

2004 No. 770

SOCIAL SECURITY

The Social Security (Contributions, Categorisation of Earners and Intermediaries) (Amendment) Regulations 2004

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| <i>Made</i> - - - - | <i>16th March 2004</i> |
| <i>Laid before Parliament</i> | <i>16th March 2004</i> |
| <i>Coming into force</i> - - | <i>6th April 2004</i> |

The Treasury, in exercise of the powers conferred upon them by sections 2(2) and (2A), 3(2), (2A) and (3), 4(6) and (7), 4A, 10(8) and (9), 10A(7), 19(1), (2)(b) and (5A), 122(1) and 175(3) and (4) of, and paragraphs 7B and 8(1)(ia) and (1A) of Schedule 1 to the Social Security Contributions and Benefits Act 1992(a) (“the 1992 Act”) with the concurrence of the Secretary of State insofar as required and sections 2(2) and (2A), 3(2), (2A) and (3), 4(6) and (7), 4A, 10(8) and (9), 10A(7), 18(1), 19(1), (2)(b) and (5A), 121(1) and 171(3), (4) and (10) of, and paragraphs 7B and 8(1)(ia) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b) (“the 1992 Northern Ireland Act”), with the concurrence of the Department for Social

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- (a) 1992 c. 4. Section 2 has been amended. Relevant amendments were made to subsection (1) by paragraph 171 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1: “ITEPA 2003”) and subsection (2A) was inserted by paragraph 2 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2: “the Transfer Act”) and substituted by paragraph 2 of Schedule 11 to the Welfare Reform and Pensions Act 1999 (c. 30: “the Welfare Reform Act”). Section 3 has been amended: subsection (2A) was inserted by section 48 of the Social Security Act 1998 (c. 14: “the 1998 Act”). Section 4 has been amended. Subsection (6) was substituted by section 74(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19: “the 2000 Act”) and subsection (7) was inserted by paragraph 4 of Schedule 3 to the Transfer Act. Section 4A was inserted by section 75 of the Welfare Reform and Pensions Act 1999 (c. 30) and amended by articles 3 and 4 of S.I. 2003/1874. Section 10 was substituted by section 74(2) of the 2000 Act and relevantly amended by paragraph 174 of Schedule 6 to the ITEPA 2003. Section 10A was inserted by section 53 of the 1998 Act and relevantly amended by paragraph 11 of Schedule 3 to the Transfer Act. Section 19 has been amended. Subsection (1) was amended by paragraph 5 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19: “the 2002 Act”). Subsection (5A) was inserted by paragraph 19(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2: “the Transfer Act”). Section 122(1) is cited because of the meaning it ascribes to “prescribe”. Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Transfer Act. Paragraph 7B was inserted by section 57 of the 1998 Act and amended by paragraph 38 of Schedule 3, paragraph 7 of Schedule 9 and Schedule 10 to the Transfer Act and section 76(3) and (4) of the 2000 Act. Paragraph 8(1)(ia) was inserted by paragraph 77(15) of Schedule 7 to the 1998 Act and amended by section 74(5) of the 2000 Act. Sub-paragraph (1) was also amended, and sub-paragraph (1A) inserted, by paragraph 39 of Schedule 3 to the Transfer Act.
- (b) 1992 c. 7 (“the 1992 Northern Ireland Act”). Section 2 has been amended. Relevant amendments were made to subsection (1) by paragraph 192 of Schedule 6 to ITEPA 2003, and subsection (2A) was inserted by paragraph 2 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671: “the Transfer Order”) and substituted by paragraph 10 of Schedule 11 to the Welfare Reform Act. Section 3 has been amended: relevant amendments are those made by Article 45 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10: “the 1998 Order”) and paragraph 4 of Schedule 3 to the Transfer Order. Section 4 has been amended. Subsection (6) was substituted by section 78(3) of the 2000 Act and subsection (7) was inserted by paragraph 5 of Schedule 3 to the Transfer Order. Section 4A was inserted by section 76 of the Welfare Reform and Pensions Act. and amended by Articles 3 and 4 of S.I. 2003/1884. Section 10 was substituted by section 78(2) of the 2000 Act and relevantly amended by paragraph 195 of Schedule 6 to ITEPA 2003. Section 10A was inserted by Article 50 of the 1998 Order and relevantly amended by paragraph 198 of Schedule 6 to ITEPA 2003. Section 19 has been amended. Subsection (1) was amended by paragraph 24 of Schedule 1 to the 2002 Act. Subsection (5A) was inserted by paragraph 19(2) of Schedule 3 to the Transfer Order. Section 121(1) is cited because of the meaning it ascribes to “prescribe”. Section 171(10) was substituted by paragraph 28(3) of Schedule 3 to the Transfer Order. Paragraph 7B was inserted by Article 54 of the 1998 Order and amended by paragraph 37 of Schedule 3,

Development insofar as required (a), and the Commissioners of Inland Revenue in exercise of the powers conferred upon them by sections 18(1), 175(3) and (4) of, and paragraphs 3(1), (3) and (6) and 6(1) of Schedule 1 to the 1992 Act (b) and sections 18(1), 171(3) and (4) of, and paragraphs 3(1), (3) and (6) and 6(1) of Schedule 1 to the 1992 Northern Ireland Act(c) hereby make the following Regulations:

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Social Security (Contributions, Categorisation of Earners and Intermediaries) (Amendment) Regulations 2004 and shall come into force on 6th April 2004.

(2) The substitution by regulation 12 of regulations 52 and 52A of the Contributions Regulations for the former regulation 52, and the consequential amendments made to those Regulations by regulations 11, 14, 26 and 32(11) of these Regulations have effect only in respect of contributions payable in respect of the year 2003-04 and subsequent years.

(3) In these Regulations—

“the Categorisation Regulations” means the Social Security (Categorisation of Earners) Regulations 1978(d) and “the Northern Ireland Categorisation Regulations” means the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978(e);

“the Contributions Regulations” means the Social Security (Contributions) Regulations 2001(f); and

“the Intermediaries Regulations” means the Social Security Contributions (Intermediaries) Regulations 2000(g) and “the Northern Ireland Intermediaries Regulations” means the Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000(h).

Amendment of the Contributions Regulations

2. The Contributions Regulations shall be amended as follows.

3. In regulation 1(2) (interpretation)—

(a) after the definition of “apportionment” insert—

““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;”

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- paragraph 5 of Schedule 8 and Schedule 9 to the Transfer Order and section 80(3) and (4) of the 2000 Act. Paragraph 8(1)(ia) was inserted by paragraph 58(25) of Schedule 6 to the 1998 Order and amended by section 78(5) of the 2000 Act. Sub-paragraph (1) was amended and sub-paragraph (1A) was inserted, by paragraph 38 of Schedule 3 to the Transfer Order.
- (a) The functions of the Department of Health and Social Services for Northern Ireland under the 1992 Northern Ireland Act 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) Section 18(1) was amended by paragraph 18 of Schedule 3 to the Transfer Act. Paragraph 3 has been amended: sub-paragraph (1) was amended by paragraph 77(5) of Schedule 6 to the 1998 Act and paragraph 33 of Schedule 3 to the Transfer Act; sub-paragraph (3) was amended by section 55(a) of the Social Security Act 1998 (c. 14) (“the 1998 Act”) and sub-paragraph (6) was inserted by paragraph 33 of Schedule 3 to the Transfer Act. Paragraph 6(1) was amended by paragraph 77(8) of Schedule 7 to the 1998 Act, paragraph 35(2) of Schedule 3 to the Transfer Act and paragraph 185(a) and (b) of Schedule 6 to ITEPA 2003.
- (c) Section 18(1) has been amended by paragraph 18 of Schedule 3 to the Transfer Order Paragraph 3has been amended: sub-paragraph (1) was amended by paragraph 58(5) of Schedule 6 to the 1998 Order and paragraph 32(3) of Schedule 1 to the 2002 Act; sub-paragraph(3) was amended by Article 52(a) of the 1998 Order and sub-paragraph (6) was added by paragraph 32 of Schedule 3 to the Transfer Order. Paragraph 6(1) was amended by paragraph 58(8) of Schedule 6 to the 1998 Order, paragraph 34(2) of Schedule 3 to the Transfer Order and paragraph 204(a) and (b) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003.
- (d) S.I. 1978/1689.
- (e) S.R. 1978 No. 401.
- (f) S.I. 2001/1004: regulation 156(3) of the principal Regulations provides a rule of construction, in relation to their application to Northern Ireland, of references to enactments applying only in Great Britain.
- (g) S.I. 2000/727.
- (h) S.I. 2000/728.

- (b) for the definition of “business travel” (a) substitute—
 - ““business travel” has the meaning given in section 236(1) of ITEPA 2003(b);”;
 - (c) for the definition of “cash voucher” substitute—
 - ““cash voucher” has the meaning given to it in section 75 of ITEPA 2003;”;
 - (d) in the definition of “conditional interest in shares”, for the words from “sections” to the end substitute “Chapter 2 of Part 7 of ITEPA 2003 as originally enacted(c);”.
 - (e) omit the definitions of “income tax month” and “month”;
 - (f) for the definition of “non-cash voucher” substitute—
 - ““non-cash voucher” has the meaning given to it in section 84 of ITEPA 2003;”;
 - (g) after the definition of “non-contracted out rate” insert—
 - ““official computer system” means a computer system maintained by or on behalf of the Board;
 - “the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(d);”;
 - (h) omit the definition of “Schedule E”; and
 - (i) after the definition of “the Taxes Act” insert—
 - ““tax month” has the meaning given in paragraph 1(2) of Schedule 4;”.
- 4.** In regulation 22A (amounts to be treated as earnings in connection with the use of qualifying vehicles other than cycles) (e)—
- (a) in paragraph (3)—
 - (i) for “section 197AD(2) of the Taxes Act” substitute “section 229(2) of ITEPA 2003”; and
 - (ii) for the words from “Here “qualifying vehicle”” to “the Taxes Act,” substitute —
 - “Here “qualifying vehicle” means a vehicle to which section 235 of ITEPA 2003 applies,”;
 - and
 - (b) in paragraph (4) for “paragraph 4(2) of Schedule 12AA to the Taxes Act” substitute “section 230(2) of ITEPA 2003”.
- 5.** In regulation 27(5)(a) (payments to directors which are to be disregarded)—
- (a) omit “and (2)”; and
 - (b) at the end add “and Part 2 of Schedule 1 to ITEPA 2003”.
- 6.** Omit regulations 32 to 35.
- 7.** In regulation 36 (reduction of Class 1A contribution in respect of things provided in connection with two or more employments or to two or more earners)—
- (a) in paragraph (1) for “to which Chapter II of Part V of the Taxes Act applies” substitute “other than excluded employments within the meaning of the benefits code (see Chapter 2 of Part 3 of ITEPA 2003)”; and
 - (b) in paragraph (2) omit “(or, where regulation 35 applies, shall be further reduced)”.
- 8.** Omit regulation 37.

(a) The definition of “business travel” was inserted by regulations 2 and 3 of S. I. 2002/307.
 (b) i.e. the Income Tax (Earnings 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..
 (c) Chapter 2 of Part 7 of ITEPA 2003 was substituted by paragraph 3(1) of Schedule 22 to the Finance Act 2003 (c. 14).
 (d) S.I. 2003/2682.
 (e) Regulation 22A was inserted by regulations 2 and 5 of S.I. 2002/307.

9. In regulation 40 (prescribed general earnings in respect of which Class 1A contributions are not payable)—

- (a) in paragraph (2)(c)(a) for “2 to 7” substitute “3 to 7A”;
- (b) in paragraph (6)(c)(b) after “(superannuation funds approved before 6th April 1980)” insert “or sections 590 (annuities) and 591 (taxable pension income)”;
- (c) in paragraph (8)(a) for “Part X” substitute “Part 10(c) or 10A(d)”.

10. In regulation 42(1) (exception from liability to pay Class 1B contributions)—

- (a) in sub-paragraph (a) for “of the chargeable emoluments” substitute “general earnings which are chargeable emoluments”; and
- (b) in sub-paragraph (b) for “emoluments” substitute “general earnings”.

11. In regulation 51(2) (disposal of contributions not properly paid) for “regulation 52(1)” substitute “regulation 52 or 52A”.

12. For regulation 52(e) substitute—

“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(f).

(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

(a) Regulation 40(2) was amended by regulations 2 and 3 of S.I. 2001/2412 and regulations 3 and 6 of S.I. 2003/2085.

(b) Regulation 40(6) was amended by regulations 3 and 6 of S.I. 2003/2085.

(c) Part 10 of the Children Act 1989 ceased to apply to England and Wales by virtue of section 79(5) of the Care Standards Act 2000 (c. 14). That section took effect, in respect of England, on 2nd July 1991 (S.I. 2001/2041), and in respect of Wales, on 1st April 2002 (S.I. 2002/920).

(d) Part 10A of the Children Act 1989 was inserted by section 79(1) of the Care Standards Act 2000.

(e) Regulation 52 was substituted by regulation 8 of S.I. 2002/2366.

(f) S.I. 1996/1245: regulation 3 was amended by Schedule 2 to the Transfer Act.

- (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 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(a) 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(b) 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)(c) 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; 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.

Rule 2

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

The formula is—

$$53 \times (\text{UEL} - \text{PT}) \times 9.4\%.$$

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 UEL in respect of contracted-out employments held in the year.

Step 2

Multiply the amount found by Step 1 by 9.4%.

Step 3

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

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

(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.

Step 4

Multiply the result produced by Step 3 by 11%.

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—

$$53 \times (\text{UEL} - \text{PT}) \times 11\%.$$

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 UEL in respect of APP employments held in the year.

Step 2

Multiply the amount found by Step 1 by 11%.

Step 3

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

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

Step 4

Multiply the result produced by Step 3 by 9.4%.

Step 5

Add together the results of Steps 2 and 4.

(7) From the amount otherwise falling to be returned under Rule 2 or Rule 3 in paragraph (6) there shall be deducted so much of any payment of contributions as is attributable to the application of Steps Five and Seven in regulation 21(2).

(8) If—

- (a) an application has been made under paragraph (2) for the return of contributions in excess of the amount specified in regulation 21, and
- (b) the Board have been given notice under section 44(1) of the Pensions Act and have not rejected it,

the contributions shall be returned in the order specified in paragraph (5) save that the contributions specified in sub-paragraph (c) shall be returned after those in sub-paragraphs (d) and (e).

(9) Contributions paid by a secondary contributor on behalf of any person in excess of the amount specified in regulation 21—

- (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.”.

13. In regulation 55(2)(b) (repayment of Class 1A contributions) (a) for “emolument” substitute “general earnings”.

14. In regulation 57(1) (calculation of return of contributions)—

- (a) for “regulation 52 or 56” substitute “regulation 52, 52A or 56”; and
- (b) in sub-paragraph (b) for “regulation 52(6)” substitute “regulation 52(8)”.

15. In regulation 67 (collection and recovery of earnings-related contributions and Class 1B contributions)—

- (a) in paragraph (1) for the words from “emoluments” to the end of the paragraph substitute—

“general earnings from an office or employment by virtue of regulations under section 684 of ITEPA 2003 (PAYE Regulations).”; and
- (b) in paragraph (2) for “the Income Tax (Employments) Regulations 1993” substitute “the PAYE Regulations”.

16. In regulation 71(1) (due date for payment of a Class 1A contribution) after “19th July” insert “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”.

17. In regulation 72 (Class 1A contribution due on succession to business)—

- (a) in paragraph (1)(a) for “emoluments” substitute “general earnings”;
- (b) in paragraph (2)—
 - (i) for “income tax month”, in both places where it occurs, substitute “tax month”; and
 - (ii) after “14 days” insert “or, where payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, 17 days”;
- (c) in paragraph (4)—
 - (i) after the definition of “employer” insert—

““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;”;
 - (ii) for “income tax month”, in each place where it occurs, substitute “tax month”;
 - (iii) in the definition of “relevant final tax month” (as amended by head (ii) of this sub-paragraph)—
 - (aa) for “final payment of emoluments” substitute “final payment of general earnings”; and
 - (bb) omit the words from “and for these purposes” to the end of the definition.

18. In regulation 73 (Class 1A contribution due on cessation of business)—

- (a) in paragraph (1) for “emoluments” substitute “general earnings”;
- (b) in paragraph (2)—
 - (i) after “14 days” insert “or where payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, 17 days”;
 - (ii) for “income tax month”, in each place where it occurs, substitute “tax month”; and
- (c) in paragraph (4)—
 - (i) after the definition of “employer” insert—

(a) Regulation 55 was amended by regulations 3 and 10 of S.I. 2002/2366.

““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;”;

- (ii) for “income tax month”, in each place where it occurs, substitute “tax month”; and
- (iii) in the definition of “relevant final tax month” (as amended by head (ii) of this subparagraph)—
 - (aa) for “final payment of emoluments” substitute “final payment of general earnings”; and
 - (bb) omit the words from “and for these purposes” to the end of the definition.

19. In regulation 76(5) (interest on an overdue Class 1A contribution) after “19th July” insert “or where payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, the 22nd July”.

20. In regulation 80 (employer’s return where Class 1A contribution payable)(a)—

- (a) in paragraph (1)(c) for “emoluments” substitute “general earnings”;
- (b) for paragraph (1A) substitute—

“(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.”; and
- (c) omit paragraphs (1B) to (1F).

21. Omit regulation 80A(b).

22. In regulation 86 (special provisions concerning culpable employed earners and secondary contributors and secondary contributors or employers exempted by treaty etc. from enforcement of the Act or liability under it)—

- (a) in paragraph (1)(a)—
 - (i) after “and” insert “(i)”; and
 - (ii) after “the secondary contributor” insert—

“, 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 primary contribution which the secondary contributor was liable to pay on behalf of the earner and has not recovered that primary contribution from the earner”;

and

- (b) in paragraph (2), omit “in respect of any car made available to the earner or to a member of his family or household by reason of the employment”.

23. After regulation 90 insert the following Part—

(a) Paragraphs (1A) to (1F) of regulation 80 were inserted by regulations 2 and 3 of S.I. 2001/2187.
(b) Regulation 80A was inserted by regulation 4 of S.I. 2001/2187.

“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.—(1) If an e-payment notice has been issued to an employer in respect of a tax year under regulation 199 of the PAYE Regulations (large employers required to make specified payments under those Regulations electronically), he must pay the specified payment using an approved method of electronic communications.

(2) Paragraph (1) applies regardless of whether a payment of tax is due under regulation 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.

Employer in default if specified payment not received by applicable due date

90I.—(1) This regulation applies if an employer is required to make a specified payment by an approved method of electronic communications in accordance with regulation 90H.

(2) The employer is in default if the specified payment is not received in full by the Board (whether by an approved method of electronic communications or otherwise) on or before the date by which that payment is required in accordance with paragraph 10 of Schedule 4.

(3) But the employer is not in default if—

- (a) the employer had a reasonable excuse for failing to make the specified payment in a manner which secures that it is received in full by the Board on or before the applicable due date, and
- (b) the specified payment is received in full by the Board without unreasonable delay after the excuse ceased.

(4) Inability to pay is not a reasonable excuse for the purposes of sub-paragraph (3)(a).

(5) A payment is not treated as received in full by the Board on or before the date by which that payment is required in accordance with paragraph 10 of Schedule 4 unless it is made in a manner which secures (in a case where the 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 payment becomes available to the Board.

Default notice and appeal

90J.—(1) The Board must issue a default notice to any person who appears to be in default under regulation 90I in respect of a specified payment.

(2) A person may appeal against a default notice by giving notice to the Board within 30 days of the issue of the default notice.

(3) The ground of appeal is that the person is not in default.

(4) If the appeal is successful the default notice must be withdrawn.

(5) Regulation 90Q (appeals: supplementary provisions) applies to appeals under this paragraph.

Default surcharge

90K.—(1) An employer in default in respect of any specified payment to whom—

- (a) a default notice under regulation 90J, and
- (b) a surcharge notice under regulation 90L,

have been issued, is liable to a surcharge.

(2) The surcharge is the sum of the surcharges, calculated in accordance with paragraph (3), in respect of each default relating to the tax year, in which were made the relevant payments to which the specified payment referred to in paragraph (1) relates.

(3) The surcharge in respect of each default is the specified percentage of (A – B).

(4) In paragraph (3)—

- (a) A is the total amount of contributions due for the tax year in which the relevant payments to which the specified payment relates were made ;
- (b) B is the total of the amounts deducted from A under—
 - (i) rule 3 of regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002;
 - (ii) regulations 4, 5 and 6 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994,
 - (iii) regulations 3 and 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002,
 - (iv) regulation 2 of the Statutory Sick Pay (Compensation of Employers) and Miscellaneous Provisions Regulations 1983 and articles 2 and 3 of the Statutory Sick Pay Percentage Threshold Order 1995, and

- (v) regulation 44B of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993;
- (c) the specified percentage is determined by reference to the number of the default during a surcharge period in accordance with Table 1.

Table 1

Specified percentage for each default in a surcharge period

| <i>1 Default number (within a surcharge period)</i> | <i>2 Specified percentage</i> |
|---|-------------------------------|
| 1st | 0% |
| 2nd | 0% |
| 3rd | 0.17% |
| 4th | 0.17% |
| 5th | 0.17% |
| 6th | 0.33% |
| 7th | 0.33% |
| 8th | 0.33% |
| 9th | 0.58% |
| 10th | 0.58% |
| 11th | 0.58% |
| 12th | 0.83% |

(5) A surcharge period is a period which—

- (a) begins on the day following the date by which payment is required in accordance with paragraph 10 for the first specified payment in respect of which the employer is in default, and
- (b) ends at the end of a tax year in relation to which the employer has not been in default in respect of any specified payment.

(6) A surcharge payable under this paragraph is payable 30 days after the issue of the surcharge notice.

(7) Section 102 of the Management Act (mitigation of penalties) applies to a surcharge payable under this paragraph as if it were a penalty.

Surcharge notice and appeal

90L.—(1) The Board must issue a surcharge notice to an employer who has been in default on three or more occasions during a surcharge period and consequently will be liable to a surcharge under regulation 90K.

(2) The surcharge notice must show the total surcharge liability for the tax year.

(3) The surcharge notice must be issued within 6 years of—

- (a) the end of the tax year, or
- (b) if earlier, the date on which the employer delivered a return in accordance with paragraph 22 of Schedule 4 (return by employer at end of year).

(4) An employer may appeal against a surcharge notice by giving notice to the Board within 30 days of the issue of the surcharge notice.

(5) The grounds of appeal are—

- (a) that the numbers of defaults stated in the notice is incorrect, or
- (b) that the amount of the surcharge is incorrect.

(6) But paragraph (5)(a) does not apply in respect of a disputed default which has already been the subject of an appeal under regulation 90J, following which the default notice was not withdrawn.

Specified information and specified payments

90M. In this Part—

“specified information” means the return and accompanying information required by paragraph 22 (return by employer at end of year); and

“specified payments” means payments of earnings related contributions under paragraph 10 (payment of earnings-related contributions monthly by employer) in respect of tax months in the tax year to which the e-payments notice issued under regulation 199 of the PAYE Regulations relates.

Mandatory use of electronic communications

90N.—(1) If an e-filing notice has been issued to an employer in respect of a tax year under regulation 206 of the PAYE Regulations (specified employers required to deliver specified information electronically), he must deliver the return required under paragraph 22 of Schedule 4 in relation to that tax year to an official computer system using an approved method of electronic communications.

(2) Sub-paragraph (1) applies regardless of whether any information is due under regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).

(3) If the Board have given a direction under Regulation 205(2) 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.

Standards of accuracy and completeness

90O.—(1) Specified information 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.

(2) Specified information 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 specified information or any part of it in accordance with regulation 90N is liable to a penalty.

(2) Table 2 sets out the penalties for employers for the tax years ending 5th April 2005 to 5th April 2009, depending on the number of employees for whom particulars should have been included with the specified information.

Table 2

Penalties: tax years ending 5th April 2005 to 5th April 2009

| <i>1 Numbers of employees for whom particulars should have been included with the specified information</i> | <i>2 Penalty</i> |
|---|---|
| 1-49 | Nil |
| 50-249 | Nil for the tax year ending 5th April 2005, £600 for subsequent tax years |
| 250-399 | £900 |
| 400-499 | £1,200 |
| 500-599 | £1,500 |
| 600-699 | £1,800 |
| 700-799 | £2,100 |
| 800-899 | £2,400 |

| | |
|--------------|--------|
| 900-999 | £2,700 |
| 1000 or more | £3,000 |

(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 specified information was delivered, or
- (b) been subject to a penalty for failing to comply with regulation 205 of the PAYE Regulations (mandatory use of electronic communications), in relation to the same tax year.

(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,
- (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.

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).”.

24. In regulation 103(1)(c) (Class 4 contributions in the case of earners treated as self-employed who would otherwise be employed earners) (b), for “under Schedule E”, substitute “as general earnings”.

(a) 1970 c. 9.
(b) Regulation 103 was amended by regulations 2 and 15 of S.I. 2003/193.

25. In regulation 143(1)(b) (earnings-related contributions of members of the forces) for “section 316 of the Taxes Act (allowances, bounties and gratuities)” substitute “sections 297 and 298 of ITEPA 2003 (armed forces’ food, drink and mess allowances and reserve and auxiliary forces’ training allowances)”.

26. In regulation 155A (decisions of officers of the Board specified for the purposes of section 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999)(a)—

- (a) in paragraph (2)(e) for “regulation 52(11)” substitute “ regulation 52(8)”;
- (b) in paragraph (3)—
 - (i) in sub-paragraph (a) for “regulation 52(1)(a)” substitute “regulation 52(1)”;
 - (ii) in sub-paragraph (b) for “regulation 52(1)(b) substitute “regulation 52A(1)”.

27. In the heading to paragraph 13 of Schedule 2 for “from” substitute “to”.

28.—(1) Amend Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions) as follows.

(2) In paragraph 2(2) of Part 2 (exception to the rule that payments by way of assets not to be disregarded) for the words from “if it would be disregarded” to the end of the sub-paragraph substitute “if no liability to income tax arises by virtue of section 323 of ITEPA 2003 (long service awards)”.

(3) In Part 5 (certain non-cash vouchers to be disregarded as payments in kind)—

- (a) in paragraph 1(2)(b) (other circumstances in which a non-cash voucher may be disregarded)(b) for “incidental expenses” substitute “incidental overnight expenses”;
- (b) in paragraph 2 (non-cash vouchers provided to employees of certain passenger transport undertakings)—
 - (i) for “an emolument” substitute “general earnings”;
 - (ii) for “section 141(1) of the Taxes Act” to the end of the sentence, substitute “section 86 of ITEPA 2003 (transport vouchers under pre-26th March arrangements).”;
 - (iii) for the words from “This paragraph applies”, to the end of the paragraph, substitute—

“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”;

- (c) for paragraphs 3 and 4 (non-cash vouchers in connection with parking spaces and cars available for private use), substitute—

“**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).”; and

- (d) in paragraph 7(1) (non-cash vouchers in connection with child care costs), in paragraph (a) of the definition of “child care”, for “Part X” substitute “Part 10(c) or 10A(d)”.

(4) In Part 6 (pensions and pension contributions)—

- (a) for paragraph 2 substitute—

(a) Inserted by regulation 18 of S.I. 2002/2366.

(b) Paragraph 1(2) was substituted by regulation 6 of S.I. 2002/307.

(c) Part 10 of the Children Act 1989 ceased to apply to England and Wales by virtue of section 79(5) of the Care Standards Act 2000 (c. 14). That section took effect, in respect of England, on 2nd July 2001 (S.I. 2001/2041), and in respect of Wales, on 1st April 2002 (S.I. 2002/920).

(d) Part 10A of the Children Act 1989 was inserted by section 79(1) of the Care Standards Act 2000.

“Personal pension contributions by employers

2. A payment by way of employer’s contribution towards a personal pension which is exempt from income tax by virtue of section 308(1) of ITEPA 2003 (exemption of contributions to approved personal pension arrangements).”.

- (b) in paragraph 3 (approved statutory schemes, relevant statutory schemes, pilots’ benefit funds and schemes established by overseas governments)—
 - (i) for sub-paragraph (a) substitute—

“(a) to which section 386 of ITEPA 2003 (charge on payments to non-approved retirement benefits schemes) does not apply by virtue of sections 387(2) or 390 of that Act;”;
 - (ii) in sub-paragraph (b) for “that Act” substitute “the Taxes Act”;
 - (iii) in sub-paragraph (c) for “applies; or” substitute “or sections 590 (annuities) and 591 (taxable pension income) of ITEPA 2003 apply; or”.
- (5) In Part 7 (payments in respect of training and similar courses)—
 - (a) in paragraph 2 (work-related training)—
 - (i) for “section 200B, 200C and 200D of the Taxes Act (work-related training)” substitute “sections 250 to 254 of ITEPA 2003 (exemption for work-related training)”;
 - (ii) for “an emolument” substitute “general earnings”;
 - (b) in paragraph 3 (education and training funded by employers)—
 - (i) for “section 200E of the Taxes Act (exemption for education and training funded by employers)” substitute “section 255 of ITEPA 2003 (exemption for contributions to individual learning account training)”;
 - (ii) for “an emolument” substitute “general earnings”;
 - (c) after paragraph 9 (a) add—

“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(b), in his capacity as such.

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.”.

- (6) In Part 8 (travelling, relocation and other expenses and allowances of the employment)—
 - (a) in paragraph 2 (relocation expenses)—
 - (i) for sub-paragraph (2)(a)(i) substitute—

“(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) in sub-paragraph (2)(a)(ii), for the words from “for that purpose” to the end of the sub-paragraph substitute “by virtue of another provision of ITEPA 2003; or”.
 - (iii) for sub-paragraph (7) substitute—

“(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.”;

(a) Paragraph 9 was inserted by regulation 2(3) of S.I. 2003/2340 and substituted by regulation 5(3) of S.I. 2003/2958.

(b) 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.

- (b) in paragraph 3 (travelling expenses – general)—
 - (i) for “qualifying travelling expenses”, wherever it occurs, substitute “travel expenses”;
 - (ii) for “defray out of the emoluments of the office or employment” substitute “pay as the holder of that office or employment”;
 - (iii) in sub-paragraph (a)(ii), for “paragraph 2 of Schedule 12A to the Taxes Act” substitute “section 338 of ITEPA 2003 (travel for necessary attendance)”;
 - (iv) for sub-paragraph (b) substitute—
 - “(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.”;
- (c) for paragraphs 4 and 5 substitute—

“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.

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 or child’s travel

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 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.

Travel costs and expenses of non-domiciled employee performing duties in the UK

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 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.”;
- (d) in paragraph 6 (travel expenses of workers on offshore gas and oil rigs) for the words from “the emoluments” to the end of the paragraph, substitute “general earnings under section 305 of ITEPA 2003 (offshore oil and gas workers: mainland transfers).”;
- (e) in paragraph 7—
 - (i) for the heading substitute—

“Payments connected with cars and vans and exempt heavy goods vehicles provided for private use”;

- (ii) in sub-paragraph (a) for “section 157(3)(a) of the Taxes Act (car available for private use)”, substitute “section 239(1) of ITEPA 2003 (payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles)”;
- (iii) in sub-paragraph (b) for “section 157(3)(c)” substitute “section 239(2)”;
- (iv) for “an emolument” substitute “general earnings”; and
- (v) omit “under Schedule E”;
- (f) in paragraph 7B (qualifying amounts of mileage payments in respect of cycles) (a)—
 - (i) in sub-paragraph (2), for “paragraph 4(2) of Schedule 12AA to the Taxes Act”, substitute “section 230(2) of ITEPA 2003”;
 - (ii) in sub-paragraph (3), for “section 197AD(2) of the Taxes Act” substitute “section 229(2) of ITEPA 2003”.
- (g) in paragraph 7C (qualifying amounts of passenger payments)—
 - (i) in sub-paragraph (2)—
 - (aa) in paragraph (a) for “carries a qualifying passenger; and” substitute “receives passenger payments within the meaning of section 233(3) of ITEPA 2003; and”;

(a) Paragraphs 7A to 7D were inserted by regulations 2 and 7 of S.I. 2002/307.

- (bb) in paragraph (b) for “paragraph 5 of Schedule 12AA to the Taxes Act”, substitute “section 234 of ITEPA 2003”;
- (ii) in sub-paragraph (3), for “section 197AE(2) of the Taxes Act” substitute “section 233(3) of ITEPA 2003”;
- (iii) omit the definition of “qualifying passenger”;
- (h) for paragraph 7D substitute—

“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.”;

- (i) in paragraph 8 (car parking facilities)—
 - (i) for “section 197A of the Taxes Act” substitute “section 237 of ITEPA 2003”; and
 - (ii) for “an emolument” substitute “general earnings”;
- (j) in paragraph 10 (council tax on accommodation provided for employee’s use)—
 - (i) for “council tax”, where it occurs in the heading and the paragraph, substitute “council tax or water or sewerage charges”; and
 - (ii) for “he is not liable to tax” substitute “ he is not liable to income tax”;
- (k) in paragraphs 10 and 11 (rates on accommodation provided for employees’ use in Northern Ireland)—
 - (i) for “section 145(4) of the Taxes Act (living accommodation)” substitute “sections 99 or 100 of ITEPA 2003 (accommodation provided for performance of duties or as a result of a security threat)”;
 - (ii) omit “under Schedule E”;
- (l) in paragraph 11 for “rates”, where it occurs in the heading and the paragraph, substitute “rates or water or sewerage charges”;
- (m) in paragraph 12 (foreign service allowances) for “section 319 of the Taxes Act (Crown servants: foreign service allowance)” substitute “section 299 of ITEPA 2003 (Crown employees’ foreign service allowance)”;
- (n) after paragraph 14 add—

“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).”.

- (7) In Part 10 (miscellaneous and supplemental)—
 - (a) in paragraph 4 (payments by way of incidental expenses)—
 - (i) in the heading after “incidental” insert “overnight”;
 - (ii) for sub-paragraphs (1) and (2) substitute—

“(1) A payment by way of incidental overnight expenses, in whatever form, which by virtue of section 240 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.”;
 - (iii) for sub-paragraph (7) substitute—

“(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.”;

(b) for paragraph 8 substitute—

“Expenses and other payments not charged to income tax under miscellaneous exemptions

8. A payment which is not charged to tax by virtue of any of the following provisions of ITEPA 2003—

- (a) section 321 (suggestion awards);
- (b) section 245 (travelling and subsistence during public transport strikes);
- (c) section 246 (transport between work and home for disabled employees: general);
- (d) section 248 (transport home: late night working and failure of car-sharing arrangements).”;

(c) for paragraph 10 substitute—

“Employee’s liabilities and 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.”;

(d) in paragraph 11 (fees and subscriptions to professional bodies, learned societies etc), for the words from “section 201(1)” to the end of the paragraph substitute—

“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.”;

(e) for paragraph 14 substitute—

“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 ;
- (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.”.

29.—(1) Schedule 4 is amended as follows.

(2) For the heading to the Schedule substitute—

“Provisions derived from the Income Tax Acts and the Income Tax (Pay As You Earn) Regulations 2003”

30.—(1) Part 1 (general) is amended as follows.

(2) In paragraph 1 for sub-paragraphs (1) and (2) substitute—

“(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);

“Compensation of Employers Regulations” means the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendments Regulations 1994(c) and the Statutory Sick Pay Percentage Threshold Order 1995(d)

“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 or the form issued by the Inland Revenue under paragraph 31 or under regulation 35 of the PAYE Regulations (simplified deduction scheme);

“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(e); or

(c) under regulation 122;

“general earnings has the meaning given in section 7(3) of ITEPA 2003;”;

“Inland Revenue” means any officer of the Board of Inland Revenue;

“mariner” has the same meaning as in regulation 115;

“the Reimbursement Regulations” means the Employer’s Contributions Re-imbusement Regulations 1996(f);

“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;

(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.

(c) S.I. 1994/1882.

(d) S.I. 1995/512.

(e) 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.

(f) S.I. 1996/195, amended by Part 2 of Schedule 10 to the Transfer Act and regulation 2 of S.I. 1999/286.

“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 paragraph 2 substitute—

“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.”.

(4) In paragraph 3 (intermediate employers)—

- (a) in sub-paragraph (1) for “emoluments” substitute “general earnings”;
- (b) in sub-paragraph (3)—
 - (i) for “employee’s emoluments” substitute “employee’s general earnings”;
 - (ii) in paragraph (a) for “the emoluments” substitute “those earnings”; and
 - (iii) in paragraph (b) for “the said emoluments” substitute “those earnings”; and
- (c) in sub-paragraph (4), for “section 203E of the Taxes Act”, substitute “section 691 of ITEPA 2003”.

(5) In paragraph 4A(a), for “emoluments”, wherever it occurs, substitute “general earnings”.

(6) For paragraph 5 substitute—

“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.”.

31.—(1) Part 2 (deduction of earnings related contributions) is amended as follows.

(2) In paragraph 6 (deduction of earnings-related contributions)—

- (a) in sub-paragraph (1) for “emoluments” substitute “general earnings”;
- (b) in sub-paragraph (1)(a) for “regulation 20 of the Income Tax Regulations (employee on fixed pay)” substitute “regulation 35 of the PAYE Regulations (simplified deduction scheme)”.

(3) In paragraph 7 (calculation of deduction)(b)—

- (a) for “emoluments”, wherever it occurs, substitute “general earnings”;

(a) Paragraph 4A was inserted by regulation 6 of S.I. 2002/2929.

(b) Paragraph 7 has been amended: relevant amendments are made by regulation 7 of S.I. 2002/2929, and regulation 2 of S.I. 2003/1337.

- (b) in sub-paragraph (3) after “paragraph (b)” in the second place it occurs insert “or sub-paragraph 4(a) or (f)”;
 - (c) in sub-paragraph (4)—
 - (i) at the end of paragraph (d) omit “or”;
 - (ii) after paragraph (e) insert—
 - “; 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.”;
 - (d) in sub-paragraph (5A)(a) after “(4)(e)” add “or (f)”;
 - (e) in sub-paragraph (9)(b)—
 - (i) for “shares”, in each place where it occurs, substitute “securities”;
 - (ii) in sub-paragraph (ii) for “regulation 22(3)” substitute “regulation 22(5), (6) or (7)”;
 - and
 - (iii) in sub-paragraph (iii) for “section 135 of the Taxes Act 1988 (gains by directors and employees from share options)” substitute “section 4(4)(a) of the Act”;
 - (f) omit sub-paragraph (10);
 - (g) in sub-paragraphs (11) and (12) for “shares”, in each place where it occurs, substitute “securities”; and
 - (h) in sub-paragraph (15) for “superannuation”, in each place where it occurs, substitute “pension”.
- (4) In paragraph 9 (certificate of contributions paid)(a)—
- (a) in sub-paragraph (1)—
 - (i) for “regulation 39 of the Income Tax Regulations (certificate of tax deducted)” substitute “regulation 67 of the PAYE Regulations (information to employees about payments and tax deducted (Form P 60))”; and
 - (ii) for “Board” substitute “Inland Revenue”; and
 - (b) in sub-paragraph (2)—
 - (i) for “regulation 39 of the Income Tax Regulations” substitute “regulation 67 of the PAYE Regulations”;
 - (ii) for “emoluments” substitute “general earnings”; and
 - (iii) after “concerned” insert “or the employee was not in the employer’s employment on the last day of the tax year,”.
- 32.—**(1) Part 3 (payment and recovery of earnings-related contributions, Class 1A contributions and Class 1B contributions, etc.) is amended as follows.
- (2) In paragraph 10 (payment of earnings-related contributions monthly by employer)—
- (a) in sub-paragraph (1)—
 - (i) for “Collector” substitute “Inland Revenue”;
 - (ii) after “14 days” insert “or, if payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, within 17 days”;
 - and
 - (iii) omit “income”;
 - (b) in sub-paragraph (2)—
 - (i) for “emoluments” substitute “general earnings”; and

(a) Paragraph 9 has been amended by regulations 2 and 16 of S.I. 2003/193, and regulation 3 of S.I. 2003/1337.

- (ii) omit “income”; and
 - (c) in sub-paragraph (3) for “emoluments” substitute “general earnings”.
- (3) In paragraph 11 (payment of earnings-related contributions quarterly by employer)(a)—
- (a) in sub-paragraph (1)—
 - (i) for “Collector” substitute “Inland Revenue”;
 - (ii) omit “income”;
 - (iii) after “tax quarter” insert—
 - “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”
 - (iv) omit sub-paragraph (1)(b);
 - (b) in sub-paragraph (2)—
 - (i) for “emoluments” substitute “general earnings”;
 - (ii) omit “income”;
 - (c) in sub-paragraph (3), for “or emoluments”, substitute “of general earnings”;
 - (d) in sub-paragraph (4)—
 - (i) for “income tax months” substitute “tax months”;
 - (ii) for “Collector”, wherever it occurs, substitute “Inland Revenue”;
 - (iii) for “regulation 40 of the Income Tax Regulations” substitute “regulation 68 of the PAYE Regulations”; and
 - (iv) for “the Board” substitute “the Inland Revenue”.
- (4) In paragraph 12 (payment of earnings-related contributions by employer: further provisions)
- (a) for sub-paragraph (1) substitute—
 - “(1) The Inland Revenue shall give a receipt to the employer for the total amount paid under paragraph 10 or 11 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.”; and
 - (b) in sub-paragraph (2)—
 - (i) for “Collector” substitute “Inland Revenue”; and
 - (ii) for “emoluments”, wherever it occurs, substitute “general earnings”.
- (5) In paragraph 13 (payment of Class 1B contributions)—
- (a) in sub-paragraph (1) after “19th October” insert “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”; and
 - (b) for “Collector”, wherever it occurs, substitute “Inland Revenue”; and
 - (c) in sub-paragraph (2) omit “income”.
- (6) In paragraph 14 (employer failing to pay earnings-related contributions)—
- (a) in sub-paragraph (1) after for “14 days” where those words first occur, substitute “17 days”.;
 - (b) for “Collector”, wherever it occurs, substitute “Inland Revenue”;
 - (c) omit “income” wherever it occurs; and
 - (d) in sub-paragraph (3) omit “to him” wherever the words occur.
- (7) In paragraph 15 (specified amount of earnings-related contributions payable by the employer)—

(a) Sub-paragraph (4) of paragraph 11 was substituted by regulations 2 and 16 of S.I. 2003/193.

- (a) in sub-paragraph (1)—
 - (i) for “14 days” insert “substitute “17 days”;
 - (ii) for “his judgment” substitute “their judgment”; and
 - (iii) for “he considers” substitute “they consider”;
 - (b) for “Collector”, wherever it occurs, substitute “Inland Revenue”;
 - (c) omit “income”, wherever it occurs; and
 - (d) in sub-paragraph (6), omit “to him” wherever the words occur.
- (8) In paragraph 16 (recovery of earnings-related contributions or Class 1B contributions)—
- (a) in sub-paragraph (1)—
 - (i) for “section 203 of the Taxes Act (pay as you earn)”, substitute “section 684 of ITEPA 2003 (PAYE regulations)”;
 - (ii) for “under Schedule E”, substitute “as employment income under ITEPA 2003”;
 - (b) for “Collector”, wherever it occurs, substitute “Inland Revenue”; and
 - (c) omit “income ” wherever it occurs.
- (9) In paragraph 17 (interest on overdue earnings-related contributions or Class 1B contributions)—
- (a) in sub-paragraph (1)—
 - (i) for the words from the beginning to “paragraph 21” substitute “Subject to paragraph 21”
 - (ii) in paragraph (a) after “14 days” insert “or, if payment is made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, 17 days”;
 - (iii) in paragraph (b) after “19th October” insert “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”;
 - (b) in sub-paragraph (2) for “Collector” substitute “Inland Revenue”;
 - (c) in sub-paragraph (3)(b)—
 - (i) in sub-paragraph (i) after “the 14th day” insert “or, if payment was made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, the 17th day”;
 - (ii) in sub-paragraph (ii) after “the 19th October” insert “or, if payment was made by an approved method of electronic communications in respect of earnings paid after 5th April 2004, the 22nd October”.
 - (d) for sub-paragraph (5) substitute—

“(5) A certificate of the Inland Revenue 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.”.
- (10) After paragraph 17 insert—

“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.”.

(11) In paragraph 19(b) (repayment of interest on contributions which are repaid) for “52 or 55” substitute “52, 52A or 55”.

(12) In paragraph 22 (return by employer at end of year) (a)—

(a) in sub-paragraph (1) for the words from “Not later” to “prescribe”, substitute—

“Before 20th May following the end of the year the employer shall render to the Inland Revenue in such form as they may approve or prescribe”;

(b) for “Board”, wherever it occurs (but subject to the amendment made by sub-paragraph (a) above) substitute “Inland Revenue”;

(c) for “Collector”, wherever it occurs, substitute “Inland Revenue”.

(13) In paragraph 23 (additional return by employer at end of year where liability transferred to employed earner: gains from employment-related securities options)(b)—

(a) in sub-paragraph (1)(a), for “remuneration”, substitute “earnings”;

(b) in sub-paragraph (2), for the words from “Not later than” to “Inspector”, substitute “Before 7th July after the end of the year the employer shall deliver to the Inland Revenue”;

(c) in sub-paragraph (3)(c) for “Collector”, substitute “Inland Revenue”.

(14) In paragraph 24 (special return by employer at end of voyage period)—

(a) for “Board”, wherever it occurs, substitute “Inland Revenue”;

(b) for “emoluments”, wherever it occurs, substitute “general earnings”.

(15) In paragraph 25 (return by employer of recovery under the Statutory Sick Pay Percentage Threshold Order) omit “income” wherever it occurs.

(16) In paragraph 26 (inspection of employer’s records)(c)—

(a) for “emoluments”, wherever it occurs, substitute “general earnings”;

(b) omit “income” wherever it occurs;

(c) for “Collector”, wherever it occurs other than as provided for in sub-paragraph (d) below, substitute “Inland Revenue”;

(d) in sub-paragraph (1) for “Board” substitute “Inland Revenue”;

(e) in sub-paragraph (4), for “The Collector may”, substitute “The authorised officer may”;

(f) in sub-paragraph (6), for “regulation 20 of the Income Tax Regulations”, substitute “regulation 35 of the PAYE regulations”;

(17) In paragraphs 27 and 28 (death of an employer and succession to a business) for “emoluments”, wherever it occurs, substitute “general earnings”.

(18) In paragraph 28(3) for “the employer after” substitute “the employee after”.

(19) In paragraph 29 for “Collector”, wherever it occurs, substitute “Inland Revenue”.

33.—(1) Part 4 (assessment and direct collection) is amended as follows.

(2) In paragraph 31 (direct collection involving deductions working sheets)—

(a) for “Inspector”, “Collector”, and “Board”, wherever the words occur, substitute “Inland Revenue” (save as provided for in sub-paragraphs (f)(ii) and (g)(ii) below);

(b) in sub-paragraph (2), for “emoluments”, where it first occurs, substitute “general earnings”; and where it subsequently occurs, substitute “earnings”;

(c) in sub-paragraph (3), for “emoluments”, substitute “general earnings”;

(a) In sub-paragraph (1)(c)(i) of paragraph 22, words “subparagraphs (i) to (iv)” were substituted, and sub-paragraphs (1)(c)(ii) revoked, by regulations 2 and 16 of S.I. 2003/193. In sub-paragraphs (1)(d) and (2)(d) the word “omitted” was revoked, and sub-paragraphs (1)(da), (db), (2)(da) and (db) were inserted, by regulations 2 and 16 of S.I. 2003/193.

(b) Paragraph 23 and the heading were amended by S.I. 2003/2085.

(c) Sub-paragraph (3A) of paragraph 26 was inserted by regulation 16 of S.I. 2003/193.

- (d) in sub-paragraph (4), for “emoluments” where it first occurs, substitute “general earnings”, and where it subsequently occurs, substitute “earnings”;
- (e) in sub-paragraph (5), for “emoluments” where it first occurs, substitute “general earnings”, and where it subsequently occurs, substitute “earnings”;
- (f) in sub-paragraph (6)—
 - (i) for “emoluments”, where it first occurs, substitute “general earnings”; and, where it subsequently occurs, substitute “earnings”; and
 - (ii) for “the Inspector or, if so required to the Collector, in such form as the Board may prescribe”, substitute “the Inland Revenue, in such form as they may prescribe”;
- (g) in sub-paragraph (7)—
 - (i) for “Not later than 44 days after”, substitute “Before 20th May following”;
 - (ii) for “the Inspector or, if so required, to the Collector, in such form as the Board may prescribe” substitute “the Inland Revenue, in such form as they may prescribe”; and
 - (iii) for “emoluments” substitute “general earnings”.

Amendment to the Categorisation Regulations and the Northern Ireland Categorisation Regulations

34.—(1) The Categorisation Regulations and the Northern Ireland Categorisation Regulations are amended as follows.

(2) In regulation 2 of both instruments (treatment of earners in one category falling within another category and disregard of employments) for “emoluments chargeable to income tax under Schedule E”, wherever the phrase occurs, substitute “general earnings”.

(3) In paragraphs 5 and 5A (a) of Column A of Schedule 1 to both instruments (employments which are treated as employed earner’s employments) for “emoluments chargeable to income tax under Schedule E”, substitute “general earnings”.

(4) In paragraph 10 (b) of Column A of Schedule 3 to the Categorisation Regulations (employments in respect of which persons are treated as secondary contributors) for “emoluments chargeable to income tax under Schedule E”, substitute “general earnings”.

(5) In paragraph 8 (c) of Column A of Schedule 3 of the Northern Ireland Categorisation Regulations (provision corresponding in Northern Ireland to that amended by paragraph (4) above), for “emoluments chargeable to income tax under Schedule E”, substitute “general earnings”.

Amendment to the Intermediaries Regulations and the Northern Ireland Intermediaries Regulations

35.—(1) The Intermediaries Regulations (d) and the Northern Ireland Intermediaries Regulations (e) are amended as follows.

(2) In regulation 2(4) (interpretation), for “section 168(4) of the Taxes Act”, substitute “sections 721(4) and (5) of ITEPA 2003”.

-
- (a) Paragraph 5A of the Schedule to the Categorisation Regulations was inserted by regulation 3(b) of S.I. 1998/1728 (which was itself amended by regulation 2 of S. I. 1999/3) and was subsequently amended by regulation 3 of S.I. 2003/736. Paragraph 5A of the Schedule to the Northern Ireland Categorisation Regulations was inserted by regulation 3(b) of S.R. 1998/250 (which was itself amended by regulation 2 of S.I. 1999/2) and was subsequently amended by regulation 3 of S.I. 2003/733.
 - (b) Paragraph 10 was inserted by regulation 4 of S.I. 1998/1728 (which was itself amended by regulation 2 of S.I. 1999/3) and was subsequently amended by regulation 4 of S.I. 2003/736.
 - (c) Paragraph 8 was inserted by regulation 4 of S.I. 1998/250 (which was itself amended by regulation 2 of S.I. 1999/2) and was subsequently amended by regulation 4 of S.I. 2003/733.
 - (d) Regulation 7 of the Intermediaries Regulations was amended by regulations 4 of S.I. 2002/703 and regulation 6 of S.I. 2003/2079., and regulation 7 of the Northern Ireland Intermediaries Regulations was amended by regulation 4 of S.I. 2002/705 and regulation 6 of 2003/2080.
 - (e) S.I. 2000/728. Regulations 2(4) and 7 were amended by regulations 4 and 6 of S.I. 2003/2080.

(3) In regulation 3(4) (meaning of “associate”), for “paragraph 7 of Schedule 8 to the Taxes Act”, substitute “sections 550 and 551 of ITEPA 2003”.

(4) In regulation 4 (meaning of benefit)—

(a) for paragraph (1), substitute—

“(1) For the purposes of these Regulations a “benefit” means anything that, if received by an employee for performing the duties of an employment, would be general earnings of the employment.”.

(b) In paragraph (3), for sub-paragraphs (a) and (b), substitute—

“(a) the amount that would, for income tax purposes, be general earnings if the benefit were general earnings from an employment, and

(b) the cash equivalent determined in accordance with section 398(2)(b) of ITEPA 2003.”.

(5) In regulation 5(1)(b)(i) (meaning of intermediary), for “under Schedule E”, substitute “as employment income under ITEPA 2003”.

(6) In regulation 7(1) (worker’s attributable earnings) for “emoluments”, where it appears in sub-paragraph (b) of Step Seven, substitute “general earnings”.

Revocations

36. The instruments specified in the column 1 of the Table in Schedule 1 to these Regulations are, to the extent shown in the column 2, revoked.

Nick Ainger

Joan Ryan

16th March 2004

Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State concurs.

Signed by authority of the Secretary of State.

Chris Pond

Parliamentary Under Secretary of State,
Department for Works and Pensions

15th March 2004

The Department for Social Development concurs.

Sealed with the Official Seal of the Department for Social Development on 10th March 2004



D A Baker

Senior Officer of the Department for Social Development

Nick Montagu

Helen Ghosh

10th March 2004

Two of the Commissioners of Inland Revenue

SCHEDULE

Regulation 36

Revocations

| <i>1</i> <i>Instrument</i> | <i>2</i> <i>Extent of revocation</i> |
|---|---|
| The Social Security (Contributions) Regulations 2001 (S.I. 2001/1004). | In regulation 1(2), the definitions of “income tax month”, “income tax quarter” and “Schedule E”. Regulations 32 to 35 and 37, In each of regulations 72(4) and 73(4), in the definition of “relevant final tax month” the words from “and for this purpose” to the end. Regulations 80(1B) to (1F) and 80A(a). In regulation 86(2) the words “in respect of any car made available to the earner or to a member of his family or household by reason of the employment” In Schedule 4, paragraph 7(10). |
| The Social Security Contributions and Benefits Act 1992 (Modification of Section 10(7)) Regulations 2001 (S.I. 2001/966)(b). | The whole instrument. |
| The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 10(7)) Regulations 2001 (S.I. 2001/965)(c). | The whole instrument. |
| The Social Security (Contributions) (Amendment No. 4) Regulations 2001 (S.I. 2001/2187). | Regulation 3(2), to the extent that it inserts paragraphs (1B) to 1F) into regulation 80 of S.I. 2001/1004, and regulation 4. |
| The Social Security (Contributions) (Amendment No. 2) Regulations 2002 (S.I. 2002/307). | Regulation 3. |
| The Social Security (Contributions) (Amendment No. 5) Regulations 2002 (S.I. 2002/2929) | Regulation 4. |

(a) Regulation 80A was inserted by regulation 4 of S.I.2001/2187

(b) These Regulations became spent on the substitution of section 10(7) of the Social Security Contributions and Benefits Act 1992 by paragraph 174(9) of Schedule 6 to ITEPA 2003.

(c) These Regulations became spent on the substitution of section 10(7) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by paragraph 195(9) of Schedule 6 to ITEPA 2003.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the provisions of the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004: “the principal Regulations”). They reflect the re-writing of tax legislation dealing with employment income by the Income Tax (Earnings and Pensions) Act 2003 (c. 1: “ITEPA 2003”) and the replacement of the Income Tax (Employments) Regulations 1993 (S.I. 1993/744) by the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682: “the PAYE Regulations”). They also amend the provisions of the principal Regulations dealing with the refund of contributions to ensure that, in the light of changes to the structure of the National Insurance contributions system by the National Insurance (Contributions) Act 2002, those provisions enable the appropriate calculations to be made. Further changes are made in respect of the time during which contributions may be recovered from an employed earner, and the circumstances in which a primary contribution may be recovered directly from a primary contributor.

Regulation 1 provides for the citation, commencement, effect and interpretation of these Regulations.

Regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends the definitions in regulation 1(2) of the principal Regulations, mainly in consequence of changes made by ITEPA 2003.

Regulations 4 to 10 make amendments which are, in the main, consequential upon changes made by ITEPA 2003.

Regulation 12 substitutes two new regulations (52 and 52A) which specify the amounts to be refunded to contributors in case of error and excess payments respectively. The main changes are that payments made in error and excess payments are now dealt with in separate provisions and, in the case of excess payments, contributions payable at different rates are dealt with separately. Regulations 11, 14 and 26 make amendments consequent on this restructuring.

Regulations 13, 15, 17, 18, 20 and 24 to 33 make other amendments consequential upon changes made by ITEPA 2003.

Regulation 22 extends the scope of regulation 86 of the principal Regulations to enable recovery of primary Class 1 contributions directly from an earner where an officer of the Board is satisfied that the earner knows of the secondary contributor’s wilful failure to pay the contribution and of his failure to collect it from the earner.

Regulations 16 to 21 and 23 make amendments to mirror, in relation to the collection of contributions, requirements for the electronic delivery of information and payments in respect of income subject to PAYE recovery contained in Part 10 of the PAYE Regulations.

Regulation 28 also makes amendments providing further disregards in Schedule 3 to the principal Regulations in respect of the introduction of Working Neighbourhoods Pilots and the In-Work Credit Pilot Scheme, and in respect of payments by way of daily subsistence allowance paid by the European Commission.

Regulation 31 also extends, by a year, the time limit for an employer to recover primary Class 1 contributions from the earner’s future earnings where there has been an error in good faith or where the employee is employed outside the United Kingdom and Class 1 contributions are, but income tax is not, payable upon their earnings.

Regulations 34 and 35 make amendments to the Social Security (Categorisation of Earners) Regulations 1978 (S.I. 1978/1689) and the Social Security (Contributions) (Intermediaries) Regulations 2000 (S.I. 2000/727) and their equivalents in Northern Ireland, in each case as a consequence of the rewriting of tax provisions by ITEPA 2003 and the PAYE Regulations.

Regulation 36 provides for the Schedule of revocations to have effect.

These Regulations do not impose any new costs on business.

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