

# NATIONAL INSURANCE CONTRIBUTIONS AND STATUTORY PAYMENTS ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Employers' Liability for National Insurance contributions*

##### *Section 1 – Payment of Class 1 contributions: Great Britain*

48. [Section 1](#) amends paragraph 3 of Schedule 1 to the CBA 1992 in order to extend the employer's ability to recover primary Class 1 contributions from his employee in respect of non-monetary earnings.

49. Subsection (3) amends paragraph 3 of Schedule 1 to the CBA 1992 so as to insert sub-paragraphs (3A) and (3B) after sub-paragraph (3). These sub-paragraphs apply where an employer makes a payment of non-monetary earnings to an employee. They allow the employer to recover primary Class 1 contributions paid on the employee's behalf in the manner prescribed by regulations. It is intended that regulations will allow the employer, with the written consent of the employee, to recover the primary Class 1 contributions by either:

- retaining some or all of the securities; or
- requiring the employee to sell some or all of the securities and using the proceeds to reimburse the employer.

It is intended that regulations will also allow the employer and employee to enter into written agreements about methods of recovery at any time up to the day that the securities-based earnings are treated as paid.

50. Subsection (4) amends paragraph 3(4) of Schedule 1 to the CBA 1992 to allow recovery of primary Class 1 contributions in respect of ex-employees in the tax year following the year of cessation of their employment. Sub-paragraph 3(4) previously limited recovery to the year in which the employee ceased the employment.

51. Subsection (5) amends paragraph 3(5) by removing paragraph (b). This has been omitted because the new sub-paragraphs (3A) and (3B) now allow recovery of primary Class 1 contributions from employees in respect of non-monetary earnings, thus sub-paragraph 3(5)(b) becomes an unnecessary repetition. Paragraph 3(5)(b) also limited the options for making regulations concerning the forms of recovery to cases where the employee was ceasing employment in the tax year and there were insufficient cash earnings from which the deductions could be made. These restrictions have been removed to allow paragraph 7 of Schedule 4 to the Social Security (Contributions) Regulations 2001 ([S.I. 2001 No. 1004](#))<sup>1</sup> to be amended to enable employers to

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<sup>1</sup> As amended by regulation 7 of the Social Security (Contributions) (Amendment No. 5) Regulations 2002 ([S.I. 2002 No. 2929](#)), regulation 2 of the Social Security (Contributions) (Amendment No. 4) Regulations 2003 ([S.I. 2003 No. 1337](#)) and regulation 31(3) of the Social Security (Contributions, Categorisation of Earners and Intermediaries) (Amendment) Regulations 2004 ([S.I. 2004 No. 770](#))

recoup the primary contributions on security-based earnings by withholding sufficient securities to cover the cost of these contributions.

52. Section 2 – Payment of Class 1 contributions: Northern Ireland

53. [Section 2](#) replicates the provisions of Section 1 in respect of the CB(NI)A 1992.

### ***Section 3 – Agreements and joint elections: Great Britain***

54. Subsection (1) provides for the following amendments to Schedule 1 to the CBA 1992.

55. Subsection (2) extends the scope of paragraph 3A of Schedule 1 to the CBA 1992 in relation to agreements entered into between employers and their employees. These allow employers to recover secondary Class 1 National Insurance contributions from their employees in respect of post-acquisition income from both restricted and convertible securities. Subsection (2) also inserts sub-paragraph (2A) which introduces a condition to the use of agreements; namely, that such agreements may not be used in respect of relevant employment income if the market value of the securities from which that income derives has been artificially depressed.

56. The term “artificially depressed market value” is used in the title of Chapter 3A of Part 7 of ITEPA 2003 (as substituted by Schedule 22 to the Finance Act 2003). That Chapter applies in certain cases where the market value of employment-related securities (or other relevant securities or interests in securities) is reduced by things done otherwise than for genuine commercial purposes. The following are among the things that are, for the purposes of Chapter 3A of Part 7 of ITEPA 2003, done otherwise than for genuine commercial purposes:

- anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or National Insurance contributions; and
- any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm’s length (other than a payment for group relief).

57. Subsection (2) also inserts sub-paragraph (2B) (to paragraph 3A of Schedule 1 to the CBA 1992) which defines “relevant employment income” in three ways:

- an amount that counts as employment income of the earner under section 426 of ITEPA (restricted securities: charge on certain post-acquisition events), as amended by Schedule 22 of the Finance Act 2003;
- an amount that counts as employment income of the earner under section 438 of ITEPA (convertible securities: charge on certain post-acquisition events), as amended by Schedule 22 of the Finance Act 2003;
- a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) of the CBA 1992, as consequentially amended by Schedule 22 of the Finance Act 2003. This section treats as earnings gains from securities options.

58. Subsection (3) amends paragraph 3B of Schedule 1 to the CBA 1992 in order to extend the joint National Insurance contributions election facility to include relevant employment income that is derived from restricted or convertible securities (by virtue of post-acquisition chargeable events only). Further changes are made to ensure that a joint election may not be used with respect to relevant employment income if the market value of the securities from which that income derives has been artificially depressed. Subsection (3) also provides that a joint National Insurance contributions election in respect of relevant employment income from restricted or convertible securities may

*These notes refer to the National Insurance Contributions and Statutory Payments Act 2004 (c.3) which received Royal Assent on 13 May 2004*

not be applied to any contributions in respect of a payment of relevant employment income made before the election is entered into.

59. Subsection (4) provides that the amendments made by this section will apply to agreements and elections entered into after the date of commencement of this section in respect of relevant employment income which counts as employment income after commencement of the section.
60. Subsection (5) defines “post-commencement employment income”, for the purposes of subsection (4), as amounts of relevant employment income which, after the date of commencement of this section, count as employment income.

***Section 4 – Agreements and joint elections: Northern Ireland***

61. [Section 4](#) replicates the provisions of section 3 in relation to Northern Ireland by amending the equivalent sections of the CB(NI)A 1992.