

**2001 No. 1817**

**SOCIAL SECURITY**

**The Social Security Contributions (Share Options) Regulations 2001**

<i>Made</i> - - - -	<i>11th May 2001</i>
<i>Laid before Parliament</i>	<i>11th May 2001</i>
<i>Coming into force</i> -	<i>12th May 2001</i>

The Treasury, in exercise of the powers conferred upon them by section 175(3) and (4) of, and paragraphs 7B(1) and (2)(e), (f) and (g) and 8(1)(b) and (q) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(a), section 171(3) and (4) of, and paragraphs 7B(1), (2)(e), (f) and (g) and (10) and 8(1)(b) and (q) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b) and section 5(3) of the Social Security Contributions (Share Options) Act 2001(c), and the Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 175(3) and (4) of, and paragraph 6(1)(b) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992, section 171(3) and (4) of, and paragraph 6(1)(b) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and section 1(5)(a) and (b) of the Social Security Contributions (Share Options) Act 2001, after the signifying of Royal Assent to the Social Security Contributions (Share Options) Act 2001, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Social Security Contributions (Share Options) Regulations 2001 and shall come into force on 12th May 2001.

**Interpretation**

2. In these Regulations—  
“the Act” means the Social Security Contributions (Share Options) Act 2001 and references to a numbered section, without more, are references to the section bearing that number in the Act;

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(a) 1992 c. 4. Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer Act”). Paragraph 7B was inserted by section 57 of the Social Security Act 1998 (c. 14) and amended by paragraph 38 of Schedule 3, paragraph 7 of Schedule 9, and Part I of Schedule 10, to the Transfer Act, and section 76(3) and (4) of the Child Support, Pensions and Social Security Act 2000 (c. 19). Paragraph 8(1)(b) was amended by paragraph 77(14) of Schedule 7 to the Social Security Act 1998, and paragraph 8(1) was amended further, and paragraph 8(1A) was inserted, by paragraph 39 of Schedule 3 to the Transfer Act.

(b) 1992 c. 7. Paragraph 7B was inserted by Article 54 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and amended by paragraph 37 of Schedule 3, paragraph 5 of Schedule 8, and Part I of Schedule 9, to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) (“the Transfer Order”), and section 80(3) and (4) of the Child Support, Pensions and Social Security Act 2000. Paragraph 8(1)(b) was amended by paragraph 58(14) of Schedule 6 to the Social Security (Northern Ireland) Order 1998, and paragraph 8(1) was amended further, and paragraph 8(1A) was inserted by paragraph 38 of Schedule 3 to the Transfer Order.

(c) 2001 c. 20.

“the Contributions and Benefits Act” means—

- (a) in the application of these Regulations to Great Britain, the Social Security Contributions and Benefits Act 1992; and
- (b) in the application of these Regulations to Northern Ireland, the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“the day on which the Act is passed” means 11th May 2001;

“special contribution” means the contribution payable to the Inland Revenue under section 2.

### **Matters to be contained in notices under section 1**

3.—(1) A notice under section 1 must contain the following—

- (a) the name and address of the person giving the notice;
- (b) the name and national insurance number of the person who has obtained a right to acquire shares in respect of which the notice is given;
- (c) the date on which the right was granted;
- (d) the amount that a person might reasonably have expected to have obtained from a sale in the open market on 7th November 2000 of each share to which the right relates together with a statement as to whether or not that amount has been agreed with Inland Revenue Shares Valuation;
- (e) the price at which each share may be acquired by exercise of the right;
- (f) any amount paid in consideration of the grant of the right, or, in cases where section 3 applies, the grant of the original right, by the person who has obtained it;
- (g) the amount in respect of which Class 1 contributions would have been payable by virtue of section 4(4)(a) of the Contributions and Benefits Act(a) if the right had been exercised in full on 7th November 2000 without the giving of any further consideration for the shares acquired by exercise of that right;
- (h) the amounts of any Class 1 contributions that have already been paid to the Inland Revenue in respect of any liability to pay Class 1 contributions in respect of any gain realised on an exercise, assignment or release of the right after 7th November 2000 and before the day on which the Act is passed; and
- (i) confirmation that the person giving the notice understands that the notice is irrevocable.

(2) In cases where an election for the purposes of paragraph 3B(1) of Schedule 1 to the Contributions and Benefits Act(b) which is in force on the day of the notice would relate to any gain realised on an exercise, assignment or release of the right on the day of the notice, the notice must also contain the following—

- (a) a statement as to whether the person paying the special contribution is the person on whom (apart from the Act) any liability to pay secondary Class 1 contributions in respect of that gain would fall by virtue of the election;
- (b) if different parts of that liability would fall (apart from the Act) on different persons by virtue of the election, a statement as to how much of the special contribution is being paid by the secondary contributor on whom (apart from the Act) that liability would fall if no election were in force; and
- (c) if the notice is given—
  - (i) by the secondary contributor on whom (apart from the Act) any liability to pay secondary Class 1 contributions in respect of that gain would fall if no election were in force,
  - (ii) on behalf of the person on whom (apart from the Act) that liability would fall by virtue of the election,a declaration that that person has consented to the notice being given by the secondary contributor.

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(a) Section 4(4) was substituted, for Great Britain, by section 50(1) of the Social Security Act 1998, and, for Northern Ireland, by Article 47(1) of the Social Security (Northern Ireland) Order 1998.

(b) Paragraph 3B was inserted, for Great Britain, by section 77(2), and, for Northern Ireland, by section 81(2) of the Child Support, Pensions and Social Security Act 2000.

(3) In cases where section 3 applies, the notice must also contain confirmation that the person on whom any liability to pay Class 1 contributions in respect of any gain realised on the exercise, assignment or release of the replacement right referred to in that section or any subsequent replacement right would fall understands that section 2(1)(a) and (b) does not—

- (a) prevent any such liability in respect of any such gain; or
- (b) have the effect of deeming any such liability not to have arisen on any such gain.

#### **Form of, and manner of giving, notices under section 1**

4.—(1) A notice under section 1 given in writing must be signed by the person giving it.

(2) A notice under section 1 may also be given by electronic communication containing an electronic signature of the person giving the notice.

(3) Where a notice under section 1 is to be given by a company, section 108(1) of the Taxes Management Act 1970(a) shall apply to that notice as it applies to a notice to be given by a company under the Taxes Acts.

(4) In this regulation—

“electronic communication” includes any communication by means of a telecommunication system (within the meaning of the Telecommunications Act 1984(b));

“electronic signature” has the meaning given by section 7(2) of the Electronic Communications Act 2000(c);

“the Taxes Acts” has the same meaning as is given by section 118(1) of the Taxes Management Act 1970(d).

#### **Payment of special contributions**

5.—(1) Any special contribution must be paid to the Inland Revenue before the end of the period of ninety-two days beginning with the day on which the Act is passed or before the end of that period as extended by any such further period determined by the Inland Revenue under section 2(5).

(2) For the purpose of this regulation and regulations 6 to 9 where—

(a) any payment to the Inland Revenue is made by cheque; and

(b) 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 Inland Revenue and cognate expressions shall be construed accordingly.

#### **Interest on overdue special contributions**

6.—(1) A special contribution which is not paid to the Inland Revenue before the end of the period of ninety-two days beginning with the day on which the Act is passed shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 from the end of that period until payment.

(2) Interest payable under this regulation shall be recoverable as if it were a Class 1A contribution.

(3) A certificate of the Inland Revenue that any amount of interest payable under this regulation has not been paid to them, or, to the best of their knowledge and belief, to any person acting on their behalf, shall be sufficient evidence that a person is liable to pay to them 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 such a certificate until the contrary is proved.

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(a) 1970 c. 9; section 108(1) was amended by paragraph 7 of Schedule 14 to the Finance Act 1993 (c.34).

(b) 1984 c. 12.

(c) 2000 c. 7.

(d) Section 118(1) was relevantly amended by paragraph 32(d) of Schedule 8 to the Development Land Tax Act 1976 (c. 24), Schedule 31 to the Income and Corporation Taxes Act 1988 (c. 1) and paragraph 2(11)(b) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12).

### **Payment of interest on repaid special contributions**

7. Where a special contribution is repaid to a person by the Inland Revenue, the repayment shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 from the end of the period of ninety-two days beginning with the day on which the Act is passed, or, if later, from the date on which the special contribution was paid to the Inland Revenue, until the order for repayment is issued.

### **Repayment of interest paid on special contributions**

8. Where a person has paid interest in respect of a special contribution, the Inland Revenue shall repay the interest to that person if—

- (a) the interest is found not to have been due to be paid; or
- (b) the special contribution is returned, or repaid, to that person.

### **Remission of interest on special contributions**

9.—(1) Interest payable in respect of a special contribution 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) The circumstances specified in this paragraph are that the liability, or a part of the liability, to pay the interest arises as the result of an official error being made.

(3) In 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 Inland Revenue acting as such, where the person by whom the interest was payable, or any person acting on his behalf, does not cause, or materially contribute to, that error or omission;

“the first relevant date” means the date after the end of the period of ninety-two days beginning with the day on which the Act is passed or, if later, the date on which the official error occurs;

“the second relevant date” means the date which is fourteen days after the date on which the official error is rectified and the person by whom the interest was payable is advised of its rectification.

### **Records to be maintained**

10.—(1) A person who has given a notice under section 1 must maintain the following records—

- (a) a copy of the notice;
- (b) evidence of the price at which each share may be acquired by exercise of the right in respect of which the notice is given;
- (c) evidence of the amount that a person might reasonably have expected to have obtained from a sale in the open market on 7th November 2000 of each share to which the right relates;
- (d) evidence that the special contribution was paid to the Inland Revenue before the end of the period of ninety-two days beginning with the day on which the Act is passed; and
- (e) in cases where sub-paragraph (c) of regulation 3(2) applies, evidence of the consent referred to in that sub-paragraph.

(2) Subject to paragraph (3), the records referred to in paragraph (1) must be retained by the person required to maintain them for a period of not less than three years beginning with 6th April following the date on which a gain is realised on the exercise, assignment or release of the right in respect of which the notice under section 1 is given.

(3) In cases where—

- (a) section 3 applies; and
- (b) the notice under section 1 is given in respect of the original right,

the records referred to in paragraph (1) must be retained by the person required to maintain them for a period of not less than three years beginning with 6th April following the date on which a gain is realised on the exercise, assignment or release of the replacement right or any subsequent replacement right.

## Inspection of records

11.—(1) The following provisions of this regulation, which are a modified version of paragraphs (1) and (3) to (7) of regulation 55 of the Income Tax (Employments) Regulations 1993(a), shall apply in relation to every person required to maintain records under regulation 10 of these Regulations.

(2) Every person required to maintain records under regulation 10, whenever called upon to do so by any authorised officer of the Inland Revenue, must produce those records to that officer for inspection, at such time as that officer may reasonably require, at the prescribed place.

- (3) “The prescribed place” mentioned in paragraph (2) means—
- (a) such place in the United Kingdom as the person and the officer may agree upon;
  - (b) in default of such agreement, the place in the United Kingdom at which the records referred to in paragraph (2) are normally kept; or
  - (c) in default of such agreement and if there is no such place as is referred to in subparagraph (b), the person’s principal place of business in the United Kingdom.
- (4) The authorised officer may—
- (a) take copies of, or make extracts from, any document produced to him for inspection in accordance with paragraph (2); and
  - (b) remove any document so produced if it appears to him to be necessary to do so, at a reasonable time and for a reasonable period.
- (5) Where any document is removed in accordance with paragraph (4)(b), the authorised officer must provide—
- (a) a receipt for any documents so removed; and
  - (b) a copy of the document, free of charge, within seven days, to the person by whom it was produced or caused to be produced where the document is reasonably required for the proper conduct of a business.
- (6) Where a lien is claimed on a document produced in accordance with paragraph (2), the removal of the document under paragraph (4)(b) shall not be regarded as breaking the lien.
- (7) Where records are maintained by computer, the person required to make them available for inspection shall provide the authorised officer with all facilities necessary for obtaining information from them.

11th May 2001

*David Clelland*  
*Clive Betts*  
Two of the Lords Commissioners of Her Majesty’s Treasury

11th May 2001

*Nick Montagu*  
*Tim Flesher*  
Two of the Commissioners of Inland Revenue

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(a) 1993/744.

## EXPLANATORY NOTES

*(This note is not part of the Regulations)*

The Social Security Contributions (Share Options) Act 2001 (c. 20) (“the Act”) contains provisions for the limitation of liability to pay social security contributions in respect of gains arising on the exercise, assignment or release of certain share options. In order for these provisions to be used, a notice must be given to the Inland Revenue within ninety-two days of the day on which the Act is passed (11th May 2001). Where such a notice is given, a special contribution is payable in respect of the gain, if any, which would have arisen had the share option been exercised, assigned or released on 7th November 2000.

Regulation 1 provides for citation and commencement, and regulation 2 for interpretation.

Regulation 3 sets out the matters to be contained in the notice to be given to the Inland Revenue and regulation 4 provides for the form of, and manner of giving, such a notice.

Regulation 5 provides for the payment of special contributions.

Regulations 6, 7, 8 and 9 respectively provide for interest on overdue special contributions, interest on repaid special contributions, repayment of interest paid on special contributions, and the remission of interest on special contributions.

Regulation 10 provides for the records which a person who has given a notice to the Inland Revenue must maintain and for the period for which such records must be retained.

Regulation 11 applies with modifications paragraphs (1) and (3) to (7) of regulation 55 of the Income Tax (Employments) Regulations 1993 (S.I. 1993/744) in relation to the records to be maintained under regulation 10 of these Regulations.



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