

*Status: Point in time view as at 12/04/2021.*

*Changes to legislation: Social Security Contributions and Benefits (Northern Ireland) Act 1992, Cross Heading: Transfer of liability to be borne by earner is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

#### SUPPLEMENTARY PROVISIONS RELATING TO CONTRIBUTIONS OF CLASSES 1, 1A, <sup>F1</sup>1B,] 2 <sup>F1</sup>, 3 AND 3A]

##### Textual Amendments

- F1** Words in heading to Sch. 1 inserted (6.4.1999) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 58(1)**; S.R. 1998/312, art. 2(d), **Sch. Pt. III**
- F1** Words in Sch. 1 heading substituted (12.10.2015) by Pensions Act 2014 (c. 19), s. 56(1), **Sch. 15 para. 21**; S.I. 2015/1670, art. 2(b)

*<sup>F1</sup>Transfer of liability to be borne by earner*

##### Textual Amendments

- F1** Sch. 1 paras. 3A, 3B and cross-headings inserted (28.7.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 81(2)**

- 3B** (1) This paragraph applies where—
- (a) an election is jointly made by—
- (i) a secondary contributor, and
- (ii) a person (“the earner”) in relation to whom the secondary contributor is or will be such a contributor in respect of contributions on <sup>F2</sup>relevant employment income of the earner],
- for the whole or a part of any liability of the secondary contributor to contributions on any <sup>F3</sup>such income] to be transferred to the earner; and
- (b) the election is one in respect of which the Inland Revenue have, before it was made, given by notice to the secondary contributor their approval to both—
- (i) the form of the election; and
- (ii) the arrangements made in relation to the proposed election for securing that the liability transferred by the election will be met.

[ In this paragraph “relevant employment income”, in relation to the earner, means—

- <sup>F4</sup>(1A) (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),
- (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
- (c) a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) above,

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and references to contributions on relevant employment income are references to any secondary Class 1 contributions payable in respect of that income.]

- (2) Any liability which—
- (a) arises while the election is in force, and
  - (b) is a liability to pay the contributions on [<sup>F5</sup>relevant employment income of the earner, or the part of it], to which the election relates,
- shall be treated for the purposes of this Act, the Administration Act and Part III of the <sup>M1</sup>Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 as a liability falling on the earner, instead of on the secondary contributor.
- (3) Subject to [<sup>F6</sup>sub-paragraphs (7)(b) and (7B)] below, an election made for the purposes of sub-paragraph (1) above shall continue in force from the time when it is made until whichever of the following first occurs, namely—
- (a) it ceases to have effect in accordance with its terms;
  - (b) it is revoked jointly by both parties to the election;
  - (c) notice is given to the earner by the secondary contributor terminating the effect of the election.
- (4) An approval given to the secondary contributor for the purposes of sub-paragraph (1) (b) above may be given either—
- (a) for an election to be made by the secondary contributor and a particular person; or
  - (b) for all elections to be made, or to be made in particular circumstances, by the secondary contributor and particular persons or by the secondary contributor and persons of a particular description.
- (5) The grounds on which the Inland Revenue shall be entitled to refuse an approval for the purposes of sub-paragraph (1)(b) above shall include each of the following—
- (a) that it appears to the Inland Revenue that adequate arrangements have not been made for securing that the liabilities transferred by the proposed election or elections will be met by the person or persons to whom they would be so transferred; and
  - (b) that it appears to the Inland Revenue that they do not have sufficient information to determine whether or not grounds falling within paragraph (a) above exist.
- (6) If, at any time after they have given an approval for the purposes of sub-paragraph (1) (b) above, it appears to the Inland Revenue—
- (a) that the arrangements that were made or are in force for securing that liabilities transferred by elections to which the approval relates are met are proving inadequate or unsatisfactory in any respect, or
  - (b) that any election to which the approval relates has resulted, or is likely to result, in the avoidance or non-payment of the whole or any part of any secondary Class 1 contributions,
- the Inland Revenue may withdraw the approval by notice to the secondary contributor.
- (7) The withdrawal by the Inland Revenue of any approval given for the purposes of sub-paragraph (1)(b) above—
- (a) may be either general or confined to a particular election or to particular elections; and

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- (b) shall have the effect that the election to which the withdrawal relates has no effect on contributions [<sup>F7</sup>on relevant employment income if—
- (i) that income is within sub-paragraph (1A)(a) or (b) and the securities, or interest in securities, to which it relates were or was acquired after the withdrawal date, or
  - (ii) that income is within sub-paragraph (1A)(c) and the right to acquire securities to which it relates was acquired after that date.]
- [ In sub-paragraph (7)(b) “the withdrawal date” means—
- <sup>F8</sup>(7A) (a) the date on which notice of the withdrawal of the approval is given, or
- (b) such later date as the Inland Revenue may specify in that notice.
- (7B) An election is void for the purposes of sub-paragraph (1) to the extent that it relates to [<sup>F9</sup>—
- (a)] relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value)[<sup>F10</sup>, or
  - (b) any liability, or any part of any liability, to a contribution arising as a result of regulations being given retrospective effect by virtue of section 4B(2) (earnings: power to make retrospective provision in consequence of retrospective tax legislation)].]
- (8) Where the Inland Revenue have refused or withdrawn their approval for the purposes of sub-paragraph (1)(b) above, the person who applied for it or, as the case may be, to whom it was given may appeal <sup>F11</sup>... against the Inland Revenue’s decision.
- (9) On an appeal under sub-paragraph (8) above [<sup>F12</sup>that is notified to the tribunal, the tribunal may]—
- (a) dismiss the appeal;
  - (b) remit the decision appealed against to the Inland Revenue with a direction to make such decision as the [<sup>F13</sup>tribunal thinks] fit; or
  - (c) in the case of a decision to withdraw an approval, quash that decision and direct that that decision is to be treated as never having been made.
- <sup>F14</sup>(10) Subject to sub-paragraph (12) below, an election under sub-paragraph (1) above shall not apply to any contributions in respect of income which, before the election was made, counted as employment income for a tax year by virtue of Part 7 of ITEPA 2003.]
- (11) Regulations made by the Inland Revenue may make provision with respect to the making of elections for the purposes of this paragraph and the giving of approvals for the purposes of sub-paragraph (1)(b) above; and any such regulations may, in particular—
- (a) prescribe the matters that must be contained in such an election;
  - (b) provide for the manner in which such an election is to be capable of being made and of being confined to particular liabilities or the part of particular liabilities; and
  - (c) provide for the making of applications for such approvals and for the manner in which those applications are to be dealt with.
- (12) Where—

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- (a) an election is made under this paragraph before the end of the period of three months beginning with the date of the passing of the Child Support, Pensions and Social Security Act 2000, and
- (b) that election is expressed to relate to liabilities for contributions arising on or after 19th May 2000 and before the making of the election, this paragraph shall have effect in relation to those liabilities as if sub-paragraph (2) above provided for them to be deemed to have fallen on the earner (instead of on the secondary contributor); and the secondary contributor shall accordingly be entitled to reimbursement from the earner for any payment made by that contributor in or towards the discharge of any of those liabilities.

<sup>F15</sup>(13) . . . . .

[<sup>F16</sup>(14) In this paragraph “tribunal” means the First-tier Tribunal or, where determined under Tribunal Procedure Rules, the Upper Tribunal;]]

#### Textual Amendments

- F2** Words in **Sch. 1 para. 3B(1)(a)** substituted (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(a)(i), 13; S.I. 2004/1943, art. 2(d)**
- F3** Words in **Sch. 1 para. 3B(1)(a)** substituted (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(a)(ii), 13; S.I. 2004/1943, art. 2(d)**
- F4** **Sch. 1 para. 3B(1A)** inserted (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(b), 13; S.I. 2004/1943, art. 2(d)**
- F5** Words in **Sch. 1 para. 3B(2)(b)** substituted (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(c), 13; S.I. 2004/1943, art. 2(d)**
- F6** Words in **Sch. 1 para. 3B(3)** substituted (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(d), 13; S.I. 2004/1943, art. 2(d)**
- F7** Words in **Sch. 1 para. 3B(7)(b)** substituted (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(e), 13; S.I. 2004/1943, art. 2(d)**
- F8** **Sch. 1 para. 3B(7A)(7B)** inserted (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(f), 13; S.I. 2004/1943, art. 2(d)**
- F9** Words in **Sch. 1 para. 3B(7B)** inserted (with retrospective effect in accordance with s. 6(4) of the amending Act) by **National Insurance Contributions Act 2006 (c. 10), ss. 6(3)(a), 9**
- F10** Words in **Sch. 1 para. 3B(7B)** inserted (with retrospective effect in accordance with s. 6(4) of the amending Act) by **National Insurance Contributions Act 2006 (c. 10), ss. 6(3)(b), 9**
- F11** Words in **Sch. 1 para. 3B(8)** omitted (1.4.2009) by virtue of **The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 174(2)**
- F12** Words in **Sch. 1 para. 3B(9)** substituted (1.4.2009) by **The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 174(3)(a)**
- F13** Words in **Sch. 1 para. 3B(9)(b)** substituted (1.4.2009) by **The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 174(3)(b)**
- F14** **Sch. 1 para. 3B(10)** substituted (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by **National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(g), 13; S.I. 2004/1943, art. 2(d)**

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- F15** Sch. 1 para. 3B(13) repealed (1.9.2004 with effect in accordance with s. 4(4)(5) of the amending Act) by National Insurance Contributions and Statutory Payments Act 2004 (c. 3), ss. 4(3)(h), 13, **Sch. 2**; S.I. 2004/1943, arts. 2(d), 6(a)(ii)
- F16** Sch. 1 para. 3B(14) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 174(4)**
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**Marginal Citations**

- M1** S.I. 1999/671.

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