄ Section 98A of TMA 1970 (special penalties in the case of certain returns)(a) applies to ►<sup>3</sup>that return◄►<sup>4</sup>, but this sub-paragraph does not apply to a return in respect of the tax year 2014-15 or a subsequent tax year.◄◄

<sup>4</sup>Words inserted in para. 21EA(6) by reg. 3(4) of S.I. 2014/2397 as from 6.10.14 (applies in respect of general earnings paid on or after the effective date, see reg. 1(2)).

### Additional information about payments

**21F.**—(1) A Real Time Information employer must inform HMRC of each of the amounts specified in Schedule 4B (additional information about payments) for each tax period unless sub-paragraph (4) or (5) applies.

(2) The information must be given in a return.

(3) The return must be delivered within 14 days after the end of the tax period.

(4) This sub-paragraph applies if—

(a) all of the amounts are zero; and

(b) the employer has not made a return under sub-paragraph (2) in the tax year.

(a) 1970 (c. 9). Section 98A was inserted by section 165 of the Finance Act 1989 (c. 26) and has been amended by paragraphs 123 and 138 of Schedule 6 to ITEPA; paragraph 8 of Schedule 12 to the Finance Act 2004 (c. 12) and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c. 11).



(5) This paragraph applies if none of the amounts has changed in the tax period.

(6) If an employer makes an error in a return under this paragraph, the employer must provide the correct information in the first return made under sub-paragraph (2) after the discovery of the error.

(7) But if the information given has not been corrected before 20th April following the end of the year in question, the employer must provide the correct information for the year in question in a return under this sub-paragraph.

►<sup>1</sup>(7A) A Real Time Information employer may send to HMRC a notification (included within a return under this paragraph or otherwise) if—

- (a) for a tax period, the employer was not required to make any returns in accordance with paragraph 21A or 21D because no payments of general earnings were made during the tax periods, or
- (b) the employer has sent the final return under paragraph 21A or 21D that the employer expects to make—
  - (i) in the circumstances described in paragraph 5 of Schedule A1 to the PAYE Regulations (real time returns)(a); or
  - (ii) for the year. ◀

<sup>1</sup>Para. 21F(7A), (8)(v) and words in (8) inserted, word in (8)(a)(iii) & sub-para. (9) omitted in Sch. 4 by reg. 17 of S.I. 2013/622 as from 6.4.13.

(8) A return under sub-paragraph (2) or (7) ►<sup>1</sup>and a notification under paragraph (7A)◀

- (a) must state—
  - (i) the year to which the return relates,
  - (ii) the employer's HMRC office number,
  - (iii) the employer's PAYE reference, ►<sup>1</sup>◀
  - (iv) the employer's accounts office reference►<sup>1</sup>, and
  - (v) if the notification is under sub-paragraph (7A)(b)(i), include the date of cessation;◀
- (b) is to be made using an approved method of electronic communications.

(9) ►<sup>1</sup>◀

(10) For the purposes of sub-paragraph (8)(b), regulation 90N(2) (mandatory use of electronic communications) applies as if the return was a paragraph 22 return within the meaning given by regulation 90M (paragraph 22 return and specified payments).

(11) The requirement to use an approved method of electronic communications does not apply if the employer is one to whom paragraph 21D (exceptions to paragraph 21A) applies but in those circumstances the return must be in such a form as HMRC may approve or prescribe.

(12) Schedule 24 to the Finance Act 2007 (penalties for errors), as that Schedule applies to income tax returns, shall apply in relation to the requirement to make a return contained in sub-paragraph (2) or (7).

►<sup>2</sup>**Penalty: failure to comply with paragraph 21A or 21D**

**21G.**—(1) Where a Real Time Information employer fails to deliver a return in accordance with paragraph 21A (real time returns of information about payments of general earnings) to paragraph 21AB (employees paid in specific circumstances)(b), paragraph 21AD (benefits and expenses - returns under the PAYE Regulations)(c), paragraph 21B (modification of the requirements of paragraph 21A: notional

<sup>2</sup>Para. 21G inserted by reg. 3(5) of S.I. 2014/2397 as from 6.10.14. (See reg. 1(3) for effective dates in some circumstances).

(a) Schedule A1 to the PAYE Regulations was inserted by regulation 52 of S.I. 2012/822.

(b) Paragraph 21A was inserted by regulation 11 of S.I. 2012/821, and has been amended by regulation 10 of S.I. 2013/622, regulation 3 of S.I. 2013/2301 and regulation 7 of S.I. 2014/608. Paragraphs 21AA and 21AB were inserted by regulation 11 of S.I. 2013/622.

(c) Paragraph 21AD was inserted by regulation 11 of S.I. 2013/622.

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payments)(a) or paragraph 21D (exceptions to paragraph 21A)(b), Schedule 55 to the Finance Act 2009 (amount of penalty: real time information for PAYE)(c) and regulations 67I to 67K of the PAYE Regulations (penalties)(d) apply in relation that failure as if—

- (a) the return under paragraph 21A (real time returns of information about payments of general earnings) or paragraph 21D (exceptions to paragraph 21A), as the case may be, were a return falling within item 4 of the Table in paragraph 1 of Schedule 55(e), and
- (b) references to the PAYE Regulations were references to these Regulations, but this is subject to sub-paragraph (2).

(2) Where a Real Time Information employer (P) is liable to a penalty in consequence of a failure to deliver a return (“the tax return”) under regulation 67B (real time returns of information about relevant payments) or regulation 67D (exceptions to regulation 67B of the PAYE Regulations (f), P shall not also be liable to a penalty in respect of any failure in relation to an associated return under paragraph 21A (real time returns of information about payments of general earnings) or 21D (exceptions to paragraph 21A).

(3) A tax return and a return under paragraph 21A or 21D are “associated” if the return under paragraph 21A or 21D is required to be delivered at the same time as the tax return.◀

**Return by employer at end of year**

<sup>1</sup>Para. 22(A1) inserted in Sch. 4 by reg. 12 of S.I. 2012/821 as from 6.4.12.

<sup>2</sup>Word in para. 22(A1) substituted by reg. 18 of S.I. 2013/622 as from 6.4.13.

<sup>3</sup>Words in paras. 22(1) substituted by reg. 32(12) of S.I. 2004/770 as from 6.4.04.

<sup>4</sup>Words substituted in paras. 22(1) & sub- paras. (1)(a) by reg. 6(3) of S.I. 2008/636 as from 6.4.08.

22.—<sup>1</sup>(A1) This <sup>2</sup>paragraph◀ applies to—

- (a) non-Real Time Information employers;
- (b) Real Time Information employers in relation to years in which they were, for the whole of the year, non-Real Time information employers; and
- (c) Real Time Information employers to whom HMRC has given a notice requiring a return under regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax (Forms P35 and P14) in respect of a tax year.◀

(1) <sup>3</sup>Before 20th May following the end of the year the employer shall render to the <sup>4</sup>HMRC◀ in such form as they may approve or prescribe◀, a return showing in respect of each employee, in respect of whom he was required at any time during the year to prepare or maintain a deductions working sheet in accordance with this Schedule—

- (a) such particulars as <sup>4</sup>HMRC◀ may require for the identification of the employee,
- (b) the year to which the return relates,
- (c) in respect of each and under each of the category letters, the total amounts for the year shown under—

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- (a) Paragraph 21B was inserted by regulation 11 of S.I. 2012/821 and amended by regulation 12 of S.I. 2013/622.
  - (b) Paragraph 21D was inserted by regulation 11 of S.I. 2012/821 and has been amended by regulation 14 of S.I. 2013/622 and regulation 8 of S.I. 2014/608.
  - (c) 2009 c. 10. Schedule 55 has been relevantly amended by paragraphs 3 to 6 of Schedule 50 to the Finance Act 2013 (c. 29).
  - (d) The term “PAYE Regulations” is defined in regulation 1(2) and was inserted by regulation 3 of S.I. 2004/770. Regulations 67I to 67K were inserted into the PAYE Regulations by regulation 2 of S.I. 2014/2396.
  - (e) Item 4 of the Table in paragraph 1 of Schedule 55 to the Finance Act 2009 was amended by paragraph 3(a) of Schedule 50 to the Finance Act 2013.
  - (f) Regulations 67B and 67D were inserted into the PAYE Regulations by regulation 27 of S.I. 2012/822 and have been amended by regulations 18 and 21 of S.I. 2013/521 Regulation 67B has been amended by regulation 2 of S.I. 2013/2300 and by regulation 4 of S.I. 2014/472. Regulation 67D has been amended by regulation 5 of S.I. 2014/472. Regulations 67BA and 67BB were inserted by regulation 19 of S.I. 2013/522.

- (i) each of <sup>1</sup>sub-paragraphs (i) to (v) severally of paragraph 7(13)(b) (such amounts being rounded down to the next whole pound if not already whole pounds) in the case of paragraphs (i) to <sup>2</sup>(iii) and
- (ii)–(iii) <sup>1</sup> and
- (d) the total amount of any statutory maternity pay paid during the year; <sup>1</sup> and
- <sup>1</sup>(da) the total amount of <sup>3</sup><sup>4</sup> statutory paternity pay paid during the year; <sup>5</sup> and
- <sup>3</sup>(daa) <sup>4</sup> and
- (db) the total amount of statutory adoption pay paid during the year <sup>5</sup> and <sup>4</sup>; and
- (dc) the total amount of statutory shared parental pay paid during the year. and
- (e) <sup>5</sup> and

(2) The return required by sub-paragraph (1) shall include a statement and declaration in the form approved or prescribed by <sup>6</sup>HMRC containing a list of all deductions working sheets on which the employer was obliged to keep records in accordance with this Schedule in respect of that year, and shall also include a certificate showing–

- (a) the total amount of earnings-related contributions payable by him in respect of each employee during that year;
- (b) the total amount of earnings-related contributions payable in respect of all his employees during that year;
- (c) in relation to any contracted-out employment the number notified by <sup>6</sup>HMRC on the relevant contracting-out certificate as the employer's number;
- (d) in respect of statutory maternity pay paid during that year to all his employees, the total of amounts determined under regulation 3 of the Compensation of Employers Regulations and deducted by virtue of regulation 4 of those Regulations; <sup>4</sup> and
- <sup>1</sup>(da) in respect of <sup>3</sup><sup>4</sup> statutory paternity pay paid during that year to all his employees the total of the amounts determined under regulation 5 of the <sup>3</sup><sup>4</sup> Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002(a); <sup>5</sup> and
- <sup>3</sup>(daa) <sup>4</sup> and
- (db) in respect of statutory adoption pay paid during that year to all his employees the total of the amounts determined under regulation 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002 <sup>5</sup> and <sup>4</sup>; and
- (dc) in respect to statutory shared parental pay paid during the year to all his employees the total of the amounts determined under regulation 5 (deductions from payments to the Commissioners) of the Statutory Shared Parental Pay (Administration) Regulations 2014(b).
- (e) <sup>5</sup> and

<sup>7</sup>(2A) Where a liability arises to pay contributions in respect of retrospective earnings relating to a closed tax year, the employer shall render a replacement return, or where necessary prepare one, in respect of the employee for that closed tax year before 20th May following the end of the year in which the relevant retrospective contributions regulations came into force, in accordance with paragraphs (a) to (c) of sub-paragraph (1), setting out the revised earnings and earnings-related contributions.

(2B) The return required by sub-paragraph (2A) shall include a statement and declaration in a form prescribed by HMRC containing a list of all deductions working sheets in accordance with paragraph 6(1A) of this Schedule in respect of that year, and shall also include a certificate showing–

<sup>1</sup>Words in para. 22(1)(c)(i) substituted, paras. 22(1)(c)(ii)–(iii) omitted, word “and” omitted in paras. 22(1)(d) & (2)(d), paras. 22(1) & (2)(da) & (db) inserted by regs. 16(5)(a)–(c) of S.I. 2003/193 as from 6.4.03.

<sup>2</sup>Words substituted in para. 22(1)(c)(i) by reg. 4(4) of S.I. 2009/111 as from 6.4.09.

<sup>3</sup>Words in paras. 22(1)(da), (1)(daa), (2)(da) & (2)(daa) substituted & inserted by regs. 4(5)(a)–(d) of S.I. 2010/2450 as from 14.11.10.

<sup>4</sup>Words in paras. 22(1)(da), (1)(daa), (2)(da) & (2)(daa) omitted & substituted & (1)(dc) & (2)(dc) inserted by reg. 4(5) of S.I. 2015/175 as from 5.3.15.

<sup>5</sup>Words inserted & omitted in paras. 22(1) & (2) & sub-paras. 22(1)(e) & 22(1)(e) deleted by regs. 27(a)–(c) of S.I. 2012/821 as from 6.4.12.

<sup>6</sup>Words substituted in paras. 22(1), 22(2) & sub-paras. (1)(a) & (2)(c) by reg. 6(3) of S.I. 2008/636 as from 6.4.08.

<sup>7</sup>Paras. 22(2A) & (2B) inserted by reg. 8(12) of S.I. 2007/1056 as from 6.4.07.

(a) S.I. 2002/2820.

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- (a) the total amount of earnings-related contributions originally payable (in accordance with sub-paragraph (2)(a)) in respect of each employee to whom sub-paragraph (2A) applies;
- (b) the total amount of earnings-related contributions originally payable (in accordance with sub-paragraph (2)(b)) in respect of all employees to whom sub-paragraph (2A) applies;
- (c) the total amount of revised earnings-related contributions payable in respect of each of those employees;
- (d) the total amount of revised earnings-related contributions payable in respect of all those employees,
- (e) the difference between the amount certified in paragraph (b) and paragraph (d) of this sub-paragraph in respect of all of those employees;
- (f) in relation to any contracted-out employment the number notified by HMRC on the relevant contracting-out certificate as the employer's number.◀

<sup>1</sup>Para. 22(3) omitted by reg. 3(6) of S.I. 2014/2397 as from 6.10.14.

<sup>2</sup>Words substituted in paras. 22(4), (6) & (7) by reg. 8(12) & (13) of S.I. 2007/1056 as from 6.4.07.

<sup>3</sup>Words substituted in paras. 22(5) & (6) by reg. 6(3) of S.I. 2008/636 as from 6.4.08.

(3) ▶<sup>1</sup>◀

(4) If the employer is a body corporate, ▶<sup>2</sup>the declarations◀ and ▶<sup>2</sup>the certificates◀ referred to in ▶<sup>3</sup>sub-paragraphs (2) and (2B)◀ shall be signed by the secretary or by a director of the body corporate.

(5) If, within 14 days of the end of any year, an employer has failed to pay to ▶<sup>3</sup>HMRC◀ the total amount of earnings-related contributions which he is liable so to pay, ▶<sup>3</sup>HMRC◀ may prepare a certificate showing the amount of such contributions remaining unpaid for the year in question, excluding any amount deducted by the employer by virtue of the Compensation of Employers Regulations.

The provisions of paragraph 17 shall apply with any necessary modifications to the amount shown in that certificate.

(6) Notwithstanding sub-paragraphs (2) to (5), ▶<sup>2</sup>the returns referred to in sub-paragraphs (1) and (2A)◀ may be made in such other form as ▶<sup>3</sup>HMRC◀ and the employer approve, and in that case—

- (a) sub-paragraphs (2) to (5) shall not apply; and
- (b) the making of ▶<sup>2</sup>the returns◀ shall be subject to such conditions as ▶<sup>3</sup>HMRC◀ may direct as to the method of making it.

<sup>4</sup>Words in para. 22(7) substituted by reg. 7(a) of S.I. 2008/636 as from 6.4.08.

▶<sup>4</sup>(7) Section 98A of the Taxes Management Act 1970(a) (special penalties in the case of certain returns) and Schedule 24 to the Finance Act 2007 (Penalties for errors) as that Schedule applies to income tax returns◀ as modified by the provisions of paragraph 7 of Schedule 1 to the Act shall apply in relation to the requirement to make a return contained in sub-paragraph (1) ▶<sup>2</sup>and (2A)◀.

<sup>5</sup>Heading to para. 23 and words in para. 23(1)(a) substituted by reg. 7(d) & (c) of S.I. 2004/2096 as from 1.9.04.

▶<sup>5</sup>**Additional return by employer at end of year where liability transferred to employed earner: elections under paragraph 3B(1) of Schedule 1 to the Act**◀

23.—(1) This paragraph applies where—

- (a) secondary Class 1 contributions are payable in respect of ▶<sup>5</sup>relevant employment income; and◀
- (b) an amount or proportion (as the case may be) of the liability of the secondary contributor for those contributions is transferred to the employed earner by an election made jointly by them for the purposes of paragraph 3B(1) of Schedule 1 to the Act.

<sup>6</sup>Words substituted in para. 23(2) by reg. 32(13) of S.I. 2004/770 as from 6.4.04.

(2) ▶<sup>6</sup>Before 7th July after the end of the year the employer shall deliver to the Inland Revenue◀, in respect of each employed earner to whom any liability is transferred by the election, written particulars of the matters set out in sub-paragraph (3).

(3) The matters set out in this paragraph are—

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(a) Section 98A was inserted by section 165(1) of the Finance Act 1989 (c. 26), and amended by paragraph 148 of Schedule 6 to ITEPA 2003 and paragraph 8 of Schedule 12 to the Finance Act 2004. Subsection (4) has been repealed by the relevant entry in Part 5 of Schedule 27 to the Finance Act 2007 (c. 11), and the scope of the section accordingly limited to late returns.

- (a) the amount of the contributions referred to in sub-paragraph (1)(a);
- (b) the amount of the transferred liability; and
- (c) the date on which payment of the amount of the transferred liability was made to the ►<sup>1</sup>Inland Revenue◄.

<sup>1</sup>Words substituted & omitted in paras. 23-24 by reg. 32(13-14) of S.I. 2004/770 as from 6.4.04.

#### Special return by employer at end of voyage period

**24.**—(1) This paragraph applies where earnings-related contributions are assessed in accordance with regulation 120(4) or (5) (earnings periods for mariners and apportionment of earnings).

(2) Not later than 14 days after the end of the voyage period the employer shall render to the ►<sup>1</sup>Inland Revenue◄ in such form as the ►<sup>1</sup>Inland Revenue◄ may authorise a return in respect of each mariner showing—

- (a) his name, discharge book number and national insurance number;
- (b) the earnings periods and the amounts of ►<sup>1</sup>general earnings◄ apportioned to each such period in the voyage period;
- (c) the appropriate category letter for each apportionment of ►<sup>1</sup>general earnings◄;
- (d) the amounts of all the earnings-related contributions payable on each apportionment of ►<sup>1</sup>general earnings◄ otherwise than under paragraph 7(3);
- (e) the amounts of primary Class 1 contributions included in the amounts shown under paragraph (d) for each apportionment of ►<sup>1</sup>general earnings◄;
- (f) where the employment is contracted-out employment for any part of the voyage period—
  - (i) the amounts of that part of the contributions shown under paragraph (e) which were payable on earnings above the primary threshold, if primary Class 1 contributions were payable at the reduced rate, and
  - (ii) the number notified by the ►<sup>1</sup>Inland Revenue◄ on the relevant contracting-out certificate as the employer's number; ►<sup>2</sup>and◄
- (g) the total amount of any earnings in respect of which primary Class 1 contributions were payable, other than earnings from non-contracted-out employment in respect of which primary Class 1 contributions were payable at the reduced rate ►<sup>2</sup>◄.

<sup>2</sup>Words in para. 24(2)(f) inserted, substituted in sub-para. (g) & sub-para. (h) omitted by reg. 29(a)-(c) of S.I. 2012/821 as from 6.4.12.

#### Return by employer of recovery under the Statutory Sick Pay Percentage Threshold Order

**25.** ►<sup>3</sup>◄

<sup>3</sup>Para. 25 omitted by reg. 3(7) of S.I. 2014/2397 as from 6.10.14.

#### ►<sup>4</sup>Retention by employer of contribution and election records

**26.**—(1) An employer must keep and preserve all contribution records which are not required to be sent to HMRC by other provisions in these Regulations for not less than—

- (a) three years after the end of the tax year to which they relate; or
- (b) for documents or records relating to information about the amounts of Class 1A and Class 1B contributions, three years after the end of the year in which a contribution became payable.

<sup>4</sup>Para. 26 substituted by paras. 26 & 26A by reg. 8(4) of S.I. 2009/600 as from 6.4.09.

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(2) The duty under paragraph (1) may be discharged by preserving the contribution records in any form or by any means.

(3) Where an election has been made jointly by the secondary contributor and the employed earner for the purposes of paragraph 3B(1) of Schedule 1 to the Act<sup>(a)</sup>, the records which the secondary contributor is obliged by paragraph 8 to maintain shall be retained by the secondary contributor throughout the period for which the election is in force and for six years after the end of that period.

(4) In this paragraph “contribution records” means wages sheets, deductions working sheets (other than deductions working sheets issued under regulation 35 of the PAYE Regulations<sup>(b)</sup> (simplified deduction schemes: records)) and other documents or records relating to—

- (a) the calculation of payment of earnings to the employer’s employees or the amount of the earnings-related contributions payable for those earnings;
- (b) the amount of any Class 1A contributions or Class 1B contributions payable by the employer; and
- (c) any information about the amounts of Class 1A and Class 1B contributions.

(5) For the purposes of this paragraph “employer”—

- (a) includes, in relation to a Class 1A contribution, the person liable to pay such a contribution in accordance with section 10ZA of the Act (liability of third party provider of benefits in kind); and
- (b) means, in relation to a Class 1B contribution, the person liable to pay such a contribution in accordance with section 10A of the Act.

#### **Certificate of employer’s liability to pay contributions after inspection of documents**

**26A.**—(1) An officer of Revenue and Customs<sup>(c)</sup> may, by reference to the information obtained from an inspection of the documents and records produced under Schedule 36 to the Finance Act 2008 (information and inspection powers), and on the occasion of each inspection, prepare a certificate showing—

- (a) the amount of earnings-related contributions which it appears that the employer is liable to pay to HMRC, excluding any amount deducted by the employer by virtue of the Compensation of Employers Regulations<sup>(d)</sup> for the years or tax periods covered by the inspection; or
- (b) the amount of any Class 1B contributions which it appears that the employer is liable to pay to HMRC for the years covered by the inspection, or such an amount in addition to an amount referred to in paragraph (a);

together with any amount of earnings-related contributions or Class 1B contributions or a combination of those classes of contributions, which has not been paid to HMRC or, to the best of the officer’s knowledge and belief, to any other person to whom it might lawfully be paid.

(2) The production of a certificate mentioned in sub-paragraph (1) shall, unless the contrary is proved, be sufficient evidence that the employer is liable to pay to HMRC in respect of the years or, as the case may be, tax periods mentioned in the certificate, the amount shown in the certificate as unpaid; and any document purporting to be such a certificate shall be treated as such a certificate until the contrary is proved.

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(a) Regulation 1(2) of S.I. 2001/1004 defines “the Act” as meaning the Social Security Contributions and Benefits Act 1992.

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

(c) Schedule 1 to the Interpretation Act 1978 (c. 30) defines “officer of Revenue and Customs” as having the meaning in section 2(1) of the Commissioners of Revenue and Customs Act 2005 (c. 11); this definition was inserted in the former Act by section 2(7) of the latter.

(d) Paragraph 1 of Schedule 4 to S.I. 2001/1004 defines “Compensation of Employers Regulations” as meaning the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations 1994 and the Statutory Sick Pay Percentage Threshold Order 1995.

(3) The provisions of paragraph 16 shall apply with any necessary modifications to the amount shown in such a certificate.

(4) For the purposes of this paragraph “employer” has the meaning given by paragraph 26(5).

#### Death of an employer

27. If an employer dies, anything which he would have been liable to do under this Schedule shall be done by his personal representatives, or, in the case of an employer who paid ►<sup>1</sup>general earnings◄ on behalf of another person, by the person succeeding him or, if no person succeeds him, the person on whose behalf he paid ►<sup>1</sup>general earnings◄.

<sup>1</sup>Words substituted in paras. 27-29 by reg. 32(17)-(19) of S.I. 2004/770 as from 6.4.04.

#### Succession to a business, etc

28.—(1) This paragraph applies where there has been a change in the employer from whom an employee receives ►<sup>1</sup>general earnings◄ in respect of his employment in any trade, business, concern or undertaking, or in connection with any property, or from whom an employee receives any annuity other than a pension.

(2) Where this paragraph applies, in relation to any matter arising after the change, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under this Schedule if the change had not taken place.

(3) Sub-paragraph (2) is subject to the qualification that ►<sup>1</sup>the employee after◄ the change shall not be liable for the payment of any earnings-related contributions which were deductible from ►<sup>1</sup>general earnings◄ paid to the employee before, unless they are also deductible from ►<sup>1</sup>general earnings◄ paid to the employer after, the change took place, or of any corresponding employer’s earnings-related contributions.

#### Payments by cheque

29.—(1) Sub-paragraph (2) applies for the purposes of paragraphs 10, 11, 13, 15, 17 and 18.

(2) If any payment to the ►<sup>1</sup>Inland Revenue◄ is made by cheque, and the cheque is paid on its first presentation to the banker on whom it is drawn, the payment shall be treated as made on the day on which the cheque was received by the ►<sup>1</sup>Inland Revenue◄, and “pay”, “paid”, “unpaid” and “overpaid” shall be construed accordingly.

### ►<sup>2</sup>PART 3A

## DEBTS OF MANAGED SERVICE COMPANIES

<sup>2</sup>Paras. 29A-29L inserted by reg. 2 of S.I. 2007/2068 as from 6.8.07.

#### Interpretation of this Part

29A.—(1) In this Part of this Schedule—

“HM Revenue and Customs” means Her Majesty’s Revenue and Customs;

“lower amount” means the amount mentioned in paragraph 29C(5);

“managed service company” has the meaning given by section 61B of ITEPA(a);

“paragraph (b) associate” means a person who—

(a) is within section 688A(2)(d)(b), and

(b) is within that provision by virtue of a connection with a person who is within section 688A(2)(b);

“paragraph (c) associate” means a person who—

(a) Section 61B was inserted by paragraph 4 of Schedule 3 to the Finance Act 2007 (c. 11).

(b) Section 688A was inserted by paragraph 6 of Schedule 3 to the Finance Act 2007.

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(a) is within section 688A(2)(d), and

(b) is within that provision by virtue of a connection with a person who is within section 688A(2)(c);

“qualifying period” means a tax period beginning on or after 6th August 2007;

“relevant contributions debt” means a debt specified in paragraph 29B;

“specified amount” means the amount mentioned in paragraph 29C(1)(b);

“transfer notice” means the notice mentioned in paragraph 29C(4);

“transferee” means the person mentioned in paragraph 29C(4).

(2) In this Part of this Schedule references to section 688A, however expressed, are references to section 688A of ITEPA.

**Relevant contributions debts of managed service companies**

**29B.**—(1) A managed service company has a relevant contributions debt if—

(a) a managed service company must pay an amount of contributions for a qualifying period, and

(b) one of conditions A to E is met.

(2) Condition A is met if—

(a) a decision has been made in accordance with section 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999(a) that an amount of Class 1 National Insurance contributions is due in respect of a qualifying period, and

(b) any part of the amount has not been paid within 14 days from the date on which the decision became final and conclusive.

(3) Condition B is met if—

(a) an employer delivers a return under paragraph 22(1) (return by employer at end of year) for the tax year 2007-08, or any later tax year, showing an amount of total contributions deducted by the employer for that tax year,

(b) HM Revenue and Customs prepare a certificate under paragraph 22(5) (certificate that contributions specified in return under paragraph 22(1) remain unpaid) showing how much of that amount remains unpaid, and

(c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.

(4) Condition C is met if—

(a) HM Revenue and Customs prepare a certificate under paragraph 14(1) (employer failing to pay earnings-related contributions) showing an amount of contributions which the employer is liable to pay for a qualifying period, and

(b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.

(5) Condition D is met if—

(a) HM Revenue and Customs serve notice on an employer under paragraph 15(1) (specified amount of earnings-related contributions payable by the employer) requiring payment of the amount of Class 1 contributions which they consider the employer is liable to pay, and

(b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.

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(a) Regulation 156(3) of S.I. 2001/1004 provides a rule of construction for the application in Northern Ireland of references to enactments not applying there.



(6) Condition E is met if—

- (a) HM Revenue and Customs prepare a certificate under paragraph 26A (certificate of employer's liability to pay contributions after inspection of documents) showing an amount of contributions which it appears that the employer is liable to pay for a qualifying period,
- (b) HM Revenue and Customs make a written demand for payment of that amount of contributions, and
- (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the written demand for payment is made.

<sup>1</sup>Words substituted in para. 29B(6)(a) by reg. 8(5) of S.I. 2009/600 as from 6.4.09.

#### Transfer of debt of managed service company

**29C.**—(1) This paragraph applies if—

- (a) a managed service company has a relevant contributions debt, and
- (b) an officer of Revenue and Customs is of the opinion that the relevant contributions debt or a part of the relevant contributions debt (the “specified amount”) is irrecoverable from the managed service company within a reasonable period.

(2) HM Revenue and Customs may make a direction authorising the recovery of the specified amount from the persons specified in section 688A(2) (managed service companies: recovery from other persons).

(3) Upon the making of a direction under sub-paragraph (2), the persons specified in section 688A(2) become jointly and severally liable for the relevant contributions debt, but subject to what follows.

(4) HM Revenue and Customs may not recover the specified amount from any person in accordance with a direction made under sub-paragraph (2) until they have served a notice (a “transfer notice”) on the person in question (the “transferee”).

(5) If an officer of Revenue and Customs is of the opinion that it is appropriate to do so, HM Revenue and Customs may accept an amount less than the specified amount (the “lower amount”) from a transferee; but this acceptance shall not prejudice the recovery of the specified amount from any other transferee.

(6) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, if the relevant contributions debt is incurred before 6th January 2008.

(7) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, unless an officer of Revenue and Customs certifies that, in his opinion, it is impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates.

(8) In determining, for the purposes of sub-paragraph (7), whether it is impracticable to recover the specified amount from the persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates the officer of Revenue and Customs may have regard to all managed service companies in relation to which a person is a person mentioned in paragraph (a) or (b) of section 688A(2) or a paragraph (b) associate.

(9) In determining which of the persons mentioned in section 688A(2)(c) and which of the paragraph (c) associates are to be served with transfer notices and the amount of those notices, HM Revenue and Customs must have regard to the degree and extent to which those persons are persons who (directly or indirectly) have encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.

#### Time limits for issue of transfer notices

**29D.**—(1) A transfer notice must be served before the end of the period specified in this paragraph.

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(2) Sub-paragraphs (3) to (7) apply if the transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2) or on a paragraph (b) associate.

(3) In a case in which condition A in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the decision became final and conclusive.

(4) In a case in which condition B in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs received the return delivered under paragraph 22.

(5) In a case in which condition C in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs prepare the certificate under paragraph 14(1).

(6) In a case in which condition D in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs serve notice to the employer under paragraph 15(1).

(7) In a case in which condition E in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs carry out the inspection of the employer's contribution records under <sup>1</sup>Schedule 36 to the Finance Act 2008<sup>4</sup>.

<sup>4</sup>Words substituted in para. 29D(7) by reg. 8(6) of S.I. 2009/600 as from 6.4.09.

(8) If the transfer notice is served on a person mentioned in paragraph (c) of section 688A(2), or on a paragraph (c) associate, the transfer notice must be served before the end of a period of three months beginning with the date on which the officer of Revenue and Customs certifies the matters specified in paragraph 29C(7).

#### Contents of transfer notice

**29E.**—(1) A transfer notice must contain the following information—

- (a) the name of the managed service company to which the relevant contributions debt relates;
- (b) the address of the managed service company to which the relevant contributions debt relates;
- (c) the amount of the relevant contributions debt;
- (d) the tax periods to which the relevant contributions debt relates;
- (e) if the tax periods to which the relevant contributions debt relates are comprised in more than one tax year, the apportionment of the relevant contributions debt among those tax years;
- (f) which of the conditions A to E specified in paragraph 29B is met;
- (g) the transferee's name;
- (h) the transferee's address;
- (j) whether the transferee is a person mentioned in paragraph (a), (b) or (c) of section 688A, a paragraph (b) associate or a paragraph (c) associate;
- (k) if the transferee is a person mentioned in paragraph (c) of section 688A or a paragraph (c) associate—
  - (i) the date on which the officer of Revenue and Customs certified the matters specified in paragraph 29C(7), and
  - (ii) the names of the persons from whom it has been impracticable to recover the specified amount;
- (l) the specified amount;
- (m) the tax periods to which the specified amount relates;
- (n) if the tax periods to which the specified amount relates are comprised in more than one tax year, the apportionment of the specified amount among those tax years;
- (o) the address to which payment must be sent;
- (p) the address to which an appeal must be sent.

(2) The transfer notice may specify the lower amount if HM Revenue and Customs are prepared to accept the lower amount from the transferee.

(3) The transfer notice must also contain a statement, made by the officer of Revenue and Customs serving the notice, that in his opinion the specified amount is irrecoverable from the managed service company within a reasonable period.

#### Payment of the specified amount

**29F.**—(1) If a transfer notice is served, the transferee must pay the specified amount to HM Revenue and Customs at the address specified in the transfer notice.

(2) The transferee must pay the specified amount within 30 days beginning with the date on which the transfer notice is served (the “specified period”).

(3) If a transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2), or on a paragraph (b) associate, the specified amount carries interest from the reckonable date until the date on which payment is made.

(4) If a transfer notice is served on a person mentioned in paragraph (c) of section 688A(2), or on a paragraph (c) associate, the specified amount carries interest from the day following the expiry of the specified period until the date on which payment is made.

►<sup>1</sup>(5) For the purposes of sub-paragraph (3) “the reckonable date” has the meaning given by paragraph 17(3)(b)(i).◀

<sup>1</sup>Para. 29F(5) inserted by reg. 8(7) of S.I. 2009/600 as from 6.4.09.

#### Appeals

**29G.**—(1) A transferee may appeal against the transfer notice.

(2) A notice of appeal must—

- (a) be given to HM Revenue and Customs at the address specified in the transfer notice within 30 days beginning with the date on which the transfer notice was served, and
- (b) specify the grounds of the appeal.

(3) The grounds of appeal are any of the following—

- (a) that the relevant contributions debt (or part of the relevant contributions debt) is not due from the managed service company to HM Revenue and Customs;
- (b) that the specified amount does not relate to a company which is a managed service company;
- (c) that the specified amount is not irrecoverable from the managed service company within a reasonable period;
- (d) that the transferee is not a person mentioned in section 688A(2);
- (e) that the transferee was not a person mentioned in section 688A(2) during the tax periods to which the specified amount relates;
- (f) that the transferee was not a person mentioned in section 688A(2) during some part of the tax periods to which the specified amount relates;
- (g) that the transfer notice was not served before the end of the period specified in paragraph 29D;
- (h) that the transfer notice does not satisfy the requirements specified in paragraph 29E;
- (j) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that it is not impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) or from paragraph (b) associates;

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(k) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that the amount specified in the transfer notice does not have regard to the degree and extent to which the transferee is a person who (directly or indirectly) has encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.

(4) Sub-paragraph (3)(a) is subject to paragraph 29H(4).

(5) The appeal is to the Special Commissioners.

**Procedure on appeals**

**29H.**—(1) On an appeal the Special Commissioners shall uphold or quash the transfer notice.

(2) The general rule in sub-paragraph (1) is subject to the following qualifications.

(3) In the case of the ground of appeal specified in paragraph 29G(3)(a), the Special Commissioners shall investigate the matter and shall—

(a) uphold the amount of the relevant contributions debt specified in the transfer notice, or

(b) reduce or increase the amount of the relevant contributions debt specified in the transfer notice to such amount as in their opinion is just and reasonable.

(4) If the Special Commissioners determine the amount of the relevant contributions debt of a managed service company under sub-paragraph (3), that amount is conclusive as to the amount of that relevant contributions debt in any later appeal relating to that debt.

(5) In the case of the ground of appeal specified in paragraph 29G(3)(f), the Special Commissioners may reduce the amount specified in the transfer notice to an amount determined in accordance with the equation—

$$RA = \frac{P}{TP} \times AS$$

(6) In paragraph (5)—

RA means the reduced amount;

P means the number of days in the tax periods specified in the transfer notice during which the transferee was a person mentioned in section 688A(2);

TP means the number of days in the tax periods specified in the transfer notice;

AS means the amount specified in the transfer notice.

(7) In the case of the ground of appeal specified in paragraph 29G(3)(k), the Special Commissioners may reduce the amount specified in the transfer notice to such amount as in their opinion is just and reasonable.

**Withdrawal of transfer notices**

**29J.**—(1) A transfer notice shall be withdrawn if the Special Commissioners quash it.

(2) A transfer notice may be withdrawn if, in the opinion of an officer of Revenue and Customs, it is appropriate to do so.

(3) If a transfer notice is withdrawn, HM Revenue and Customs must give written notice of that fact to the transferee.

**Application of Part 6 of the Taxes Management Act 1970**

**29K.**—(1) For the purposes of this Chapter, Part 6 of the Taxes Management Act 1970 (collection and recovery)(a) applies as if—

- (a) the transfer notice were an assessment of tax on employment income, and
- (b) the amount of earnings-related contributions specified in the transfer notice, and any interest payable on that amount under sub-paragraph (3) or (4) of paragraph 29F were income tax charged on the transferee;

and that Part of that Act applies with the modification specified in sub-paragraph (2) and any other necessary modifications.

(2) Summary proceedings for the recovery of the specified amount may be brought in England and Wales or Northern Ireland at any time before the end of a period of 12 months beginning immediately after the expiry of the period mentioned in paragraph 29F(2).

(3) The specified amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of the Taxes Management Act 1970 (magistrates' courts, county courts and inferior courts in Scotland).

(4) But sub-paragraph (3) does not prevent the bringing of separate proceedings for the recovery of each of the amounts which the transferee is liable to pay for any tax period.

**Repayment of surplus amounts**

**29L.**—(1) This paragraph applies if the amounts paid to HM Revenue and Customs in respect of a relevant contributions debt exceed the specified amount.

(2) HM Revenue and Customs shall repay the difference on a just and equitable basis and without unreasonable delay.

(3) Interest on any sum repaid shall be paid in accordance with paragraph 18 (payment of interest on repaid earnings-related contributions).◀

▶<sup>1</sup>PART 3B

## SECURITY FOR THE PAYMENT OF CLASS 1 CONTRIBUTIONS

<sup>1</sup>Part 3B of Sch. 4 inserted by reg. 18 of S.I. 2012/821 as from 6.4.12.

**Interpretation**

**29M.** In this Part—

- “employer” has the meaning given in paragraph 29O(1);
- “a further notice” has the meaning given in paragraph 29U(3);
- “PGS” has the meaning given in paragraph 29S(1).

**Requirement for security**

**29N.** In circumstances where an officer of Revenue and Customs considers it necessary for the protection of Class 1 contributions, the officer may require a person described in paragraph 29P(1) to give security or further security for the payment of amounts which an employer is or may be liable to pay to HMRC(b) under paragraph 10, 11▶<sup>2</sup>, 11ZA◀ or 11A.

<sup>2</sup>Words inserted in para. 29N of Sch. 4 by reg. 19 of S.I. 2013/622 as from 6.4.13.

**Employers**

**29O.**—(1) An “employer” is any employer within the meaning given in paragraph 1(2) other than—

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- (a) 1970 c. 9.
  - (b) HMRC is defined in regulation 1(2) of S.I. 2001/1004 as meaning Her Majesty's Revenue and Customs.

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- (a) the Crown;
- (b) a person to whom sub-paragraph (2) applies;
- (c) a person who employs only employees who are personal employees within the meaning given in regulation 34(3) of the PAYE Regulations; and
- (d) a care and support employer within the meaning given in regulation 90NA(3) of these Regulations.

(2) This sub-paragraph applies to persons who at the relevant time could not be liable to a penalty under Schedule 56 to the Finance Act 2009<sup>(a)</sup> by virtue of paragraph 10 of that Schedule (suspension of penalty for failure to make payments on time during currency of agreement for deferred payment).

(3) In sub-paragraph (2), the relevant time is a time at which, but for sub-paragraph (1)(b), the officer would require security.

**Persons from whom security can be required**

**29P.**—(1) The persons are—

- (a) the employer;
- (b) any of the following in relation to the employer—
  - (i) a director;
  - (ii) a company secretary;
  - (iii) any other similar officer; or
  - (iv) any person purporting to act in such a capacity; and
- (c) in a case where the employer is a limited liability partnership, a member of the limited liability partnership.

(2) An officer of Revenue and Customs may require—

- (a) a person to give security or further security of a specified value in respect of the employer; or
- (b) more than one person to give security or further security of a specified value in respect of the employer, and where the officer does so those persons shall be jointly and severally liable to give that security or further security.

**Notice of requirement**

**29Q.**—(1) An officer of Revenue and Customs must give notice of a requirement for security to each person from whom security is required and the notice must specify—

- (a) the value of security to be given;
- (b) the manner in which security is to be given;
- (c) the date on or before which security is to be given; and
- (d) the period of time for which security is required.

(2) The notice must include, or be accompanied by, an explanation of—

- (a) the employer's right to make a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009; and
- (b) the effect of paragraph 29R(2) and (3).

(3) In a case which falls within paragraph 29P(2)(b), the notice must include, or be accompanied by, the names of each other person from whom security is required.

(4) The notice may contain such other information as the officer considers necessary.

(5) A person shall not be treated as having been required to provide security unless HMRC comply with this paragraph and paragraph 29R(1).

(6) Notwithstanding anything in regulation 1(4)(b), where the notice, or a further notice, ("contributions notice") is to be given with a notice or further notice mentioned in regulations 97Q(1) and 97U(3) of the PAYE Regulations ("PAYE notice") the contributions notice shall be taken to be given at the same time that the PAYE notice is given.

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(a) 2009 c. 10. Schedule 56 was applied by regulations 67A and 67B of S.I. 2001/1004.

**Date on which security is due**

**29R.**—(1) The date specified under paragraph 29Q(1)(c) may not be earlier than the 30th day after the day on which the notice is given.

(2) If, before the date specified under paragraph 29Q(1)(c), the employer makes a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009, the requirement to give security on or before that date does not apply.

(3) In a case which falls within sub-paragraph (2), if HMRC does not agree to the employer's request, security is to be given on or before the 30th day after the day on which HMRC notifies the employer of that decision.

**Application for reduction in the value of security held**

**29S.**—(1) A person who has given security ("PGS") may apply to an officer of Revenue and Customs for a reduction in the value of security held by HMRC if—

- (a) PGS' circumstances have changed since the day the security was given because—
  - (i) of hardship; or
  - (ii) PGS has ceased to be a person mentioned in paragraph 29P(1); or
- (b) since the day the security was given there has been a significant reduction in the number of employed earners of the employer to whom the security relates or that employer has ceased to be an employer.

(2) Where paragraph 29P(2)(b) applies, a person who has not contributed to the value of the security given may not make an application under sub-paragraph (1).

**Outcome of application under paragraph 29S**

**29T.**—(1) If an application under paragraph 29S(1) is successful, the officer must inform PGS of the reduced value of security that is still required or, where that value is nil, that the requirement for security has been cancelled.

(2) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of security held.

**Outcome of application under paragraph 29S: further provision**

**29U.**—(1) This paragraph applies—

- (a) in cases which fall within paragraph 29P(2)(b); and
- (b) where PGS' application is made under paragraph 29S(1)(a).

(2) As a consequence of arrangements made under paragraph 29T(2), an officer of Revenue and Customs may require any other person who was given notice under paragraph 29Q in relation to the security ("the original security"), or any other person mentioned in paragraph 29P(1), to provide security in substitution for the original security.

(3) Where an officer of Revenue and Customs acts in reliance on sub-paragraph (2), the officer must give notice ("a further notice").

(4) Paragraph 29Q(1) to (5) and paragraph 29R apply in relation to a further notice.

(5) Subject to sub-paragraph (6), paragraph 29V(1) applies in relation to a further notice.

(6) A person who is given a further notice and who was also given notice under paragraph 29Q in relation to the original security may only appeal on the grounds that the person is not a person mentioned in paragraph 29P(1).

**Appeals**

**29V.**—(1) A person who is given notice under paragraph 29Q may appeal against the notice or any requirement in it.

(2) PGS may appeal against—

- (a) the rejection by an officer of Revenue and Customs of an application under paragraph 29S(1); and

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- (b) a smaller reduction in the value of security held than PGS applied for.
- (3) Notice of an appeal under this paragraph must be given—
- (a) before the end of the period of 30 days beginning with—
    - (i) in the case of an appeal under sub-paragraph (1), the day after the day on which the notice was given; and
    - (ii) in the case of an appeal under sub-paragraph (2), the day after the day on which PGS was notified of the outcome of the application; and
  - (b) to the officer of Revenue and Customs by whom the notice was given or the decision on the application was made, as the case may be.
- (4) Notice of an appeal under this paragraph must state the grounds of appeal.
- (5) On an appeal under sub-paragraph (1) that is notified to the tribunal, the tribunal may—
- (a) confirm the requirements in the notice;
  - (b) vary the requirements in the notice; or
  - (c) set aside the notice.
- (6) On an appeal under sub-paragraph (2) that is notified to the tribunal, the tribunal may—
- (a) confirm the decision on the application; or
  - (b) vary the decision on the application.
- (7) On the final determination of an appeal under this paragraph—
- (a) subject to any alternative determination by a tribunal or court, any security to be given is due on the 30th day after the day on which the determination is made; or
  - (b) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of the security held.
- (8) Part 5 of the Taxes Management Act 1970(a) (appeals and other proceedings) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under the Taxes Acts(b) but as if—
- (a) sections 46D, 47B, 50(6) to (9) and (11)(c) and 54A to 57 were omitted; and
  - (b) in section 48(1)—
    - (i) in paragraph (a) the reference to “the Taxes Acts” were a reference to “paragraph 29V of Schedule 4 to the Social Security (Contributions) Regulations 2001”; and
    - (ii) in paragraph (b) the reference to “any provision of the Taxes Acts” were a reference to “paragraph 29V of Schedule 4 to the Social Security (Contributions) Regulations 2001”.

**Appeals: further provision for cases which fall within paragraph 29R(2)**

**29W.** In a case which falls within paragraph 29R(2), if the request mentioned in that provision is made before an appeal under paragraph 29V(1), paragraph 29V(3)(a)(i) applies as if the words “the day after the day on which the notice was given” were “the day after the day on which HMRC notifies the employer of its decision”.

**Offence**

**29X.**—(1) Section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003(c) (PAYE regulations - security for payment of PAYE: offence) applies in relation to a requirement imposed under these Regulations as it applies in relation to a requirement imposed under the PAYE Regulations.

- (2) For the purposes of section 684(4A) as it applies by virtue of sub-paragraph (1)—
- (a) in relation to a requirement for security under a notice under paragraph 29Q the period specified is the period which starts with the day the notice is given and ends with—
- 
- (a) Part 5 was amended in particular by schedule 1 to S.I. 1994/1813, paragraph 7 to Schedule 22 to this Finance Act 1996 (c. 8), Schedule 1 to S.I. 2009/56 and paragraph 31 to Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8).
- (b) “The Taxes Acts” is defined for the purposes of the Taxes Management Act 1970 by Section 118(1) of that Act.
- (c) 2003 c. 1. Section 684(4A) was inserted by section 85(3) of the Finance Act 2011 (c. 11).



- (i) the first day after the date specified under paragraph 29Q(1)(c); or
- (ii) in a case which falls within paragraph 29R(2), the first day after the date determined under paragraph 29R(3);
- (b) in relation to a requirement for security under a further notice the period specified is the period which starts with the day the further notice is given and ends with—
  - (i) the first day after the date specified under paragraph 29Q(1)(c) as it applies in relation to the further notice; or
  - (ii) in a case which falls within paragraph 29R(2), the first day after the date determined under paragraph 29R(3) as it applies in relation to the further notice; and
- (c) in relation to a requirement for security to which paragraph 29V(7)(a) applies the period specified is the period which starts with the day the determination is made and ends with the first day after—
  - (i) the day the tribunal or court determines to be the day that the security is to be given; or
  - (ii) the day determined in accordance with that paragraph,

as the case may be. ◀

#### PART IV

### ASSESSMENT AND DIRECT COLLECTION

#### Provisions for direct payment

**30.** In cases of employed earner's employment, where the employer does not fulfil the conditions prescribed in regulation 145(1)(b) as to residence or presence in Great Britain or Northern Ireland or is a person who, by reason of any international treaty to which the United Kingdom is a party or of any international convention binding on the United Kingdom, is exempt from the provisions of the Act or is a person against whom, for a similar reason, the provisions of the Act are not enforceable, the provisions of paragraph 31 shall apply to the employee, unless the employer, being a person entitled to pay the primary contributions due in respect of the earnings from the said employment, is willing to pay those contributions.

#### ▶<sup>1</sup>Application of paragraphs 31 and 31A

**30A.**—(1) Paragraph 31(4) to (7) does not apply on or after 6th April 2014.

(2) Paragraph 31(7A) and (7B) applies only in relation to closed tax years ending on or before 5th April 2014.

(3) Paragraph 31A applies on and after 6th April 2014. ◀

<sup>1</sup>Para. 30A inserted in Sch. 4 by reg. 20 of S.I. 2013/622 as from 6.4.13.

#### Direct collection involving deductions working sheets

**31.**—(1) In any case falling within paragraph 30, the ▶<sup>2</sup>◀ sub-paragraphs (2) to (8) shall apply.

(2) The employee ▶<sup>2</sup>◀ shall record on ▶<sup>2</sup>a working sheet◀ his name, national insurance number and category letter indicated by the ▶<sup>3</sup>HMRC◀, and whenever, in respect of an employment such as is specified in paragraph 30, the employee receives any ▶<sup>4</sup>general earnings◀ during ▶<sup>2</sup>the relevant tax year◀, he shall also record on that working sheet the amount of the ▶<sup>4</sup>earnings◀, the date on which he received them, and the earnings-related contributions payable by him in respect of those ▶<sup>3</sup>earnings◀.

(3) Not later than the time for the payment of income tax, if any, the employee shall pay to the ▶<sup>3</sup>HMRC◀ the amount of the earnings-related contributions payable by the employee in respect of the ▶<sup>3</sup>general earnings◀ which have been received by him and for which the income tax is or would have been payable.

▶<sup>2</sup>(3A) Before 20 May 2014 the employee must deliver to HMRC a return in the prescribed form for the tax year 2013-14 showing the following information—

(a) the total amount of the general earnings and earnings-related contributions payable during the tax year 2013-14,

<sup>2</sup>Words in para. 31(1) & (2) omitted and substituted & para. 31(3A) inserted by reg. 10 & 10(c) of S.I. 2014/608 as from 6.4.14.

<sup>3</sup>Words in para. 31(2) substituted by reg. 8(16) of S.I. 2007/1056 as from 6.4.07.

<sup>4</sup>Words substituted in para. 31 by reg. 33(2) of S.I. 2004/770 as from 6.4.04.

<sup>5</sup>Words in para. 31 substituted by reg. 8(16) of S.I. 2007/1056 as from 6.4.07.

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- (b) the appropriate category letter,
- (c) the employee's national insurance number, and

the provisions of paragraph 22(5) regarding the certification and recovery of earnings-related contributions remaining unpaid by an employer for any year shall apply in the case of any earnings-related contributions remaining unpaid by the employee.◀

(4) If, by the time specified in sub-paragraph (3), the employee has paid no amount of earnings-related contributions to the ▶<sup>1</sup>HMRC◀ in respect of the ▶<sup>2</sup>general earnings◀ mentioned in that sub-paragraph, and the ▶<sup>1</sup>HMRC◀ is unaware of the amount, if any, which the employee is liable so to pay, or if an amount has been paid but the ▶<sup>1</sup>HMRC◀ is not satisfied that it is the full amount which the employee is liable to pay to him in respect of those ▶<sup>2</sup>earnings◀, sub-paragraph (5) applies.

(5) If this sub-paragraph applies, the ▶<sup>1</sup>HMRC◀ may give notice to the employee requiring him to render, within the time limited in the notice, a return in the prescribed form containing particulars of all ▶<sup>2</sup>general earnings◀ received by him during the period specified in the notice and such other particulars affecting the calculations of the earnings-related contributions payable in respect of the ▶<sup>2</sup>earnings◀ in question as may be specified in the notice, and in such a case the provisions of—

- (a) paragraph 14 regarding the ascertaining and certifying by the ▶<sup>1</sup>HMRC◀ of earnings-related contributions payable by an employer, and
- (b) paragraph 16 regarding the recovery of those contributions,

shall apply with the necessary modifications for the purposes of ascertaining, certifying and recovering the earnings-related contributions payable by the employee.

(6) If the employee ceases to receive ▶<sup>2</sup>general earnings◀ falling within sub-paragraph (2), he shall immediately render to the ▶<sup>2</sup>the ▶<sup>1</sup>HMRC◀ in such form as they may prescribe◀, a return showing such particulars as they may require for the identification of the employee, the year to which the return relates, the appropriate category letter, the last date on which he received any such ▶<sup>2</sup>earnings◀, the total of those ▶<sup>2</sup>earnings◀ and the earnings-related contributions payable from the beginning of the year to that date.

(7) ▶<sup>3</sup>Before 20th May following◀ the end of the year, the employee shall (unless sub-paragraph (6) has applied) render to ▶<sup>3</sup>the ▶<sup>4</sup>HMRC◀ in such form as they may prescribe◀, a return showing such particulars as they may require for the identification of the employee, the year to which the return relates, the total of the ▶<sup>3</sup>general earnings◀ and earnings-related contributions payable during the year, together with the appropriate category letter, and the provisions of paragraph 22(5) regarding the certification and recovery of earnings-related contributions remaining unpaid by an employer for any year shall apply in the case of any earnings-related contributions remaining unpaid by the employee.

▶<sup>4</sup>(7A) Where a liability arises to pay contributions in respect of retrospective earnings relating to a closed tax year, the ▶<sup>5</sup>employee◀ shall render a replacement return for the closed tax year before 20th May following the end of the year in which the relevant retrospective contributions regulations came into force in accordance with sub-paragraph (7), setting out the revised earnings and earnings-related contributions.

(7B) Where sub-paragraph (7A) applies, the ▶<sup>5</sup>employee◀ shall amend the relevant deductions working sheet or where necessary prepare one in accordance with sub-paragraph (2).◀

(8) The employee shall retain deductions working sheets ▶<sup>6</sup>◀ for not less than three years after the end of the year to which they relate.

▶<sup>9</sup>Section 98A of the Taxes Management Act 1970(a) (special penalties in the case of certain returns) and Schedule 24 to the Finance Act 2007 (penalties for errors) as that Schedule applies to income tax returns◀ as modified by the provisions of paragraph 7

(a) Section 98A was inserted by section 165(1) of the Finance Act 1989 (c. 26), and amended by paragraph 148 of Schedule 6 to ITEPA 2003 and paragraph 8 of Schedule 12 to the Finance Act 2004. Subsection (4) has been repealed by the relevant entry in Part 5 of Schedule 27 to the Finance Act 2007 (c. 11), and the scope of the section accordingly limited to late returns.

<sup>1</sup>Words in para. 31 substituted by reg. 8(16) of S.I. 2007/1056 as from 6.4.07.

<sup>2</sup>Words substituted in para. 31 by reg. 33(2) of S.I. 2004/770 as from 6.4.04.

<sup>3</sup>Words substituted in para. 31 by reg. 33 of S.I. 2004/770 as from 6.4.04.

<sup>4</sup>Words substituted in para. 31(7) & (9) and sub-para. (7A) inserted by reg. 8(16)(a)-(c) of S.I. 2007/1056 as from 6.4.07.

<sup>5</sup>Words substituted in paras. 31(7A) & (7B) in Sch. 4 by reg. 21(3) of S.I. 2013/622 as from 6.4.13.

<sup>6</sup>Words in para. 31(8) omitted by reg. 10(d) of S.I. 2014/608 as from 6.4.14.

<sup>7</sup>Words in para. 31(9) substituted by reg. 7(b) of S.I. 2008/636 as from 6.4.08.

to Schedule 1 to the Act, shall apply in relation to the requirement to make a return contained in sub-paragraphs ►<sup>1</sup>(3A)◄ ►<sup>2</sup>and (7A)◄.

►<sup>3</sup>**Direct collection involving deductions working sheets on and after 6th April 2014**

**31A.**—(1) On receiving any general earnings which fall to be recorded on a deductions working sheet under paragraph 31(2), subject to sub-paragraph (2), an employee must proceed in accordance with paragraph 21A(1), (2) and (5).

(2) If the employee falls within paragraph 21D(1)(a), the employee may instead proceed in accordance with paragraph 21D(3), (4) and (5).

(3) For the purposes of sub-paragraph (1), paragraph 21A(8) and paragraphs 21AB, 21AC, 21AD, 21B and 21C apply as if the employee were a Real Time Information employer.

(4) For the purposes of sub-paragraph (2), paragraph 21D(9) applies as if the employee were a Real Time Information employer.

(5) For the purposes of sub-paragraphs (1) and (2), paragraphs 15, 16, 21E, 21EA and 21F(7A) and (8) and Schedule 4A apply as if the employee were a Real Time Information employer, but the information required by paragraph 10(a) and (b) of that Schedule need not be provided.◄

►<sup>4</sup>**SCHEDULE 4A**

Regulation 67(3)

**Real time returns**

<sup>1</sup>Words in para. 31(9) substituted by reg. 10(e) of S.I. 2014/608 as from 6.4.14.

<sup>2</sup>Words substituted in para. 31(9) by reg. 8(16)(c) of S.I. 2007/1056 as from 6.4.07.

<sup>3</sup>Para. 31A inserted in Sch. 4, para. 2A & 3A inserted in Sch. 4A and words in para. 2 of Sch. 4A substituted by regs. 22-26 of S.I. 2013/622 as from 6.4.13

<sup>4</sup>Sch. 4A & 4B inserted by reg. 14 & Schedule to S.I. 2012/821 as from 6.4.12.

**1.** The information specified in this Schedule is as follows and terms used in this Schedule which are defined for the purposes of Schedule 4 bear the same meaning as in that Schedule.

**Information about the employer and the employee**

**2.** The information specified in paragraphs 2 to ►<sup>3</sup>6, 8 to 15 and 18 to 20◄ of Schedule A1(a) (real time returns) to the PAYE Regulations.

►<sup>3</sup>**2A.** For the purposes of paragraph 2, the references in paragraphs 5 and 6 of Schedule A1 to the PAYE Regulations to regulation 67F of those Regulations(b) shall be taken as references to paragraph 21F of Schedule 4 to these Regulations.◄

**Information about payments to the employee, etc**

**3.** The amount of the payment made that is included in the amount of the employee's earnings from the employment for the purposes of determining the amount of earnings-related contributions payable.

►<sup>3</sup>**3A.** The total of the amounts referred to in paragraph 3 in the year to date.◄

**4.** For the purposes of assessing earnings-related contributions based on the payment, the number of earnings periods the payment relates to.

**5.** Where—

- (a) the earner is concurrently employed in more than one employed earner's employment under the same employer but regulation 14 (aggregation of earnings paid in respect of separate employed earner's employments under the same employer) does not apply; or
- (b) regulation 15 (aggregation of earnings paid in respect of different employed earner's employments by different persons and apportionment of contribution liability) applies in relation to the earner,

an indication of whether the return relates to earnings which have been or will be aggregated.

(a) Schedule A1 was inserted by S.I. 2012/822.

(b) Regulation 67F of the PAYE Regulations was inserted by regulation 27 of S.I. 2012/822.

## Sch. 4A

**6.** The appropriate category letter or, as the case may be, letters in relation to the employee (being the appropriate letter or letters indicated by HMRC).

**7.** For the category letter or, as the case may be, each category letter in relation to the employee (being the appropriate letter or letters indicated by HMRC), the total of the amounts required to be recorded by paragraph 7(13)(b)(i) to (iiia) of Schedule 4 (calculation of deduction) for the year to date.

**8.** If the employee is a director, in so far as relevant to the relevant category letter (being the appropriate category letter indicated by HMRC) in relation to the employee—

- (a) an indication of whether, for the purposes of assessing earnings-related contributions based on the payment, the employer has relied on regulation 8(2) or (3) (earnings periods for directors), or
- (b) an indication of whether, for the purposes of assessing earnings-related contributions based on the payment, the employer has relied or, if the earnings fall to be aggregated, will rely on regulation 8(6).

**9.** Where regulation 8(2) applies and the appointment was in the current tax year, the week in which the appointment was made.

**10.** In so far as relevant to the relevant category letter or, as the case may be, letters (being the appropriate category letter or letters indicated by HMRC) in relation to the employee—

- (a) the total amount of secondary Class 1 contributions payable on the employee's earnings in the earnings period in which the return is made,
- (b) the total amount of secondary Class 1 contributions payable on the employee's earnings in the year to date,
- (c) the total amount of primary Class 1 contributions payable on the employee's earnings in the earnings period in which the return is made, and
- (d) the total amount of primary Class 1 contributions payable on the employee's earnings in the year to date.

**11.** In a case where the earnings the return relates to will fall to be aggregated with other earnings in the same earnings period, the information required by paragraphs 6, 7 and 10 need only be provided when the final payment of general earnings in the earnings period is made.

<sup>1</sup>Para. 12 substituted & paras. 12A-D inserted in Sch. 4 by regs. 27 & 28 of S.I. 2013/622 as from 6.4.13.

►<sup>1</sup>**12.** If the employee's employment is contracted-out or was contracted-out at any time during the year—

- (a) the number notified by HMRC on the relevant contracting-out certificate as the employer's number, and
- (b) the number notified by HMRC on the relevant contracting-out certificate as the registered pension scheme's number.◀

►<sup>1</sup>**12A.** Whether, during the period since the employer last made a return under paragraph 21A or 21D of Schedule 4 containing information about the employee—

- (a) the employee has been absent from the employment because of a trade dispute at the employer's place of work, or
- (b) the employee has been absent from the employment without pay for any other reason.

**12B.** In cases—

- (a) falling within paragraph 30 of Schedule 4, or
- (b) where the employer has no obligation to deduct or repay tax in accordance with regulation 21 of the PAYE Regulations

the amount of the payment after statutory deductions, being the amount of the payment referred to in paragraph 3 minus the total amount of primary Class 1 contributions for the period (see paragraph 10(c)) minus the value of the deduction due under the Education (Student Loans) (Repayment) Regulations 2009(a) or the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(b).

**12C.** The value of any amount which is not subject to tax or national insurance contributions paid to the employee at the same time as the payment.

**12D.** The value of any deductions made from the payment which do not otherwise fall to be reported under Schedule 4.◀

(a) S.I. 2009/470, as amended by S.I. 2010/661, 2011/784, 2012/836 and 2012/1309.

(b) S.R. (NI) 2009 No. 128, as amended by S.R. (N.I.) 2010 No. 90, S.R. (N.I.) 2011 No. 137 and S.R. (N.I.) 2012 No. 136.

**Information about statutory sick pay**

**13.** In a case where the employer is entitled to recover an amount in accordance with article 2 (right of employer to recover statutory sick pay) of the Statutory Sick Pay Percentage Threshold Order 1995(a) in respect of a payment of statutory sick pay, the total amount of statutory sick pay paid during the year to date in this employment.

**Information about statutory maternity pay**

**14.** If any, the total amount of statutory maternity pay paid during the year to date in this employment.

**Information about ordinary statutory paternity pay**

**15.** If any, the total amount of ►<sup>1</sup>◄ statutory paternity pay paid during the year to date in this employment.

**16-17.** ►<sup>1</sup>◄

**►<sup>1</sup> Information about statutory shared paternity pay**

**17A.** If any, the total amount of statutory shared parental pay paid during the year to date in this employment.

**17B.** Where statutory shared paternity pay has been paid during the year to date, the following information from the employee's application for the payment under, as the case may be, regulation 6, 7, 19 or 20 (notification and evidential requirements) of the Statutory shared Paternity Pay (General) Regulations 2014(b)–

- (a) the name of the employee's spouse or partner who has the main responsibility (apart from the employee) for the care of the child to which the application relates, and
- (b) where there is such a number, the national insurance number of the employee's spouse or partner who has the main responsibility (apart from the employee) for the care of the child to whom application relates.

For the purposes of this regulation "partner" has the meaning given in regulation 2(a) of the Statutory Shared Parental Pay (General) Regulations 2014.◄

**Information about statutory adoption pay**

**18.** If any, the total amount of statutory adoption pay paid in the year to date in this employment.

**SCHEDULE 4B**

Regulation 67(3)

**Additional information about payments**

**1.** The amounts specified in this Schedule are as follows and terms used in this Schedule which are defined for the purposes of Schedule 4 bear the same meaning as in that Schedule.

**Deductions in respect of statutory payments**

**2.** In respect of statutory maternity pay paid during the year to date to all employees the total of the amounts determined under regulation 3 (determination of the amount of additional payment to which a small employer shall be entitled) of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations 1994(c) and deducted by virtue of regulation 4 (right of employer to prescribed amount) of those Regulations.

**3.** In respect of ►<sup>1</sup>◄ statutory paternity pay paid during the year to date to all employees, the total of the amounts determined under regulation 5 (deductions from payments to HMRC) of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002(d).

(a) S.I. 1995/512, to which there are amendments not relevant to these Regulations.

(b) S.I. 2014/3051.

(c) S.I. 1994/1882, amended by S.I. 2003/672; there are other amending instruments but none is relevant.

(d) S.I. 2002/2820, to which there are amendments not relevant to these Regulations.

<sup>1</sup>Words in Sch 4A para. 15, paras. 16 & 17, Sch. 4B, para. 3 omitted. Sch. 4A paras. 17A & 17B inserted by regs. 5 & 6 of S.I. 2015/175 as from 5.3.15.

**Schs. 4B-5**

<sup>1</sup>Sch. 4B, para. 4 omitted & para. 4A inserted by regs. 6 of S.I. 2015/175 as from 5.3.15.

**4. ▶<sup>1</sup>◀**

▶<sup>1</sup>**4A.** In respect of statutory shared paternity pay paid during the year to date to all employees, the total amounts determined under regulation 5 (deductions from payments to the Commissioners) of the Statutory Shared Paternal Pay (Administration) Regulations 2014.◀

**5.** In respect of statutory adoption pay paid during the year to date to all employees, the total of the amounts determined under regulation 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002.

<sup>2</sup>Sch. 4B para. 6 omitted by reg. 3(9) of S.I. 2014/2397 as from 6.10.14.

**6. ▶<sup>2</sup>◀****Regional secondary contributions holiday for new businesses**

**7.** The total of the appropriate amounts within the meaning given by section 7 of the National Insurance Contributions Act 2011(a) (regional secondary contributions holiday for new businesses) deducted by or refunded to the employer under section 4 of that Act in the year to date.◀

**SCHEDULE 5**

Regulation 69

**ELECTIONS ABOUT ▶<sup>3</sup>SECURITIES OPTIONS, RESTRICTED SECURITIES AND CONVERTIBLE SECURITIES◀**

<sup>3</sup>Words in heading to Sch. 5 & sub-paras. 1(1)(a) & (b) substituted by reg. 8 of S.I. 2004/2096 as from 1.9.04.

**1.—(1)** An election for the purposes of paragraph 3B(1) of Schedule 1 to the Act shall contain—

- ▶<sup>3</sup>(a) details of the securities options, restricted securities and convertible securities to which it relates, or of the period to which it relates, within which these are intended to be awarded or acquired;
- (b) a statement that the election relates to relevant employment income arising from the securities or securities options referred to in sub-paragraph (1)(a) on which the employed earner is liable to pay secondary Class 1 contributions under—
  - (i) in the case of securities options, section 476 of ITEPA 2003(b) and section 4(4)(a) of the Act(c);
  - (ii) in the case of restricted securities, section 426 of ITEPA 2003(d) and regulation 22(7)(e);
  - (iii) in the case of convertible securities, section 438 of ITEPA 2003(f) and regulation 22(7), and

an explanation of the effect of the relevant provision;◀

- (c) the amount or proportion (as the case may be) of the liability for secondary Class 1 contributions to be transferred;
- (d) a statement that its purpose is to transfer the liability for the secondary Class 1 contributions referred to in paragraph (c) from the secondary contributor to the employed earner;
- ▶<sup>4</sup>(dd) a statement that it does not apply in relation to any liability, or any part of any liability, arising as a result of regulations being given retrospective effect by virtue of section 4B(2) of either the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992;◀

<sup>4</sup>Para. 1(1)(dd) added to Sch. 5 by reg. 2(2) of S.I. 2007/1175 as from 6.4.07.

(a) 2011 c. 3.

(b) Section 476 of ITEPA 2003 was substituted by paragraph 10(1) of Schedule 22 to the Finance Act 2003.

(c) Section 4(4) of the Act was substituted by section 50(1) of the Social Security Act 1998. Subsection (4)(a) was substituted by paragraph 172(2) of Part 2 of Schedule 6 to ITEPA 2003 and amended by paragraph 48 of Schedule 22 to the Finance Act 2003.

(d) Section 426 of ITEPA 2003 was substituted by paragraph 3(1) of Schedule 22 to the Finance Act 2003.

(e) Regulation 22(7) was substituted by regulation 5 of S.I. 2003/3085.

(f) Section 438 of ITEPA 2003 was substituted by paragraph 4(1) of Schedule 22 to the Finance Act 2003.

- (e) a statement as to the method by which the secondary contributor will secure that the liability for amounts of contributions, transferred under the election, is met;
- (f) a statement as to the circumstances in which it shall cease to have effect;
- (g) a declaration by the employed earner that he agrees to be bound by its terms; and
- (h) evidence sufficient to show that the secondary contributor agrees to be bound by its terms.

(2) The declaration referred to in sub-paragraph (1)(g) must either be signed by the employed earner or, if it is made by electronic communications, made by him in such electronic form and by such means of electronic communications as may be authorised by the Board.

2.—(1) An election to which this Schedule applies shall be made either in writing or in such electronic form and by such means of electronic communications as may be authorised by the Board.

(2) An election to which this Schedule applies may be contained in two documents, one made by the employed earner and the other by the secondary contributor, in which case—

- (a) the document made by the employed earner shall contain the matters listed in paragraph 1(1)(a) to (g); and
- (b) the document made by the secondary contributor shall contain the matters listed in paragraph 1(1)(a) to (f) and (h).

3.—(1) Where an election to which this Schedule applies has been made, the secondary contributor shall notify the employed earner to whom any of his liabilities are transferred by the election of—

- (a) any transferred liability that arises;
- (b) the amount of any transferred liability that arises; and
- (c) the contents of any notice of withdrawal by the Board of any approval that relates to the election.

(2) The secondary contributor shall notify the employed earner of the matters set out in sub-paragraph (1)(a) and (b) as soon as reasonably practicable.

(3) The secondary contributor shall notify the employed earner of the matters set out in sub-paragraph (1)(c) within 14 days of receipt of the notice of withdrawal in question.

## SCHEDULE 6

Regulation 140

### PART 1

#### PRESCRIBED ESTABLISHMENTS AND ORGANISATIONS FOR THE PURPOSES OF SECTION 116(3) OF THE ACT

1. Any of the regular naval, military or air forces of the Crown.
2. Royal Fleet Reserve.
3. Royal Naval Reserve.
4. Royal Marines Reserve.
5. Army Reserve.
6. Territorial Army.
7. Royal Air Force Reserve.
8. Royal Auxiliary Air Force.
9. The Royal Irish Regiment, to the extent that its members are not members of any force falling within paragraph 1.

## PART II

ESTABLISHMENTS AND ORGANISATIONS OF WHICH HER  
MAJESTY'S FORCES SHALL NOT CONSIST

10. By virtue of regulation 140, Her Majesty's forces shall not be taken to consist of any of the establishments or organisations specified in Part I of this Schedule by virtue only of the employment in such establishment or organisation of the following persons—

- (a) any person who is serving as a member of any naval force of Her Majesty's forces and who (not having been an insured person under the National Insurance Act 1965(a) and not being a contributor under the Social Security Act 1975(b) or the Act) locally entered that force at an overseas base;
- (b) any person who is serving as a member of any military force of Her Majesty's forces and who entered that force, or was recruited for that force outside the United Kingdom, and the depot of whose unit is situated outside the United Kingdom;
- (c) any person who is serving as a member of any air force of Her Majesty's forces and who entered that force, or was recruited for that force, outside the United Kingdom, and is liable under the terms of his engagement to serve only in a specified part of the world outside the United Kingdom.

## SCHEDULE 7

Regulation 156(4)

## Corresponding Northern Ireland Enactments

## 1. In this Schedule—

“the 1998 Order” means the Social Security (Northern Ireland) Order 1998(c);

“the 2000 Act” means the Child Support, Pensions and Social Security Act 2000;

“the Transfer Order” means the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999(d);

“the Welfare Reform Act” means the Welfare Reform and Pensions Act 1999;  
and

“the Welfare Reform Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999(e).

## PART I

ENACTMENTS CORRESPONDING TO PRIMARY LEGISLATION APPLICABLE  
TO GREAT BRITAIN

<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
National Insurance Act 1965	National Insurance Act (Northern Ireland) 1996(f)	
Section 3	Section 3	

(a) 1965 c. 51.

(b) 1975 c. 14.

(c) S.I. 1998/1506 (N.I. 10).

(d) S.I. 1999/671.

(e) S.I. 1993/3147 (N.I. 11).

(f) 1966 c. 6 (N.I.).



<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Employment and Training Act 1973	Employment and Training Act (Northern Ireland) 1950(a)	
Section 2(2)	Section 1	Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988(b) and Article 5 of the Industrial Training (Northern Ireland) Order 1990(c).
Social Security Act 1975(d)	Social Security (Northern Ireland) Act 1975(e)	
Section 4	Section 4	
Section 5(3)	Section 5(3)(f)	
Section 7	Section 7	
Section 8	Section 8	
Section 39(4)	Section 39(4)	
Section 130(2)	Section 125(2)(g)	
Social Security Pensions Act 1975	Social Security Pensions (Northern Ireland) Order 1975	
Section 3(1)	Article 5(1)	
Section 6(1)(a)	Article 8(1)(a)	
Companies Act 1985 (h)	Companies (Northern Ireland) Order 1986(i)	
Section 718	Article 667	Amended by paragraph 8 of Schedule 8 to S.R. 1997 No. 251.
Section 735 (definition of "company")	Article 3(1)	
Social Security Act 1986	Social Security (Northern Ireland) Order 1986(j)	
Section 7	Article 9(k)	

(a) 1950 c. 29 (N.I.).

(b) S.I. 1988/1087 (N.I. 10).

(c) S.I. 1990/1200 (N.I. 8).

(d) 1975 c. 14.

(e) 1975 c. 15.

(f) Repealed by Article 5(1) of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)).

(g) Repealed by Article 5(1) of the Social Security Pensions (Northern Ireland) Order 1975.

(h) 1985 c. 6.

(i) S.I. 1986/1032 (N.I. 6).

(j) S.I. 1986/1888 (N.I. 18).

(k) Repealed by Schedule 4 to the Pensions Schemes (Northern Ireland) Act 1993 (c. 49), but continues to have effect by virtue of paragraph 21 of Schedule 5 to that Act. See also paragraph 1 of Schedule 1 to the Transfer Order.

<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Children Act 1999	Children (Northern Ireland) Order 1995	
Part X	Part XI	
Section 71(13) (definition of “nanny”)	Article 119(6)	
Section 105(1) (definition of “relative”)	Article 2(2)	
Social Security Contributions and Benefits Act 1992	Social Security Contributions and Benefits (Northern Ireland) Act 1992( <b>a</b> )	
Section 1(6)	Section 1(6)	Paragraph 38(3) of Schedule 6 to the 1998 Order and paragraph 2 of Schedule 3 to the transfer Order.
Section 2(1) and (2)	Section 2(1) and (2)	
Section 3	Section 3	Articles 45 and 46 of the 1998 Order and paragraph 4 of Schedule 3 to the Transfer Order.
Section 4(1) and(4)	Section 4(1) and (4)	Subsection (4) was substituted by Article 47(1) of the 1998 Order.
Section 5(1)	Section 5(1)	Substituted by paragraph 1 of Part I of Schedule 10 to the Welfare Reform Act.
Section 6	Section 6	Substituted by paragraph 2 of Part I of Schedule 10 to the Welfare Reform Act and amended by section 81(3) of the 2000 Act.
Section 6A	Section 6A( <b>b</b> )	
Section 8(1) and (2)	Section 8(1) and(2)	Section 8 was substituted by paragraph 4 of Part I of Schedule 10 to the Welfare Reform Act.
Section 9	Section 9	Substituted by paragraph 5 of Part I of Schedule 10 to the Welfare Reform Act.

(a) 1992 c. 7.

(b) Inserted by paragraph 3 of Part I of Schedule 10 to the Welfare Reform Act.

<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Section 10	Section 10	Substituted by section 78(2) of the 2000 Act.
Section 10ZA	Section 10ZA(a)	
Section 10A	Section 10A(b)	Paragraph 12 of Schedule 3 to the Transfer Order and section 78 of the Welfare Reform Act.
Section 11	Section 11	Paragraph 13 of Schedule 3 to Transfer Order and article 3 of S.I. 2001/477.
Section 12	Section 12	Paragraph 14 of Schedule 3, and paragraph 1 of Schedule 8 to the Transfer Order.
Section 13	Section 13	Paragraph 15 of Schedule 3 to the Transfer Order and article 4 of S.I. 2001/477.
Section 14(1)	Section 14(1)	
Section 15	Section 15	Article 4 of S.I. 2000/755 and article 5 of S.I. 2001/477.
Section 16	Section 16	Paragraph 6 of Schedule 1 to the Transfer Order.
Section 17	Section 17	Paragraph 7 of Schedule 1, paragraph 17 of Schedule 3 and Schedule 9 to the Transfer Order.
Section 18	Section 18	Paragraph 8 of Schedule 1, paragraph 18 of Schedule 3 to the Transfer Order, article 4 of S.I. 2000/755 and article 5 of S.I. 2001/477.
Section 19(1), (2) and (4)	Section 19(1), (2) and (4) respectively	
Section 19A	Section 19A(c)	Paragraph 20 of Schedule 3 and paragraph 2 of Schedule 8 to the Transfer Order.

(a) Inserted by section 79(1) of the 2000 Act.

(b) Inserted by Article 50 of the 1998 Order.

(c) Inserted by Article 51 of the 1998 Order.

## Sch. 7

<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Section 20(1)	Section 20(1)	Paragraph 2(2) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994(a), Schedule 3 to the Jobseekers (Northern Ireland) Order 1995(b), paragraph 18(1) of Schedule 2 to the Pensions (Northern Ireland) Order 1995(c) and paragraph 2(2) of Schedule 8, paragraph 5(2) of Schedule 9 and Part V of Schedule 10 to the Welfare Reform Order.
Section 112	Section 112	Schedule 1 to the Employment Rights (Northern Ireland) Order 1996(d) and paragraph 21 of Schedule 3 to the Transfer Order.
Section 122(1) (definition of “pensionable age”)	Section 122(1) definition of “pensionable age”)	Paragraph 9 of Schedule 2 Pensions (Northern Ireland) 1995.
Section 151(6)	Section 147(6)	Paragraph 10 of Schedule 1 to the Transfer Order.
Section 164(9)(b)	Section 160(9)(b)	Paragraph 14(2) of Schedule 1 to the Transfer Order.
Schedule 1	Schedule 1	
Paragraph 1(1)	Paragraph 1(1)	
Paragraph 1(7)	Paragraph 1(7)	
Paragraph 1(8)	Paragraph 1(8)	
Paragraph 3(1)	Paragraph 3(1)	Paragraph 58(5) of Schedule 6 to the 1998 Order.
Paragraph 3B	Paragraph 3B(e)	
Paragraph 6(3) and (4A)	Paragraph 6(3) and (4A)(f)	Amended by paragraph 3 Schedule 8 to the Transfer Order.

(a) S.I. 1994/1898 (N.I. 12).

(b) S.I. 1995/2705 (N.I. 15).

(c) S.I. 1995/3213 (N.I. 22).

(d) S.I. 1996/1919 (N.I. 16).

(e) Inserted by section 81(2) of the Child Support, Pensions and Social Security Act 2000.

(f) Paragraph 4(A) was inserted by paragraph 58(11) of Schedule 6 to the 1998 Order.

<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Schedule 2	Schedule 2(a)	
Social Security Administration Act 1992	Social Security Administration (Northern Ireland) Act 1992(b)	
Section 17	Section 15	
Section 18	Section 16	
Section 73	Section 71	Paragraph 32 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995.
Section 162(5)	Section 142(5)	Article 4(1) of the Social Security (Contributions) (Northern Ireland) Order 1994(c) , Article 61(2) of the 1998 Order, paragraph 9(2) of Part III of Schedule 10 to the Welfare Reform Act and section 78(7) of the 2000 Act.
Section 179	Section 155	Paragraph 48 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995, paragraph 84 of Schedule 6 to the 1998 Order and paragraph 5 of Schedule 1 to the Tax Credits Act 1999(d) .
Trade Union and Labour Relations (Consolidation) Act 1992	Employment Rights (Northern Ireland) Order 1996(e)	
Section 189	Article 217	Regulation 10 of S.R. 1999 No. 432.
Pension Schemes Act 1993	Pension Schemes (Northern Ireland) Act 1993(f)	
Section 8(1)	Section 4(1)	Article 133(2) of, and paragraph 14 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and paragraph 37(a) of Schedule 1 to the Transfer Order.

(a) Schedule 2 to 1992 c. 7 sets out Schedule 2 to 1992 c. 4 and section 15(3) of 1992 c. 7 expressly cross-refers to Schedule 2 in 1992 c. 4.

(b) 1992 c. 8.

(c) S.I. 1994/765 (N.I. 14).

(d) 1999 c. 10.

(e) S.I. 1996/1919 (N.I. 6).

(f) 1993 c. 49.

## Sch. 7

<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Section 9(2)	Section 5(2)	Article 133(3) of the Pensions (Northern Ireland) Order 1995.
Section 9(3)	Section 5(3)	Article 133(4) of, and paragraph 17 of Schedule 3 to the Pensions (Northern Ireland) Order 1995, and paragraph 38(3) of Schedule 3 to the Transfer Order.
Section 41(1) to (1B)	Section 37 (1) to (1B)	Subsection (1) was amended by paragraph 95 of Schedule 6 to the 1998 Order and further amended by paragraph 6(2), and subsections (1A) and (1B) were substituted by paragraph 6(3), of Part II of Schedule 10 to the Welfare Reform Act.
Section 42A(1) to (2A)	Section 38A(1) to (2A)	Section 38A was inserted by Article 134(4) of the Pensions (Northern Ireland) Order 1995, subsections (1) to (2A) were substituted by paragraph 96 of Schedule 6 to the 1998 Order and subsections (2) and (2A) were further substituted by paragraph 7(3) of Part I of Schedule 10 to the Welfare Reform Act.
Section 43	Section 39	Paragraph 34 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 and paragraph 54 of Schedule 1 to the Transfer Order.
Section 44(1)	Section 40(1)	Article 160(a) of the Pensions (Northern Ireland) Order 1995 and paragraph 55(2) and (3) of Schedule 1 to the Transfer Order.
Section 55(2)	Section 51(2)	Substituted by Article 138 of the Pensions (Northern Ireland) Order 1995 and amended by paragraph 7(2) of Schedule 2 to the Welfare Reform Act.
Jobseekers Act 1995	Jobseekers (Northern Ireland) Order 1995	

<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Section 2(1)(a)	Article 4(1)(a)	
Social Security Contributions (Transfer of Functions, etc.) Act 1999	The Transfer Order	
Section 8(1)(a) and (k)(ii)	Article 7(1)(a) and (k)(ii)	

## PART II

ENACTMENTS CORRESPONDING TO SUBORDINATE LEGISLATION  
APPLICABLE TO GREAT BRITAIN

<i>Subordinate legislation applying in Great Britain</i>	<i>Subordinate legislation applying in Northern Ireland</i>	<i>Relevant amendment to the Northern Ireland provision</i>
National Insurance (Contributions) Regulations 1969	National Insurance (Contributions) Regulations (Northern Ireland) 1962(a)	S.R. & O. (N.I.) 1963 No. 59 and 1970 No. 295.
Regulation 9(3) and (4A)	Regulation 10(3) and (4A) respectively	
National Insurance (Married Women) Regulations 1973(b)	National Insurance (Married Women) Regulations (Northern Ireland) 1973(c)	
Regulation 2(1)(a)	Regulation 2(1)(a)	
Regulation 2(2)	Regulation 2(2)	
Regulation 3(1)(a)	Regulation 3(1)(a)	
Regulation 3(2)	Regulation 3(2)	
Regulation 4(2)	Regulation 4(2)	
Regulation 16	Regulation 16	
Social Security (Contributions) Regulations 1975	Social Security (Contributions) Regulations (Northern Ireland) 1975(d)	
Regulation 91	Regulation 89	
Regulation 94	Regulation 92	

(a) S.R. &amp; O. (N.I.) 1962 No. 65.

(b) S.I. 1973/693.

(c) S.R. &amp; O. (N.I.) 1973 No. 146.

(d) S.R. 1975 No. 319.

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<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Social Security (Categorisation of Earners) Regulations 1978	Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978(a)	
Schedule 3	Schedule 3	Regulation 4 of S.R. 1984 No. 81, regulation 3 of S.R. 1990 No. 339, regulation 4 of S.R. 1994 No. 92 and regulation 4 of S.R. 1998 No. 250. See also S.R. 1999 No. 2.
Social Security (Payments on account, Overpayments and Recovery) Regulations 1988	Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(b)	
Regulation 13	Regulation 13	Regulation 15(3) of S.R. 1996 No. 289 and regulation 11 of S.I. 1999/2573.
Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations 1990	Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations (Northern Ireland) 1990(c)	
Regulation 2	Regulation 2	
Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations 1994	Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations (Northern Ireland) 1994(d).	
Regulation 3	Regulation 3	
Regulation 4	Regulation 4	
▶ <sup>1</sup> ◀	▶ <sup>1</sup> ◀	
Article 2	Article 2	

<sup>1</sup>Words omitted by reg. 3(10) of S.I. 2014/2397 as from 6.10.14.

(a) S.R. 1978 No. 401.  
 (b) S.R. 1988 No. 142.  
 (c) S.R. 1990 No. 90.  
 (d) S.R. 1994 No. 271.



<i>Enactment applying in Great Britain</i>	<i>Corresponding enactment applying in Northern Ireland</i>	<i>Relevant Northern Ireland amendment</i>
Social Security (Adjudication) Regulations 1995	Social Security (Adjudication) Regulations (Northern Ireland) 1995(a)	
Regulation 13	Regulation 13(b)	
Social Security (Additional Pension) (Contributions Paid in Error) Regulations 1996	Social Security (Additional Pension) (Contributions Paid in Error) Regulations (Northern Ireland) 1996(c)	
Regulation 3	Regulation 3	
Employer's Contributions Re-imburement Regulations 1996	Employer's Contributions Re-imburement Regulations (Northern Ireland) 1996(d)	
Regulations 5, 6 and 8	Regulations 5, 6 and 8 respectively	
► <sup>1</sup> Education (Student Loans (Repayment) Regulations 2009◀	► <sup>1</sup> Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(e)◀	
Regulation 39(1)	Regulation 39(1)	
Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001	Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations (Northern Ireland) 2001(f)	
Regulation 4	Regulation 4	
Regulation 9	Regulation 9	

<sup>1</sup>Words substituted in Col. 1 & 2 by reg. 31 of S.I. 2012/821 as from 6.4.12.

(a) S.R. 1995 No. 293.

(b) Revoked by regulation 59 of, and Schedule 3 to S.R. 1999 No. 162 Article 4 of S.R. 1999 No. 371 contains relevant savings.

(c) S.R. 1996 No. 188.

(d) S.R. 1996 No. 30.

(e) S.R. (N.I.) 2009 No. 128, to which there are amendments not relevant to these Regulations.

(f) S.R. 2001 No. 102.



## SCHEDULE 8

Regulation 157

## REVOCATIONS

## PART I

## REVOCATIONS APPLICABLE TO GREAT BRITAIN OR TO THE UNITED KINGDOM

<i>Column (1)</i> <i>Regulations revoked</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The Social Security (Contributions) Regulation 1979	S.I. 1979/591	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1980	S.I. 1980/1975	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1981	S.I. 1981/82	The whole of the Regulations
The Social Security (Contributions) (Mariners) Amendment Regulations 1982	S.I. 1982/206	The whole of the Regulations
The Contracting-out (Recovery of Class 1 Contributions) Regulations 1982	S.I. 1982/1033	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1982	S.I. 1982/1573	The whole of the Regulations
The Social Security and Statutory Sick Pay (Oil and Gas (Enterprise) Act 1982) (Consequential) Regulations 1982	S.I. 1982/1738	Regulation 4
The Social Security (Contributions) Amendment (No. 2) Regulations 1982	S.I. 1982/1739	The whole of the the regulations
The Social Security (Contributions) Amendment Regulations 1983	S.I. 1983/10	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1983	S.I. 1983/53	The whole of the the Regulations
The Social Security (Contributions, Re-rating) Consequential Amendment Regulations 1983	S.I. 1983/73	The whole of the the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1983	S.I. 1983/395	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1983	S.I. 1983/496	The whole of the Regulations

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<i>Column (1) Regulations revoked</i>	<i>Column (2) References</i>	<i>Column (3) Extent of revocation</i>
The Social Security (Contributions) Amendment (No. 5) Regulations 1983	S.I. 1983/1689	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1984	S.I. 1984/77	The whole of the Regulations
The Social Security (Contributions, Re-rating) Consequential Amendment Regulations 1984	S.I. 1984/146	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1984	S.I. 1984/1756	The whole of the Regulations
The Social Security (Contributions, Regulations Re-rating) Consequential Amendment Regulations 1985	S.I. 1985/143	The whole of the the Regulations
The Social Security (Contributions) Amendment Regulations 1985	S.I. 1985/396	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1985	S.I. 1985/397	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1985	S.I. 1985/398	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1985	S.I. 1985/399	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 5) Regulations 1985	S.I. 1985/400	The whole of the Regulations
The Social Security (Contributions and Credits) (Transitional and Consequential Provisions) Regulations 1985	S.I. 1985/1398	Regulations 2, 4, 5 and 6
The Social Security (Contributions) Amendment (No. 6) Regulations 1985	S.I. 1985/1726	The whole of the Regulations
The Social Security (Contributions, Re-rating) Consequential Amendment Regulations 1986	S.I. 1986/198	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1986	S.I. 1986/485	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1987	S.I. 1987/413	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1987	S.I. 1987/1590	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1987	S.I. 1987/2111	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1988	S.I. 1988/299	The whole of the Regulations

<i>Column (1) Regulations revoked</i>	<i>Column (2) References</i>	<i>Column (3) Extent of revocation</i>
The Social Security (Contributions) Amendment (No. 2) Regulations 1988	S.I. 1988/674	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1988	S.I. 1988/860	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1988	S.I. 1988/992	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1989	S.I. 1989/345	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1989	S.I. 1989/571	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1989	S.I. 1989/572	The whole of the Regulations
The Social Security (Contributions) (Transitional and Consequential Provisions) Regulations 1989	S.I. 1989/1677	The whole of the Regulations
The Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations 1990	S.I. 1990/536	Regulation 4
The Social Security (Contributions) Amendment Regulations 1990	S.I. 1990/604	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1990	S.I. 1990/605	The whole of the Regulations
The Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 1990	S.I. 1990/906	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1990	S.I. 1990/1779	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1990	S.I. 1990/1935	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1991	S.I. 1991/504	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1991	S.I. 1991/639	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1991	S.I. 1991/640	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1991	S.I. 1991/1632	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 5) Regulations 1991	S.I. 1991/1935	The whole of the Regulations

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<i>Column (1)</i> <i>Regulations revoked</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The Social Security (Contributions) Amendment (No. 6) Regulations 1991	S.I. 1991/2505	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1992	S.I. 1992/97	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1992	S.I. 1992/318	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1992	S.I. 1992/667	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1992	S.I. 1992/668	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 5) Regulations 1992	S.I. 1992/669	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 6) Regulations 1992	S.I. 1992/1440	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1993	S.I. 1993/260	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1993	S.I. 1993/281	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1993	S.I. 1993/282	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1993	S.I. 1993/583	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 5) Regulations 1993	S.I. 1993/821	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 6) Regulations 1993	S.I. 1993/2094	The whole of the Regulations
The Social Security (Miscellaneous Amendments) Regulations 1993	S.I. 1993/2736	The whole of the the Regulations
The Social Security (Contributions) Amendment (No. 7) Regulations 1993	S.I. 1993/2925	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1994	S.I. 1994/563	The whole of the Regulations
The Social Security (Contributions) (Miscellaneous Amendments) Regulations 1994	S.I. 1994/667	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1994	S.I. 1994/1553	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1994	S.I. 1994/2194	The whole of the Regulations

<i>Column (1)</i> <i>Regulations revoked</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The Social Security (Contributions) Amendment (No. 4) Regulations 1994	S.I. 1994/2299	The whole of the Regulations
The Statutory Sick Pay Percentage Threshold Order 1995	S.I. 1995/512	Article 6(3)
The Social Security (Contributions) Amendment Regulations 1995	S.I. 1995/514	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1995	S.I. 1995/714	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1995	S.I. 1995/730	The whole of the Regulations
The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995	S.I. 1995/829	Regulation 13
The Social Security (Contributions) Amendment (No. 4) Regulations 1995	S.I. 1995/1003	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 5) Regulations 1995	S.I. 1995/1570	The whole of the Regulations
The Employer's Contributions Reimbursement Regulations 1996	S.I. 1996/195	Regulation 13
The Social Security (Contributions) Amendment Regulations 1996	S.I. 1996/486	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1996	S.I. 1996/663	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1996	S.I. 1996/700	The whole of the Regulations
The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1996	S.I. 1996/777	Regulation 5
The Social Security (Contributions) Amendment (No. 4) Regulations 1996	S.I. 1996/1047	The whole of the the Regulations
The Social Security (Additional Pension) (Contributions Paid in Error) Regulations 1996	S.I. 1996/1245	Regulation 4
The Social Security (Credits and Contributions) (Jobseeker's Allowance Consequential and Miscellaneous Amendments) Regulations 1996	S.I. 1996/2367	Regulation 3
The Social Security (Contributions) Amendment (No. 5) Regulations 1996	S.I. 1996/2407	The whole of the Regulations

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<i>Column (1)</i> <i>Regulations revoked</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The Social Security (Contributions) Amendment (No. 6) Regulations 1996	S.I. 1996/3031	The whole of the Regulations
The Social Security (Contributions) Amendments Regulations 1997	S.I. 1997/545	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1997	S.I. 1997/575	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1997	S.I. 1997/820	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1997	S.I. 1997/1045	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1998	S.I. 1998/523	The whole of the Regulations
The Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 1998	S.I. 1998/524	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 2) Regulations 1998	S.I. 1998/680	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 3) Regulations 1998	S.I. 1998/2211	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 4) Regulations 1998	S.I. 1998/2320	The whole of the Regulations
The Social Security (Contributions) Amendment (No. 5) Regulations 1998	S.I. 1998/2894	The whole of the Regulations
The Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 1999	S.I. 1999/361	The whole of the Regulations
The Social Security (Contributions) Amendment Regulations 1999	S.I. 1999/561	The whole of the Regulations
The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1999	S.I. 1999/567	Regulations 2 to 6 and 8 to 11
The Social Security (Contributions and Credits) (Miscellaneous Amendments) Regulations 1999	S.I. 1999/568	Regulations 2 to 12 and 14 to 19
The Social Security (Contributions) Amendment (No. 2) Regulations 1999	S.I. 1999/827	The whole of the Regulations
The Social Security (Contributions) (No. 3) Regulations 1999	S.I. 1999/975	The whole of the Regulations
The Social Security (Contributions) (Amendment No. 4) Regulations 1999	S.I. 1999/1965	The whole of the Regulations
The Social Security (Contributions) Supplement No. 5 (June 2001) (Amendment No. 5) Regulations 1999	S.I. 1999/2736	The whole of the Regulations
The Social Security (Contributions) (Amendment) Regulations 2000	S.I. 2000/175	The whole of the Regulations



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<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>
<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>

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