



# Social Security Contributions and Benefits (Northern Ireland) Act 1992

## 1992 CHAPTER 7

### PART I

#### CONTRIBUTIONS

##### *Preliminary*

#### **1 Outline of contributory system.**

(1) The funds required—

- (a) for paying such benefits under this Act as are payable out of the National Insurance Fund and not out of other public money; and
- (b) for the making of payments under section 142 of the Administration Act towards the cost of the health service,

shall be provided by means of contributions payable to the [<sup>F1</sup>Inland Revenue] by earners, employers and others, together with the additions under subsection (5) below [<sup>F2</sup>and amounts payable under Article 4 of the Social Security (Northern Ireland) Order 1993].

(2) Contributions under this Part of this Act shall be of the following [<sup>F3</sup>six] classes—

- (a) Class 1, earnings-related, payable under section 6 below, being—
  - (i) primary Class 1 contributions from employed earners; and
  - (ii) secondary Class 1 contributions from employers and other persons paying earnings;
- (b) Class 1A, payable under section 10 below <sup>F4</sup>. . . by persons liable to pay secondary Class 1 contributions and certain other persons;
- [<sup>F5</sup>(bb) Class 1B, payable under section 10A below by persons who are accountable to the Inland Revenue in respect of income tax on [<sup>F6</sup>general earnings] in accordance with a PAYE settlement agreement;]

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- (c) Class 2, flat-rate, payable weekly under section 11 below by self-employed earners;
  - (d) Class 3, payable under section 13 <sup>[F7]</sup> or 13A] below by earners and others voluntarily with a view to providing entitlement to benefit, or making up entitlement; and
  - (e) Class 4, payable under section 15 below in respect of the profits or gains of a trade, profession or vocation, or under section 18 below in respect of equivalent earnings.
- (3) The amounts and rates of contributions in this Part of this Act and the other figures in it which affect the liability of contributors shall—
- (a) be subject to regulations under sections 19(4) and 116 to 119 below; and
  - (b) to the extent provided for by section 129 of the Administration Act be subject to alteration by orders made under that section,
- and the provisions of this Part of this Act are subject to the provisions of <sup>[F8]</sup>Chapter II of Part III of the Pensions Act (reduction in state scheme contributions and social security benefits for members of certified schemes)].
- (4) Schedule 1 to this Act—
- (a) shall have effect with respect to the computation, collection and recovery of contributions of Classes 1, 1A, <sup>[F9]</sup>1B,] 2 and 3, and otherwise with respect to contributions of those classes; and
  - (b) shall also, to the extent provided by regulations made under section 18 below, have effect with respect to the computation, collection and recovery of Class 4 contributions, and otherwise with respect to such contributions, <sup>F10</sup>. . .
- (5) For each financial year there shall, by way of addition to contributions, be paid out of money hereafter appropriated for that purpose, in such manner and at such times as the Department of Finance and Personnel may determine, amounts the total of which for any such year is equal to the aggregate of all statutory sick pay <sup>[F11]</sup>, statutory maternity pay, <sup>[F12]</sup>ordinary statutory paternity pay, additional statutory paternity pay] and statutory adoption pay] recovered by employers and others in that year, as estimated by the Department.
- (6) No person shall—
- (a) be liable to pay Class 1, Class 1A <sup>[F13]</sup>, Class 1B] or Class 2 contributions unless he fulfils prescribed conditions as to residence or presence in Northern Ireland;
  - (b) be entitled to pay Class 3 contributions unless he fulfils such conditions; or
  - (c) be entitled to pay Class 1, Class 1A <sup>[F13]</sup>, Class 1B] or Class 2 contributions other than those which he is liable to pay, except so far as he is permitted by regulations to pay them.

<sup>[F14]</sup>(7) Regulations under subsection (6) above shall be made by the Treasury.]

#### Textual Amendments

- F1** Words in s. 1(1) substituted (24.3.1999 for specified purposes and 1.4.1999 otherwise) by S.I. 1999/671, arts. 1(2)(b), 3(1), **Sch. 1 para. 5(2)** (with savings and transitional provisions in **Sch. 7**); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)
- F2** Words in s. 1(1) added (17.3.1993) by S.I. 1993/592 (N.I. 2), **arts. 1(2), 4(9)**

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- F3** Word in s. 1(2) substituted (9.9.1998 for the purpose of making regulations and 6.4.1999 otherwise) by S.I. 1998/1506, art. 78(1), **Sch. 6 para. 38(1)**; S.R. 1998/312, art. 2(b), **Sch. Pt. II**
- F4** Words in s. 1(2)(b) repealed (with effect in relation to tax year 2000-2001 and subsequent tax years) by 2000 c. 19, ss. 78(1)(8), 85, **Sch. 9 Pt. VIII(2)**, note 1 (with s. 78(9))
- F5** S. 1(2)(bb) inserted (9.9.1998 for the purpose of making regulations and 6.4.1999 otherwise) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 38(1)**; S.R. 1998/312, art. 2(b), **Sch. Pt. II**
- F6** Words in s. 1(2)(bb) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 191** (with Sch. 7)
- F7** Words in s. 1(2)(d) inserted (6.4.2009) by Pensions Act 2008 (c. 30), **ss. 136(3)**, 149(4)
- F8** Words in s. 1(3) substituted (7.2.1994) by 1993 c. 49, s. 184, **Sch. 7 para. 27**; S.R. 1994/17, **art. 2**
- F9** Words in s. 1(4)(a) inserted (9.9.1998 for the purpose of making regulations and 6.4.1999 otherwise) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 38(2)**; S.R. 1998/312, art. 2(b), **Sch. Pt. II**
- F10** Words in s. 1(4)(b) repealed (omitted 24.3.1999 for specified purposes only and wholly repealed 1.4.1999) by S.I. 1999/671, arts. 1(2)(b), 3(1), 24(3), **Sch. 1 para. 5(3)**, **Sch. 9 Pt. I** (with savings and transitional provisions in Sch. 7); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)
- F11** Words in s. 1(5) substituted (8.12.2002) by The Employment (Northern Ireland) Order 2002 (S.I. 2002/2836 (N.I. 2)), arts. 1(2), **7(3)**; S.R. 2002/356, **art. 2(2)**, Sch. 1 Pt. II
- F12** Words in s. 1(5) substituted (1.10.2010) by The Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947), art. 1(3), **Sch. 1 para. 2**; S.R. 2010/295, art. 3(d)
- F13** Words in s. 1(6) inserted (9.9.1998 for the purpose of making regulations and 6.4.1999 otherwise) by S.I. 1998/1506 (N.I. 10), art. 78(1), **Sch. 6 para. 38(3)**; S.R. 1998/312, art. 2(b), **Sch. Pt. II**
- F14** S. 1(7) inserted (1.4.1999) by S.I. 1999/671, art. 4, **Sch. 3 para. 2** (with savings and transitional provisions in Sch. 7); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)

## 2 Categories of earners.

(1) In this Part of this Act and Parts II to V—

- (a) “employed earner” means a person who is gainfully employed in Northern Ireland either under a contract of service, or in an office (including elective office) with [<sup>F15</sup>general earnings]; and
- (b) “self-employed earner” means a person who is gainfully employed in Northern Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment).

(2) Regulations may provide—

- (a) for employment of any prescribed description to be disregarded in relation to liability for contributions otherwise arising from employment of that description;
- (b) for a person in employment of any prescribed description to be treated, for the purposes of this Act, as falling within one or other of the categories of earner defined in subsection (1) above, notwithstanding that he would not fall within that category apart from the regulations.

[<sup>F16</sup>(2A) Regulations under subsection (2) above shall be made by the Treasury and, in the case of regulations under paragraph (b) of that subsection, with the concurrence of the Department.]

(3) Where a person is to be treated by reference to any employment of his as an employed earner, then he is to be so treated for all purposes of this Act; and references throughout this Act to employed earner’s employment shall be construed accordingly.

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- (4) Subsections (1) to (3) above are subject to the provision made by section 95 below as to the employments which are to be treated, for the purposes of industrial injuries benefit, as employed earner's employments.
- (5) For the purposes of this Act, a person shall be treated as a self-employed earner as respects any week during any part of which he is such an earner (without prejudice to his being also treated as an employed earner as respects that week by reference to any other employment of his).

#### Textual Amendments

- F15** Words in s. 2(1)(a) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 192 \(with Sch. 7\)](#)
- F16** S. 2(2A) substituted (11.11.1999) by [1999 c. 30, ss. 81, 89\(4\)\(d\), Sch. 11 para. 10](#)

### 3 “Earnings” and “earner”.

- (1) In this Part of this Act and Parts II to V—
- (a) “earnings” includes any remuneration or profit derived from an employment; and
  - (b) “earner” shall be construed accordingly.
- (2) For the purposes of this Part of this Act and of Parts II to V other than those of Schedule 8—
- (a) the amount of a person's earnings for any period; or
  - (b) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,
- shall be calculated or estimated in such manner and on such basis as may be prescribed [<sup>F17</sup>by regulations made by the Treasury with the concurrence of the Department].
- [<sup>F18</sup>(2A) Regulations made for the purposes of subsection (2) above may provide that, where a payment is made or a benefit provided to or for the benefit of two or more earners, a proportion (determined in such manner as may be prescribed) of the amount or value of the payment or benefit shall be attributed to each earner.]
- (3) Regulations made for the purposes of subsection (2) above may prescribe that payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of that person's earnings.
- [<sup>F19</sup>(4) Subsection (5) below applies to regulations made for the purposes of subsection (2) above which make special provision with respect to the earnings periods of directors and former directors of companies.
- (5) Regulations to which this subsection applies may make provision—
- (a) for enabling companies, and directors and former directors of companies, to pay on account of any earnings-related contributions that may become payable by them such amounts as would be payable by way of such contributions if the special provision had not been made; and
  - (b) for requiring any payments made in accordance with the regulations to be treated, for prescribed purposes, as if they were the contributions on account of which they were made.]

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#### Textual Amendments

- F17** Words in s. 3(2) inserted (1.4.1999) by S.I. 1999/671, art. 4, **Sch. 3 para. 4** (with savings and transitional provisions in **Sch. 7**); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)
- F18** S. 3(2A) inserted (9.9.1998) by S.I. 1998/1506 (N.I. 10), **art. 45**; S.R. 1998/312, art. 2(a), **Sch. Pt. I**
- F19** S. 3(4)(5) added (9.9.1998) by S.I. 1998/1506 (N.I. 10), **art. 46**; S.R. 1998/312, art. 2(a), **Sch. Pt. I**

#### Modifications etc. (not altering text)

- C1** S. 3 applied (7.2.1994) by 1993 c. 49, s. 176(1); S.R. 1994/17, **art. 2**

## 4 Payments treated as remuneration and earnings.

- (1) For the purposes of section 3 above there shall be treated as remuneration derived from employed earner's employment—
- (a) any sum paid to or for the benefit of a person in satisfaction (whether in whole or in part) of any entitlement of that person to—
- (i) statutory sick pay; or
- (ii) statutory maternity pay; [<sup>F20</sup>or]
- [<sup>F21</sup>(iii) ordinary statutory paternity pay; or
- (iv) additional statutory paternity pay; or
- (v) statutory adoption pay; and]
- (b) any sickness payment made—
- (i) to or for the benefit of the employed earner; and
- (ii) in accordance with arrangements under which the person who is the secondary contributor in relation to the employment concerned has made, or remains liable to make, payments towards the provision of that sickness payment.
- (2) Where the funds for making sickness payments under arrangements of the kind mentioned in paragraph (b) of subsection (1) above are attributable in part to contributions to those funds made by the employed earner, regulations may make provision for disregarding, for the purposes of that subsection, the prescribed part of any sum paid as a result of the arrangements.
- (3) For the purposes of subsections (1) and (2) above “sickness payment” means any payment made in respect of absence from work due to incapacity for work <sup>F22</sup>. . . .
- [<sup>F23</sup>(4) For the purposes of section 3 above there shall be treated as remuneration derived from an employed earner's employment—
- [<sup>F24</sup>(a) the amount of any gain calculated under section 479 [<sup>F25</sup>of ITEPA 2003 in respect of which an amount counts as employment income of the earner under section 476 of that Act (charge on acquisition of securities pursuant to option etc), reduced by any amounts deducted under section 480(1) to (6) of that Act in arriving at the amount counting as such employment income;]]
- (b) any sum paid (or treated as paid) to or for the benefit of the earner which is chargeable to tax by virtue of [<sup>F26</sup>section 225 or 226 of ITEPA 2003] (taxation of consideration for certain restrictive undertakings).]
- (5) For the purposes of section 3 above regulations may make provision for treating as remuneration derived from an employed earner's employment any payment made by

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a body corporate to or for the benefit of any of its directors where that payment would, when made, not be earnings for the purposes of this Act.

[<sup>F27</sup>(6) Regulations may make provision for the purposes of this Part—

- (a) for treating any amount on which an employed earner is chargeable to income tax under [<sup>F28</sup>the employment income Parts of ITEPA 2003] as remuneration derived from the earner's employment; and
- (b) for treating any amount which in accordance with regulations under paragraph (a) above constitutes remuneration as an amount of remuneration paid, at such time as may be determined in accordance with the regulations, to or for the benefit of the earner in respect of his employment.]

[<sup>F29</sup>(7) Regulations under this section shall be made by the Treasury with the concurrence of the Department.]

#### Textual Amendments

- F20** S. 4(1)(a)(iii)(iv) and preceding word inserted (8.12.2002) by [The Employment \(Northern Ireland\) Order 2002 \(S.I. 2002/2836 \(N.I. 2\)\)](#), arts. 1(2), 17(1), **Sch. 2 para. 1(1)**; S.R. 2002/356, **art. 2(2)**, Sch. 1 Pt. II
- F21** S. 4(1)(a)(iii)-(v) substituted for s. 4(1)(a)(iii)(iv) (1.10.2010) by [The Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947\)](#), art. 1(3), **Sch. 1 para. 3**; S.R. 2010/295, art. 3(d)
- F22** Words in s. 4(3) repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1 Pt. I para. 1, **Sch. 2** (with art. 15(1)); S.R. 1994/450, art. 2, **Sch. Pt. IV**
- F23** S. 4(4) substituted (1.7.1998 for specified purposes and 9.9.1998 otherwise with effect as mentioned in art. 47(3) of the amending S.I.) by S.I. 1998/1506 (N.I. 10), **arts. 1(3), 47(1)(3)**; S.R. 1998/312, art. 2(a), **Sch. Pt. I**,
- F24** S. 4(4)(a) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 193(2)** (with Sch. 7)
- F25** Words in s. 4(4)(a) substituted (with effect in accordance with Sch. 22 para. 48(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 48(1)(b)**
- F26** Words in s. 4(4)(b) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 193(3)** (with Sch. 7)
- F27** S. 4(6) substituted (with effect in relation to tax year 2000-2001 and subsequent tax years) by [2000 c. 19, s. 78\(3\)\(8\)](#) (with s. 78(9))
- F28** Words in s. 4(6)(a) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 193(4)** (with Sch. 7)
- F29** S. 4(7) added (1.4.1999) by S.I. 1999/671, art. 4, **Sch. 3 para. 5** (with savings and transitional provisions in Sch. 7); S.R. 1999/149, art. 2(c), **Sch. 2** (subject to arts. 3-6)

#### Modifications etc. (not altering text)

- C2** S. 4 applied (7.2.1994) by [1993 c. 49, s. 176\(1\)](#); S.R. 1994/17, **art. 2**
- C3** S. 4(1) modified (with effect in relation to tax year 2001-2002 and subsequent tax years) by S.R. 1979/186, **Sch. 1ZC Pt. X para. 7** (as inserted by S.I. 2001/597, regs. 1(2), 11, **Sch. 2**

[<sup>F30</sup>4A **Earnings of workers supplied by service companies etc.**

(1) Regulations may make provision for securing that where—

- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services [<sup>F31</sup>for another person] (“the client”),

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- (b) the performance of those services by the worker is (within the meaning of the regulations) referable to arrangements involving a third person (and not referable to any contract between the client and the worker), and
- (c) the circumstances are such that, were the services to be performed by the worker under a contract between him and the client, he would be regarded for the purposes of the applicable provisions of this Act as employed in employed earner's employment by the client,

relevant payments or benefits are, to the specified extent, to be treated for those purposes as earnings paid to the worker in respect of an employed earner's employment of his.

(2) For the purposes of this section—

- (a) “the intermediary” means—
  - (i) where the third person mentioned in subsection (1)(b) above has such a contractual or other relationship with the worker as may be specified, that third person, or
  - (ii) where that third person does not have such a relationship with the worker, any other person who has both such a relationship with the worker and such a direct or indirect contractual or other relationship with the third person as may be specified; and
- (b) a person may be the intermediary despite being—
  - (i) a person with whom the worker holds any office or employment, or
  - (ii) a body corporate, unincorporated body or partnership of which the worker is a member;

and subsection (1) above applies whether or not the client is a person with whom the worker holds any office or employment.

[ Regulations may also make provision for securing that where the services of an <sup>F32</sup>(2A) individual (“the worker”) are provided (directly or indirectly) by a managed service company (“the MSC”) relevant payments or benefits are, to the specified extent, to be treated for the purposes of the applicable provisions of this Act as earnings paid to the worker in respect of an employed earner's employment of his.

(2B) In subsection (2A) “managed service company” has the same meaning as it has for the purpose of Chapter 9 of Part 2 of ITEPA 2003.]

(3) Regulations under this section may, in particular, make provision—

- (a) for the worker to be treated for the purposes of the applicable provisions of this Act, in relation to the specified amount of relevant payments or benefits (the worker's “attributable earnings”), as employed in employed earner's employment by the intermediary [<sup>F33</sup>or the MSC (as the case requires)];
- (b) for the [<sup>F34</sup>intermediary or MSC (whether or not fulfilling] the conditions prescribed under section 1(6)(a) above for secondary contributors) to be treated for those purposes as the secondary contributor in respect of the worker's attributable earnings;
- (c) for determining—
  - (i) any deductions to be made, and
  - (ii) in other respects the manner and basis in and on which the amount of the worker's attributable earnings for any specified period is to be calculated or estimated,

in connection with relevant payments or benefits;

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- (d) for aggregating any such amount, for purposes relating to contributions, with other earnings of the worker during any such period;
  - (e) for determining the date by which contributions payable in respect of the worker's attributable earnings are to be paid and accounted for;
  - (f) for apportioning payments or benefits of any specified description, in such manner or on such basis as may be specified, for the purpose of determining the part of any such payment or benefit which is to be treated as a relevant payment or benefit for the purposes of the regulations;
  - (g) for disregarding for the purposes of the applicable provisions of this Act, in relation to relevant payments or benefits, an employed earner's employment in which the worker is employed (whether by the intermediary [<sup>F35</sup>or the MSC] or otherwise) to perform the services in question;
  - (h) for otherwise securing that a double liability to pay any amount by way of a contribution of any description does not arise in relation to a particular payment or benefit or (as the case may be) a particular part of a payment or benefit;
  - (i) for securing that, to the specified extent, two or more persons, whether—
    - (i) connected persons (within the meaning of [<sup>F36</sup>section 993 of the Income Tax Act 2007]), or
    - (ii) persons of any other specified description,
 are treated as a single person for any purposes of the regulations;
  - (j) (without prejudice to paragraph (i) above) for securing that a contract made with a person other than the client is to be treated for any such purposes as made with the client;
  - (k) for excluding or modifying the application of the regulations in relation to such cases, or payments or benefits of such description, as may be specified.
- (4) Regulations made in pursuance of subsection (3)(c) above may, in particular, make provision—
- (a) for the making of a deduction of a specified amount in respect of general expenses of the intermediary as well as deductions in respect of particular expenses incurred by him;
  - (b) for securing reductions in the amount of the worker's attributable earnings on account of—
    - (i) any secondary Class 1 contributions already paid by the intermediary [<sup>F37</sup>or the MSC] in respect of actual earnings of the worker, and
    - (ii) any such contributions that will be payable by [<sup>F38</sup>that person] in respect of the worker's attributable earnings.
- (5) Regulations under this section may make provision for securing that, in applying any provisions of the regulations, any term of a contract or other arrangement which appears to be of a description specified in the regulations is to be disregarded.
- (6) In this section—
- “the applicable provisions of this Act” means this Part of this Act and Parts II to V below;
- <sup>F39</sup>  
.....
- “relevant payments or benefits” means payments or benefits of any specified description made or provided (whether to the intermediary [<sup>F40</sup>or the MSC,] or the worker or otherwise) in connection with the performance by the worker of the services in question;



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“specified” means prescribed by or determined in accordance with regulations under this section.

- (7) Any reference in this section to the performance by the worker of any services includes a reference to any such obligation of his to perform them as is mentioned in subsection (1)(a) above.
- (8) Regulations under this section shall be made by the Treasury with the concurrence of the Department.
- (9) If, on any modification of the statutory provisions relating to income tax, it appears to the Treasury to be expedient to modify any of the preceding provisions of this section for the purpose of assimilating the law relating to income tax and the law relating to contributions under this Part of this Act, the Treasury may with the concurrence of the Department by order make such modifications of the preceding provisions of this section as the Treasury think appropriate for that purpose.]

#### Textual Amendments

- F30** S. 4A inserted (22.12.1999) by 1999 c. 30, s. 76; S.I. 1999/3420, art. 3
- F31** Words in s. 4A(1)(a) substituted (8.8.2003) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2003 (S.I. 2003/1884), arts. 1, 3
- F32** S. 4A(2A)(2B) inserted (24.7.2007) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2007 (S.I. 2007/2072), arts. 1, 2(2)
- F33** Words in s. 4A(3)(a) inserted (24.7.2007) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2007 (S.I. 2007/2072), arts. 1, 2(3)(a)
- F34** Words in s. 4A(3)(b) substituted (24.7.2007) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2007 (S.I. 2007/2072), arts. 1, 2(3)(b)
- F35** Words in s. 4A(3)(g) inserted (24.7.2007) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2007 (S.I. 2007/2072), arts. 1, 2(3)(c)
- F36** Words in s. 4A(3)(i) substituted (with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), s. 1034(1), Sch. 1 para. 292 (with Sch. 2)
- F37** Words in s. 4A(4)(b)(i) inserted (24.7.2007) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2007 (S.I. 2007/2072), arts. 1, 2(4)(a)
- F38** Words in s. 4A(4)(b)(ii) substituted (24.7.2007) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2007 (S.I. 2007/2072), arts. 1, 2(4)(b)
- F39** Words in s. 4A(6) omitted (8.8.2003) by virtue of The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2003 (S.I. 2003/1884), arts. 1, 4
- F40** Words in s. 4A(6) inserted (24.7.2007) by The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (Modification of Section 4A) Order 2007 (S.I. 2007/2072), arts. 1, 2(5)

#### [<sup>F41</sup>4B Earnings: power to make retrospective provision in consequence of retrospective tax legislation

- (1) This section applies where—
  - (a) a provision of the Income Tax Acts which relates to income tax chargeable under the employment income Parts of ITEPA 2003 is passed or made so as to have retrospective effect (“the retrospective tax provision”), and
  - (b) it appears to the Treasury to be appropriate to make regulations under a relevant power for the purpose of reflecting the whole or part of the provision made by the retrospective tax provision.

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- (2) Those regulations may be made so as to have retrospective effect if it appears to the Treasury to be expedient, in consequence of the retrospective tax provision, for the regulations to have that effect.
- (3) A “relevant power” means a power to make regulations under any of the following provisions—
- (a) section 3 (power to prescribe the manner and basis of the calculation or estimation of earnings);
  - (b) section 4(6) (power to treat amounts chargeable to income tax under the employment income Parts of ITEPA 2003 as earnings);
  - (c) section 4A (power to treat payments or benefits to workers supplied by service companies etc as earnings).
- (4) It does not matter whether the retrospective tax provision in question was passed or made before the day on which the National Insurance Contributions Act 2006 was passed.
- (5) But nothing in subsection (2) authorises regulations to be made which have effect in relation to any time before 2nd December 2004.
- (6) Regulations under a relevant power made by virtue of subsection (2) may affect, for the purposes of any contributions legislation for the purposes of which the regulations are made, the earnings in respect of an employment paid to or for the benefit of an earner at a time before the regulations are made.
- (7) In such a case, subsections (8) and (9) apply and in those subsections and this subsection—
- “relevant contributions legislation” means any contributions legislation for the purposes of which the regulations have the effect mentioned in subsection (6);
- “the relevant time” means the time before the regulations are made mentioned in that subsection;
- “the revised earnings” means the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time as determined after applying the regulations.
- (8) References in any relevant contributions legislation, or any provision made under any such legislation, which relate to—
- (a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or
  - (b) the amount of such earnings so paid at that time,
- are to be read, in so far as they so relate, as references which relate to the revised earnings or, as the case may be, the amount of those earnings.
- (9) Any matter which, at the time when the regulations are made, has been determined for the purposes of any relevant contributions legislation, or any provision made under any such legislation, wholly or partly by reference to—
- (a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or
  - (b) the amount of such earnings so paid at that time,

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is to be redetermined as it would have been determined at the time of the original determination if it had been determined wholly or partly, as the case may be, by reference to the revised earnings or the amount of those earnings.

- (10) The matters referred to in subsection (9) may include—
- (a) whether Class 1 contributions are payable in respect of earnings paid to or for the benefit of the earner in a tax week, and
  - (b) the amount of any such contribution.
- (11) Subsections (7) to (10) are subject to any express provision to the contrary (including any such provision made by regulations under section 4C(1)).
- (12) The power conferred by subsection (2) is without prejudice to any powers conferred by or by virtue of any other provision of this Act or of any other enactment.
- (13) For the purposes of this section—
- “contributions legislation” means any Part of this Act or provision of such a Part;
  - “enactment” has the same meaning as it has for the purposes of section 4C.

#### Textual Amendments

**F41** Ss. 4B, 4C inserted (30.3.2006) by [National Insurance Contributions Act 2006 \(c. 10\), ss. 2\(1\), 9](#)

#### **4C Power to make provision in consequence of provision made by or by virtue of section 4B(2) etc**

- (1) The Treasury may by regulations made with the concurrence of the relevant Northern Ireland department (if any) make such provision as appears to the Treasury to be expedient for any of the purposes mentioned in subsection (2) in consequence of any provision made by or by virtue of section 4B(2).
- (2) Those purposes are—
- (a) any purpose relating to any contributions;
  - (b) any purpose relating to any contributory benefit or contribution-based jobseeker's allowance;
  - (c) any purpose relating to any statutory payment;
  - (d) any purpose relating to minimum payments (within the meaning of the Pensions Act) by employers to occupational pension schemes;
  - (e) any purpose of Chapter 2 of Part 3 of that Act (reduction in state scheme contributions and benefits for members of certified schemes);
  - (f) such other purposes as may be prescribed by regulations made by the Treasury with the concurrence of the relevant Northern Ireland department (if any).
- (3) Regulations under subsection (1) may, in particular, make provision—
- (a) modifying any provision of any enactment (including this Act and any enactment passed or made on or after the commencement day);
  - (b) for any provision of any such enactment to apply in such cases, and with such modifications (if any), as the regulations may prescribe.
- (4) Regulations under subsection (1) may be made so as to have retrospective effect but must not have effect in relation to any time before 2nd December 2004.

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- (5) In particular, regulations under subsection (1) made by virtue of subsection (4) may affect any of the following matters—
- (a) liability to pay contributions, including liability to pay Class 1 contributions at a reduced rate by virtue of Chapter 2 of Part 3 of the Pensions Act;
  - (b) the amount of any contribution, including the amount of any such reduced rate contribution and of any related rebate under section 37(1D) or 38A(2C) of that Act;
  - (c) entitlement to a contributory benefit or contribution-based jobseeker's allowance;
  - (d) the amount of any such benefit or allowance;
  - (e) entitlement to a statutory payment;
  - (f) the amount of any such payment;
  - (g) liability to make minimum payments (within the meaning of the Pensions Act) to occupational pension schemes;
  - (h) the amount of any such payment;
  - (i) liability to make payments under section 38A(3) of the Pensions Act or to pay minimum contributions under section 39 of that Act;
  - (j) the amount of any such payment or contribution.
- (6) In such a case, where the matter has been determined before the time when the regulations are made, the regulations may provide for the matter to be redetermined accordingly.
- (7) If (ignoring this subsection) the operative provisions would directly or indirectly have effect in any case so as—
- (a) to remove a person's entitlement to a contributory benefit, contribution-based jobseeker's allowance or statutory payment, or
  - (b) to reduce the amount of any such benefit, allowance or payment to which a person has an entitlement,
- those provisions are to be read with such modifications as are necessary to ensure that they do not have that effect.
- (8) For the purposes of subsection (7)—
- (a) “the operative provisions” are section 4B(7) to (10) and any provision made by virtue of section 4B(2) or under subsection (1) of this section;
  - (b) a person's “entitlement” includes any future entitlement which the person may have.
- (9) The powers conferred by this section are without prejudice to any powers conferred by or by virtue of any other provision of this Act or any other enactment.
- (10) In particular, any modification of any provision of an instrument by regulations made under subsection (1) is without prejudice to any other power to amend or revoke the provisions of the instrument (including the modified provision).
- (11) For the purposes of this section—
- “the commencement day” means the day on which the National Insurance Contributions Act 2006 was passed;
- “enactment” includes—
- (a) Northern Ireland legislation, and

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(b) an instrument made under Northern Ireland legislation (as well as an instrument made under an Act);

“statutory payment” means—

(a) statutory sick pay, statutory maternity pay, [<sup>F42</sup>ordinary statutory paternity pay, additional statutory paternity pay] or statutory adoption pay; or

(b) any other payment prescribed by regulations made by the Treasury with the concurrence of the relevant Northern Ireland department (if any);

“the relevant Northern Ireland department”, in relation to regulations made under this section, means each Northern Ireland department responsible for any of the matters to which the regulations relate.]

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#### **Textual Amendments**

**F41** Ss. 4B, 4C inserted (30.3.2006) by National Insurance Contributions Act 2006 (c. 10), ss. 2(1), 9

**F42** Words in s. 4C(11) substituted (1.10.2010) by The Work and Families (Northern Ireland) Order 2006 (S.I. 2006/1947), art. 1(3), Sch. 1 para. 4; S.R. 2010/295, art. 3(d)

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