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STATUTORY INSTRUMENTS

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**1999 No. 671**

**The Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999**

**PART III**

**DECISIONS AND APPEALS**

**Decisions by officers of Board**

- 7.—(1) Subject to the provisions of this Part, it shall be for an officer of the Board—
- (a) to decide whether for the purposes of Parts I to V of the Contributions and Benefits Act a person is or was an earner and, if so, the category of earners in which he is or was to be included,
  - (b) to decide whether a person is or was employed in employed earner's employment for the purposes of Part V of the Contributions and Benefits Act (industrial injuries),
  - (c) to decide whether a person is or was liable to pay contributions of any particular class and, if so, the amount that he is or was liable to pay,
  - (d) to decide whether a person is or was entitled to pay contributions of any particular class that he is or was not liable to pay and, if so, the amount that he is or was entitled to pay,
  - (e) to decide whether contributions of a particular class have been paid in respect of any period,
  - (f) subject to and in accordance with regulations made for the purposes of this paragraph by the Department with the concurrence of the Board, to decide any issue arising as to, or in connection with, entitlement to statutory sick pay or statutory maternity pay,
  - (g) to make any other decision that falls to be made under Part XI of the Contributions and Benefits Act (statutory sick pay) or Part XII of that Act (statutory maternity pay),
  - (h) to decide any question as to the issue and content of a notice under subsection (2) of section 115B(1) of the Administration Act (liability of directors etc. for company's contributions),
  - (i) to decide any issue arising under Article 29 of the Jobseekers Order (employment of long-term unemployed: deductions by employers), or under any provision of regulations under that Article, as to—
    - (i) whether a person is or was an employee or employer of another,
    - (ii) whether an employer is or was entitled to make any deduction from his contributions payments in accordance with regulations under Article 29 of that Order,
    - (iii) whether a payment falls to be made to an employer in accordance with those regulations,
    - (iv) the amount that falls to be so deducted or paid, or

- (v) whether two or more employers are, by virtue of regulations under Article 29 of that Order, to be treated as one,
  - (j) to decide whether a person is liable to pay interest under paragraph 7B(2)(e)(2) of Schedule 1 to the Contributions and Benefits Act,
  - (k) to decide whether a person is liable to a penalty under—
    - (i) paragraph 7A(2)(3) or 7B(2)(h) of Schedule 1 to the Contributions and Benefits Act, or
    - (ii) section 107(1)(a)(4) of the Administration Act,
  - (l) to decide the amount of interest or penalty payable under any of the provisions mentioned in sub-paragraphs (j) and (k) of this paragraph, and
  - (m) to decide such issues relating to contributions, other than the issues specified in sub-paragraphs (a) to (l) of this paragraph or in paragraphs 16 and 17 of Schedule 3 to the 1998 Order, as may be prescribed by regulations made by the Board.
- (2) Paragraph (1)(c) and (e) of this Article does not include any decision relating to Class 4 contributions other than a decision falling to be made—
- (a) under subsection (1) of section 17 of the Contributions and Benefits Act as to whether by regulations under that subsection a person is or was excepted from liability for Class 4 contributions, or his liability is or was deferred, or
  - (b) under regulations made by virtue of subsection (3) or (4) of that section or section 18 of that Act.
- (3) Paragraph (1)(g) of this Article does not include—
- (a) any decision as to the making of subordinate legislation, or
  - (b) any decision as to whether the liability to pay statutory sick pay or statutory maternity pay is a liability of the Board rather than the employer.

### **Regulations with respect to decisions**

8.—(1) Subject to the provisions of this Part and of the Administration Act, provision may be made by the Board by regulations as to the making by their officer of any decision under or in connection with the Contributions and Benefits Act, the Administration Act or the Jobseekers Order which falls to be made by such an officer.

(2) Where it appears to an officer of the Board that a matter before him involves a question of fact requiring special expertise, he may direct that in dealing with that matter he shall have the assistance of one or more experts.

(3) In paragraph (2) above “expert” means a person appearing to the officer of the Board to have knowledge or experience which would be relevant in determining the question of fact requiring special expertise.

### **Decisions varying or superseding earlier decisions**

9.—(1) The Board may by regulations make provision—

- (a) for any decision of an officer of the Board under Article 7 of this Order (including a decision superseding an earlier decision) to be varied either within the prescribed period or in prescribed cases or circumstances,

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(2) Paragraph 7B was inserted by Article 54 of the Social Security (Northern Ireland) Order 1998.

(3) Paragraph 7A was inserted by Article 53(2) of the Social Security (Northern Ireland) Order 1998.

(4) Section 107 was substituted by Article 56 of the Social Security (Northern Ireland) Order 1998.

- (b) for any such decision to be superseded, in prescribed circumstances, by a subsequent decision made by an officer of the Board, and
  - (c) for any such decision as confirmed or varied by the tax appeal Commissioners on appeal to be superseded, in the event of a material change of circumstances since the decision was made, by a subsequent decision made by an officer of the Board.
- (2) The date as from which—
- (a) any variation of a decision, or
  - (b) any decision superseding an earlier decision,
- is to take effect shall be determined in accordance with the regulations.
- (3) In this Article “prescribed” means prescribed by regulations under this Article.

### **Appeals against decisions of Board**

- 10.**—(1) This Article applies to any decision of an officer of the Board under Article 7 of this Order or under regulations made by virtue of Article 9(1)(b) or (c) of this Order (whether as originally made or as varied under regulations made by virtue of Article 9(1)(a) of this Order).
- (2) In the case of a decision to which this Article applies—
- (a) if it relates to a person’s entitlement to statutory sick pay or statutory maternity pay, the employee and employer concerned shall each have a right to appeal to the tax appeal Commissioners, and
  - (b) in any other case, the person in respect of whom the decision is made and such other person as may be prescribed shall have a right to appeal to the tax appeal Commissioners.
- (3) In paragraph (2)(b) of this Article “prescribed” means prescribed by the Board by regulations.
- (4) This Article has effect subject to section 115C(5) of the Administration Act (appeals in relation to personal liability notices).

### **Exercise of right of appeal**

- 11.**—(1) Any appeal against a decision must be brought by a notice of appeal in writing given within 30 days after the date on which notice of the decision was issued.
- (2) The notice of appeal shall be given to the officer of the Board by whom notice of the decision was given.
- (3) The notice of appeal shall specify the grounds of appeal, but on the hearing of the appeal the tax appeal Commissioners may allow the appellant to put forward any ground not specified in the notice, and take it into consideration if satisfied that the omission was not wilful or unreasonable.
- (4) Subject to section 115C of the Administration Act (which provides for an appeal against a decision under that section to be heard by the Special Commissioners) and to regulations under section 46A of the Taxes Management Act 1970(6) (regulations about jurisdiction), any appeal under this Article shall be heard by the General Commissioners, except that the appellant may elect in accordance with section 46(1) of the Taxes Management Act 1970 to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (5) Subsections (5A) to (5E)(7) of section 31 of the Taxes Management Act 1970 (which relate to an election to bring proceedings before the Special Commissioners) shall have effect in relation to an election under paragraph (4) of this Article as they have effect in relation to an election under subsection (4) of that section.

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(5) Section 115C was inserted by Article 60 of the Social Security (Northern Ireland) Order 1998.

(6) 1970 c. 9; section 46A was added by paragraph 3 of Schedule 16 to the Finance (No. 2) Act 1992 (c. 48).

(7) Subsections (5A) to (5E) were inserted by paragraph 3(1) of Schedule 22 to the Finance Act 1984 (c. 43).

### **Regulations with respect to appeals**

**12.**—(1) The Board may, by regulations made with the concurrence of the Lord Chancellor, make provision with respect to appeals to the tax appeal Commissioners under this Part.

(2) Regulations under paragraph (1) of this Article may, in particular—

(a) make provision with respect to any of the matters dealt with in the following provisions of the Taxes Management Act 1970—

(i) section 44 and Schedule 3 (assigning proceedings to General Commissioners),

(ii) sections 48 to 54 (appeals to the tax appeal Commissioners under the Taxes Acts), and

(iii) sections 56 and 56A(8) (appeals from their decisions), or

(b) provide for any of those provisions of that Act to apply, with such modifications as may be specified in the regulations, in relation to an appeal to the tax appeal Commissioners under this Part.

(3) In sections 56B and 56C(9) of the Taxes Management Act 1970 (power of Lord Chancellor to make regulations about the practice and procedure to be followed in connection with appeals to the tax appeal Commissioners under the Taxes Acts), any reference to an appeal includes a reference to an appeal to the tax appeal Commissioners under this Part.

(4) Any regulations under section 56B of the Taxes Management Act 1970 which are in force immediately before the commencement of paragraph (3) of this Article shall apply in relation to appeals to the tax appeal Commissioners under this Part, subject to any necessary modifications, as they apply in relation to appeals to those Commissioners under the Taxes Acts.

(5) In this Article “the Taxes Acts” has the same meaning as in the Taxes Management Act 1970.

### **Matters arising as respects decisions**

**13.**—(1) The Board may by regulations make provision as respects matters arising—

(a) pending any decision of an officer of the Board under Article 7 of this Order which relates to—

(i) statutory sick pay or statutory maternity pay, or

(ii) any person’s liability for contributions,

(b) pending the determination by the tax appeal Commissioners of an appeal against any such decision,

(c) out of the variation, under regulations made under Article 9 of this Order or on appeal, of any such decision, or

(d) out of the making of a decision which, under regulations made under that Article, supersedes an earlier decision.

(2) Regulations under this Article may, in particular—

(a) make provision making a person liable to pay contributions pending the determination by the tax appeal Commissioners of an appeal against a decision of an officer of the Board, and

(b) make provision as to the repayment in prescribed circumstances of contributions paid by virtue of the regulations.

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(8) Section 56A was substituted by paragraph 11 of Schedule 1 to S.I.1994/1813.

(9) Sections 56B and 56C were inserted by paragraph 4 of Schedule 16 to the Finance Act (No. 2) Act 1992 and section 56B was amended by section 254 of the Finance Act 1994 (c. 9).

(3) Regulations under this Article must be made with the concurrence of the Department in so far as they relate to statutory sick pay or statutory maternity pay.

### **Power to make provision for period before commencement of new social security appeal provisions**

**14.**—(1) The Department or the Secretary of State may by regulations modify any of the enactments to which this paragraph applies during any period in which Article 7 of this Order is in force but Chapter II of Part II of the 1998 Order (social security decisions and appeals) is not yet wholly in force.

(2) Paragraph (1) of this Article applies to—

- (a) Part II of the Administration Act (adjudication), and
- (b) the Acts and Orders in Council amended by Article 15 of, and Schedule 6 to, this Order.

### **Decisions under Pensions Act**

**15.**—(1) The function of determining the questions referred to in subsection (1) of section 165(**10**) of the Pensions Act, as that section has effect before the commencement of paragraph 99 of Schedule 6 to the 1998 Order, is hereby transferred to an officer of the Board.

(2) In that section (decisions and appeals), as substituted by paragraph 99 of Schedule 6 to the 1998 Order, for subsections (2) to (4) there is substituted—

“(2) It shall be for an officer of the Inland Revenue—

- (a) to make any decision that falls to be made under or by virtue of Part III of this Act, other than a decision which under or by virtue of that Part falls to be made by the Department;
- (b) to decide any issue arising in connection with payments under Article 9 of the Social Security (Northern Ireland) Order 1986(**11**) (occupational pension schemes becoming contracted-out between 1986 and 1993); and
- (c) to decide any issue arising by virtue of regulations made under paragraph 15 of Schedule 3 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992(**12**) (continuing in force of certain enactments repealed by the Social Security Act 1973(**13**)).

(3) In the following provisions of this section a “relevant decision” means any decision which under subsection (2) falls to be made by an officer of the Inland Revenue, other than a decision under section 49 or 50.

(4) Articles 10 and 11 of the 1998 Order (revision of decisions and decisions superseding earlier decisions) apply as if—

- (a) any reference in those Articles to a decision of the Department under Article 9 of that Order included a reference to a relevant decision; and
- (b) any other reference in those Articles to the Department were, in relation to a relevant decision, a reference to an officer of the Inland Revenue.

(5) Regulations may make provision—

- (a) with respect to the procedure to be adopted on any application made under Article 10 or 11 of the 1998 Order by virtue of subsection (4); and

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(**10**) Section 165 was amended by paragraph 34 of Schedule 1 to, and paragraph 60 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995.

(**11**) S.I. 1986/1888 (N.I. 18).

(**12**) 1992 c. 9.

(**13**) 1973 c. 38.

- (b) generally with respect to such applications, revisions under Article 10 and decisions under Article 11;

but may not prevent such a revision or decision being made without such an application.

(6) Article 13 of the 1998 Order (appeal to appeal tribunal) applies as if, for the purposes of paragraph (1)(b) of that Article, a relevant decision were a decision of the Department falling within Schedule 3 to the 1998 Order.

- (7) The following provisions (which relate to decisions and appeals)—
  - section 22 of, and Schedule 2 to, the Social Security Administration (Northern Ireland) Act 1992,
  - Articles 14 to 18 of the 1998 Order,
  - Articles 25 and 26 of that Order,
  - Article 28 of that Order,
  - Schedule 4 to that Order,

shall apply in relation to any appeal under Article 13 of the 1998 Order by virtue of subsection (6) as if any reference to the Department were a reference to an officer of the Inland Revenue.”.

#### **Arrangements for discharge of decision-making functions**

**16.**—(1) The Department may make arrangements with the Board for any of its functions under Chapter II of Part II of the 1998 Order in relation to—

- (a) a decision whether a person was (within the meaning of regulations) precluded from regular employment by responsibilities at home, or
- (b) a decision whether a person is entitled to be credited with earnings or contributions in accordance with regulations made under section 22(5) of the Contributions and Benefits Act,

to be discharged by the Board or by officers of the Board.

(2) No such arrangements shall affect the responsibility of the Department or the application of Chapter II of Part II of the 1998 Order in relation to any decision.

(3) Until the commencement of Chapter II of Part II of the 1998 Order, the references to that Chapter in paragraphs (1) and (2) of this Article shall have effect as references to Part II of the Administration Act.

#### **Amendments relating to decisions and appeals**

**17.** Schedule 6 to this Order (which contains amendments relating to decisions and appeals) shall have effect.

#### **Interpretation of Part III**

**18.** In this Part—

“the General Commissioners” means the Commissioners for the general purposes of the income tax appointed under section 2 of the Taxes Management Act 1970;

“the Special Commissioners” means the Commissioners for the special purposes of the Income Tax Acts appointed under section 4 of the Taxes Management Act 1970;

“the tax appeal Commissioners” means the General Commissioners or the Special Commissioners.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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