



# Social Security Act 1998

## 1998 CHAPTER 14

### PART II

#### CONTRIBUTIONS

##### *Amendments of Contributions and Benefits Act*

#### **48 Apportionment of payments etc. made for more than one earner**

After subsection (2) of section 3 of the Contributions and Benefits Act (“earnings” and “earner”) there shall be inserted the following subsection—

“(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.”

#### **Commencement Information**

**II** S. 48 in force at 8.9.1998 by S.I. 1998/2209, art. 2(a), Sch. Pt. I

#### **49 Payments on account of directors' contributions**

After subsection (3) of section 3 of the Contributions and Benefits Act there shall be inserted the following subsections—

“(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—

*Status: Point in time view as at 04/03/1999.*

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- (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.”

**Commencement Information**

**I2** S. 49 in force at 8.9.1998 by S.I. 1998/2209, art. 2(a), **Sch. Pt. I**

**50 Payments treated as remuneration and earnings**

- (1) For subsection (4) of section 4 of the Contributions and Benefits Act (payments treated as remuneration and earnings) there shall be substituted the following subsection—

“(4) For the purposes of section 3 above there shall be treated as remuneration derived from an employed earner’s employment—

- (a) any gain on which the earner is chargeable to tax by virtue of section 135 (gains by directors and employees from share options) of the Income and Corporation Taxes Act 1988 (“the 1988 Act”);
- (b) any sum paid (or treated as paid) to or for the benefit of the earner which is chargeable to tax by virtue of section 313 of the 1988 Act (taxation of consideration for certain restrictive undertakings).”

- (2) After subsection (5) of that section there shall be inserted the following subsection—

“(6) For the purposes of section 3 above regulations may make provision for treating as remuneration derived from an earner’s employment any amount on which the earner is, by virtue of any provision of sections 140A to 140H of the 1988 Act, chargeable to income tax under Schedule E in respect of an acquisition of shares or an interest in shares.”

- (3) Subsection (1) above, so far as relating to a sum which is chargeable to tax by virtue of section 313 of the Income and Corporation Taxes Act 1988, shall have effect in relation to any undertaking given on or after 10th July 1997.

- (4) Regulations under subsection (6) of section 4 of the Contributions and Benefits Act (as inserted by subsection (2) above)—

- (a) shall not be made before the passing of the Finance Act 1998; but
- (b) may make provision having effect in relation to acquisitions on or after 6th April 1998.

**Commencement Information**

**I3** S. 50(1) in force at Royal Assent for certain purposes by s. 87(2)(b)

**I4** S. 50(1) in force at 8.9.1998 in so far as not already in force by S.I. 1998/2209, art. 2(a), **Sch. Pt. I**

*Status: Point in time view as at 04/03/1999.*

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## 51 Class 1 contributions

- (1) For subsection (1) of section 5 of the Contributions and Benefits Act (earnings limits for Class 1 contributions) there shall be substituted the following subsection—

“(1) For the purposes of this Act there shall for every tax year be—

- (a) a lower earnings limit (for primary Class 1 contributions);
- (b) an upper earnings limit (for primary Class 1 contributions); and
- (c) an earnings threshold (for secondary Class 1 contributions);

and those limits and that threshold shall be the amounts specified for that year by regulations which, in the case of those limits, shall be made in accordance with subsections (2) and (3) below.”

- (2) For subsection (1) of section 6 of that Act (liability for Class 1 contributions) there shall be substituted the following subsection—

“(1) Where in any tax week earnings are paid to or for the benefit of an earner over the age of 16 in respect of any one employment of his which is employed earner’s employment—

- (a) a primary Class 1 contribution shall be payable in accordance with this section and section 8 below if the amount paid exceeds the current lower earnings limit (or the prescribed equivalent in the case of earners paid otherwise than weekly); and
- (b) a secondary Class 1 contribution shall be payable in accordance with this section and section 9 below if the amount paid exceeds the current earnings threshold (or the prescribed equivalent in the case of earners paid otherwise than weekly).”

- (3) For subsections (1) and (2) of section 8 of that Act (calculation of primary Class 1 contributions) there shall be substituted the following subsections—

“(1) Where a primary Class 1 contribution is payable, the amount of that contribution shall be the primary percentage of so much of the earner’s earnings paid in the tax week, in respect of the employment in question, as—

- (a) exceeds the current lower earnings limit (or the prescribed equivalent); and
- (b) does not exceed the current upper earnings limit (or the prescribed equivalent);

but this subsection is subject to regulations under section 6(5) above and sections 116 to 120 below and to section 41 of the Pensions Act (reduced rates of Class 1 contributions for earners in contracted-out employment).

- (2) For the purposes of this Act the primary percentage shall be 10 per cent; but the percentage is subject to alteration under sections 143 and 145 of the Administration Act.”

- (4) For section 9 of that Act there shall be substituted the following section—

### “9 Calculation of secondary Class 1 contributions

- (1) Where a secondary Class 1 contribution is payable, the amount of that contribution shall be the secondary percentage of so much of the earnings paid in the tax week, in respect of the employment in question, as exceeds the current earnings threshold (or the prescribed equivalent).

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- (2) For the purposes of subsection (1) above, the secondary percentage shall be 12.2 per cent; but the percentage is subject to alteration under sections 143 and 145 of the Administration Act.
- (3) Subsection (1) above is subject to regulations under section 6(5) above and sections 116 to 120 below and to section 41 of the Pensions Act.”

**Commencement Information**

**I5** S. 51 in force at 23.2.1999 for specified purposes by S.I. 1999/418, art. 2(1)

**52 Class 1A contributions**

In subsection (2) of section 10 of the Contributions and Benefits Act (Class 1A contributions), for paragraph (b) there shall be substituted the following paragraph—

“(b) if paragraph (a) above does not apply, the person who, if the benefit in respect of which the Class 1A contribution is payable were earnings in respect of which Class 1 contributions would be payable, would be liable to pay the secondary Class 1 contribution.”

**Commencement Information**

**I6** S. 52 in force at 8.9.1998 by S.I. 1998/2209, art. 2(a), Sch. Pt. I

**53 Class 1B contributions**

After section 10 of the Contributions and Benefits Act there shall be inserted the following section—

*“Class 1B contributions*

**10A Class 1B contributions**

- (1) Where for any tax year a person is accountable to the Inland Revenue in respect of income tax on emoluments of his employees in accordance with a PAYE settlement agreement, a Class 1B contribution shall be payable by him for that tax year in accordance with this section.
- (2) The Class 1B contribution referred to in subsection (1) above is payable in respect of—
- (a) the amount of any of the emoluments included in the PAYE settlement agreement which are chargeable emoluments; and
  - (b) the total amount of income tax in respect of which the person is accountable for the tax year in accordance with the PAYE settlement agreement.
- (3) The amount of the Class 1B contribution referred to in subsection (1) above shall be the Class 1B percentage of the aggregate of the amounts mentioned in paragraphs (a) and (b) of subsection (2) above.

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- (4) Emoluments are chargeable emoluments for the purposes of subsection (2) above if, apart from section 6(2A) or 10(8A) above, the person accountable in accordance with the PAYE settlement agreement would be liable or entitled to pay secondary Class 1 contributions or Class 1A contributions in respect of them.
- (5) Where—
  - (a) the PAYE settlement agreement was entered into after the beginning of the tax year; and
  - (b) Class 1 contributions were due in respect of any emoluments before it was entered into,those emoluments shall not be taken to be included in the PAYE settlement agreement.
- (6) For the purposes of subsection (3) above the Class 1B percentage shall be 12.2 per cent, but the percentage is subject to alteration under section 143A of the Administration Act.
- (7) Regulations may provide for persons to be excepted in prescribed circumstances from liability to pay Class 1B contributions.”

#### Commencement Information

I7 S. 53 in force at 8.9.1998 for specified purposes by S.I. 1998/2209, art. 2(b)(c), Sch. Pts. II, III

## 54 Contributions paid in error

After section 19 of the Contributions and Benefits Act there shall be inserted the following section—

### “19A Class 1, 1A or 1B contributions paid in error

- (1) This section applies where—
  - (a) payments by way of Class 1, Class 1A or Class 1B contributions are made in respect of earnings paid to or for the benefit of an earner (or in respect of a benefit made available to an earner) in 1998-99 or a subsequent tax year (“year 1”);
  - (b) the payments are made in error, in that the employment from which the earnings are derived (or by reason of which the benefit is made available) is not employed earner’s employment; and
  - (c) the person making the payments has not been notified of the error by the Secretary of State before the end of the tax year following year 1 (“year 2”).
- (2) After the end of year 2 the earner shall, except in such circumstances as may be prescribed, be treated for all purposes relating to—
  - (a) contributions and contributory benefits; and
  - (b) statutory sick pay and statutory maternity pay,as if the earnings were derived from (or the benefit were made available by reason of) employed earner’s employment.”

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#### Commencement Information

**18** S. 54 in force at 4.3.1999 for specified purposes by S.I. 1999/526, art. 2(1)(2)(a)

### 55 Recovery of primary Class 1 contributions by secondary contributors

In paragraph 3 of Schedule 1 to the Contributions and Benefits Act (supplementary provisions as to contributions)—

- (a) in sub-paragraph (3), for the words from “and notwithstanding” to “any enactment” there shall be substituted the words “and, subject to sub-paragraph (4) below but notwithstanding any other provision in any enactment”;
- (b) after that sub-paragraph there shall be inserted the following sub-paragraphs—

“(4) Sub-paragraph (5) below applies in a case where—

- (a) a person (“the employee”) ceases in a particular tax year (“the cessation year”) to be employed by a particular employer (“the employer”); and
- (b) the employee receives from the employer in the cessation year, after the cessation of the employment, earnings in a form other than money (“non-monetary earnings”).

(5) If and to the extent that regulations so provide, the employer may recover from the employee in such manner as may be prescribed any primary Class 1 contributions paid or to be paid by him on the employee’s behalf in respect of—

- (a) the non-monetary earnings mentioned in sub-paragraph (4) above; or
- (b) any non-monetary earnings received by the employee from the employer in the cessation year before the cessation of the employment,

which he was unable to recover by deduction from the employee’s earnings.”

#### Commencement Information

**19** S. 55 in force at 8.9.1998 by S.I. 1998/2209, art. 2(a), Sch. Pt. I

### 56 Contributions returns

(1) In sub-paragraph (3) of paragraph 7 of Schedule 1 to the Contributions and Benefits Act—

- (a) for the words “is liable to” there shall be substituted the words “has been required to pay”; and
- (b) for the words “be liable to” there shall be substituted the words “be required to pay”.

(2) After that paragraph there shall be inserted the following paragraph—

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- “7A (1) This paragraph applies where paragraph 7 above applies; and in this paragraph “contributions return” has the same meaning as in that paragraph.
- (2) Without prejudice to paragraph 7(2) above or to the powers of the Inland Revenue to penalise omissions or errors in returns, regulations may provide for the Secretary of State to impose penalties in respect of a person who, in making a contributions return, fraudulently or negligently—
- (a) fails to provide any information or computation that he is required to provide; or
  - (b) provides any such information or computation that is incorrect.
- (3) Regulations under sub-paragraph (2) above shall—
- (a) prescribe the rates of penalty, or provide for how they are to be ascertained;
  - (b) provide for the penalty to be imposed by the Secretary of State within six years after the date on which the penalty is incurred;
  - (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Secretary of State, in his discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.”

#### Commencement Information

**I10** S. 56(2) in force at 4.3.1999 for specified purposes by S.I. 1999/526, art. 2(1)(2)(b)

## 57 Collection of contributions by Secretary of State

After paragraph 7A of Schedule 1 to the Contributions and Benefits Act there shall be inserted the following paragraph—

### *“Collection of contributions by Secretary of State*

- 7B (1) Regulations may provide that, in such cases or circumstances as may be prescribed—
- (a) contributions payable under Part I of this Act shall be paid to the Secretary of State (and not to the Inland Revenue); and
  - (b) the Secretary of State shall be responsible for the collection of such contributions, and generally for the relevant administration.
- (2) Regulations under this paragraph may, in particular—
- (a) provide for returns to be made to the Secretary of State by such date as may be prescribed;
  - (b) prescribe the form in which returns are to be made, or provide for returns to be made in such form as the Secretary of State may approve;

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- (c) prescribe the manner in which contributions are to be paid, or provide for contributions to be paid in such manner as the Secretary of State may approve;
  - (d) prescribe the due date for the payment of contributions;
  - (e) subject to sub-paragraph (4) below, provide for interest to be charged by the Secretary of State on contributions that are not paid by the due date, and for enabling such interest to be remitted or repaid;
  - (f) provide for interest to be paid on contributions that fall to be repaid;
  - (g) provide for determining the date from which interest to be charged or paid pursuant to regulations under paragraph (e) or (f) above is to be calculated;
  - (h) provide for penalties to be imposed in respect of a person who—
    - (i) fails to submit, within the time allowed, a return required to be made in accordance with regulations under paragraph (a) above;
    - (ii) in making such a return, fraudulently or negligently fails to provide any information or computation that he is required to provide;
    - (iii) in making such a return, fraudulently or negligently provides any incorrect information or computation; or
    - (iv) fails to pay Class 2 contributions by the due date;
  - (i) provide for a penalty imposed pursuant to regulations under paragraph (h) above to carry interest from the date on which it becomes payable until payment.
- (3) Where—
- (a) a decision relating to contributions falls to be made under section 8, 9, 10, 12, 14 or 15 of the Social Security Act 1998; and
  - (b) the decision will affect a person’s liability for, or the amount of, any interest due in respect of those contributions,
- regulations under sub-paragraph (2)(e) above shall not require any such interest to be paid until the decision has been made.
- (4) Regulations under sub-paragraph (2)(e) above may provide that, in such cases or circumstances as may be prescribed, interest under those regulations may be charged by the Inland Revenue (instead of the Secretary of State) as if the regulations were made by virtue of paragraph 6 above.
- (5) Regulations under sub-paragraph (2)(h) above shall—
- (a) prescribe the rates of penalty, or provide for how they are to be ascertained;
  - (b) subject to sub-paragraph (6) below, provide for the penalty to be imposed by the Secretary of State—
    - (i) within six years after the date on which the penalty is incurred; or
    - (ii) where the amount of the penalty is to be ascertained by reference to the amount of any contributions payable, at any later time within three years after the final determination of the amount of those contributions;



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- (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Secretary of State, in his discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.
- (6) Regulations under sub-paragraph (2)(h)(ii) or (iii) above may provide that, in such cases or circumstances as may be prescribed, penalties under those regulations may be imposed by the Inland Revenue (instead of the Secretary of State) as if the return in question were a contributions return within the meaning of paragraph 7 above.
- (7) Section 12 above shall not apply in relation to Class 2 contributions in respect of which the Secretary of State charges interest or imposes a penalty pursuant to regulations under paragraph (e) or (h) of sub-paragraph (2) above.
- (8) Interest or penalties may be charged by virtue of regulations under this paragraph in respect of a period before the coming into force of section 57 of the Social Security Act 1998 but only to the extent that interest or penalties would have been chargeable if the contributions in question had been recoverable, in respect of that period, by virtue of regulations under paragraph 6 above.
- (9) Any reference to contributions in sub-paragraph (1) above shall be construed as including a reference to any interest or penalty payable, in respect of contributions, by virtue of regulations under paragraph (e) or (h) of sub-paragraph (2) above.
- (10) The rate of interest applicable for any purpose of this paragraph shall be the rate from time to time prescribed under section 178 of the Finance Act 1989 for the corresponding purpose of paragraph 6 above.”

#### Commencement Information

**III** S. 57 in force at 4.3.1999 for specified purposes by S.I. 1999/526, art. 2(1)(2)(c)

## 58 Interest and penalties chargeable concurrently with Inland Revenue

After paragraph 7B of Schedule 1 to the Contributions and Benefits Act there shall be inserted the following paragraph—

*“Interest and penalties chargeable concurrently with Inland Revenue*

- 7C
- (1) Any interest or penalty chargeable by the Inland Revenue by virtue of regulations under paragraph 6 or 7 above may also be charged by the Secretary of State.
  - (2) To the extent that any interest or penalty is recovered by the Secretary of State by virtue of sub-paragraph (1) above, or by virtue of regulations under paragraph 7B above, it shall not be recoverable by the Inland Revenue by virtue of regulations under paragraph 6 or 7 above; and vice versa.

*Status: Point in time view as at 04/03/1999.*

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- (3) To the extent that any penalty is recovered by the Secretary of State by virtue of regulations under paragraph 7A above, it shall not be recoverable by the Inland Revenue by virtue of regulations under paragraph 7 above; and vice versa.”

## 59 Levy of Class 4 contributions with income tax

- (1) Schedule 2 to the Contributions and Benefits Act (levy of Class 4 contributions with income tax) and Schedule 2 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland) shall each be amended as follows.
- (2) In paragraph 2, for the words from “subject to”, in the second place where they occur, to the end there shall be substituted the words “subject to deduction for any allowance—
- (a) the amount of which falls to be given by way of discharge or repayment of income tax under section 141 of the Act of 1990; and
  - (b) which arises from activities of any relevant trade, profession or vocation.”
- (3) In paragraph 3, sub-paragraph (1)(b) shall cease to have effect.
- (4) In sub-paragraph (2) of paragraph 4, for the words “may either be charged” to the end there shall be substituted the words “shall be charged on him separately”.
- (5) In sub-paragraph (1) of paragraph 6—
- (a) for the words from “Sections 86” to “fault)” there shall be substituted the words “Section 86 of the Taxes Management Act 1970 (interest on overdue tax)”;
  - (b) for the words “as they apply” there shall be substituted the words “as it applies”.
- (6) In sub-paragraph (2) of that paragraph—
- (a) the words “or 88” shall cease to have effect;
  - (b) for the words “either of those sections on tax” there shall be substituted the words “that section on income tax”.

### Commencement Information

**I12** S. 59 in force at 8.9.1998 by S.I. 1998/2209, art. 2(a), Sch. Pt. I (with art. 3)

## *Amendments of Administration Act*

## 60 Breach of regulations

For section 113 of the Administration Act there shall be substituted the following section—

*Status: Point in time view as at 04/03/1999.*

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### “113 Breach of regulations

- (1) Regulations and schemes under any of the Acts to which section 110 above applies may provide that any person who contravenes, or fails to comply with, any provision contained in regulations made under that Act—
  - (a) in the case of a provision relating to contributions, shall be liable to a penalty;
  - (b) in any other case, shall be guilty of an offence under that Act.
- (2) Any regulations or scheme making such provision as is mentioned in subsection (1)(a) above shall—
  - (a) prescribe the amount or rate of penalty, or provide for how it is to be ascertained;
  - (b) provide for the penalty to be imposed by the Secretary of State—
    - (i) within six years after the date on which the penalty is incurred; or
    - (ii) where the amount of the penalty is to be ascertained by reference to the amount of any contributions payable, at any later time within three years after the final determination of the amount of those contributions;
  - (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Secretary of State, in his discretion, to mitigate or to remit any such penalty, or to stay or to compound any proceedings for a penalty.
- (3) A person guilty of such an offence as is mentioned in subsection (1)(b) above shall be liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale;
  - (b) in the case of an offence of continuing a contravention or failure after conviction, to a fine not exceeding £40 for each day on which it is so continued.
- (4) Any provision contained in regulations which authorises statutory sick pay or statutory maternity pay to be set off against secondary Class 1 contributions is not a provision relating to contributions for the purposes of this section.”

#### Commencement Information

**I13** S. 60 in force at 4.3.1999 for specified purposes by S.I. 1999/526, art. 2(1)(2)(d)

## 61 Offences and penalties relating to contributions

For section 114 of the Administration Act there shall be substituted the following sections—

*Status: Point in time view as at 04/03/1999.*

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### “114 Offences relating to contributions

- (1) Any person who is knowingly concerned in the fraudulent evasion of any contributions which he or any other person is liable to pay shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine or to both;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.

### 114A Penalties relating to contributions

- (1) If a person fails to pay, at or within the time prescribed for the purpose, any contribution which he is liable to pay, he shall be liable to a penalty.
- (2) If a person fails to pay, at or within the time prescribed for the purpose, any sums which he is required by regulations made by virtue of paragraph 6 or 7B of Schedule 1 to the Contributions and Benefits Act to pay, he shall be liable to a penalty under subsection (1) above without proof of his failure so to pay any particular contribution.
- (3) For the purposes of subsection (1) above, regulations shall—
  - (a) prescribe the amount or rate of penalty, or provide for how it is to be ascertained;
  - (b) provide for the penalty to be imposed by the Secretary of State—
    - (i) within six years after the date on which the penalty is incurred; or
    - (ii) where the amount of the penalty is to be ascertained by reference to the amount of any contributions payable, at any later time within three years after the final determination of the amount of those contributions;
  - (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Secretary of State, in his discretion, to mitigate or to remit any such penalty, or to stay or to compound any proceedings for a penalty.
- (4) Subsection (1) above does not apply—
  - (a) to any failure by a person in respect of which he has been convicted of an offence under section 114(1) above; or
  - (b) to Class 4 contributions recoverable by the Inland Revenue.”

#### Commencement Information

**I14** S. 61 in force at 4.3.1999 for specified purposes by S.I. 1999/526, art. 2(1)(2)(e)

*Status: Point in time view as at 04/03/1999.*

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## 62 Evidence of non-payment

(1) For subsection (1) of section 118 of the Administration Act (evidence of non-payment) there shall be substituted the following subsections—

“(1) A certificate of an authorised officer that any amount by way of contributions, or by way of interest or penalty in respect of contributions, which a person is liable to pay to the Secretary of State for any period has not been paid—

(a) to the officer; or

(b) to the best of his knowledge and belief, to any other person to whom it might lawfully be paid,

shall until the contrary is proved be sufficient evidence in any proceedings before any court that the sum mentioned in the certificate is unpaid and due.

(1A) Subsection (2) below applies with respect to any period during which, under regulations made by virtue of paragraph 6(1) of Schedule 1 to the Contributions and Benefits Act (deduction with PAYE), contributions fall to be paid in like manner as income tax.”

(2) In subsection (3) of that section, after the words “such a certificate”, in the first place where they occur, there shall be inserted the words “as is mentioned in subsection (1) or (2) above”.

(3) In subsection (4) of that section, the words “for a particular contribution card or”, and the words “the card in question or”, shall cease to have effect.

(4) After subsection (6) of that section there shall be inserted the following subsection—

“(7) In this section “authorised officer” means an officer of the Secretary of State authorised by him for the purposes of this section.”

## 63 Recovery of contributions etc

After section 121 of the Administration Act there shall be inserted the following sections—

### “121A Recovery of contributions etc. in England and Wales

(1) If—

(a) a person is served at any time with a copy of a certificate under section 118(1) above; and

(b) he neglects or refuses to pay the contributions, interest or penalty to which the certificate relates within 30 days of that time,

an authorised officer may distrain upon the goods and chattels of that person (“the person in default”).

(2) For the purpose of levying any such distress, a justice of the peace, on being satisfied by information on oath that there is reasonable ground for believing that the conditions in subsection (1) above are fulfilled, may issue a warrant in writing authorising the authorised officer to enter in the daytime, by force if necessary, any premises to which this section applies, calling on the assistance of any constable.

*Status: Point in time view as at 04/03/1999.*

*Changes to legislation: Social Security Act 1998, Part II is up to date with all changes known to be in force on or before 14 June 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)*

- (3) Every such constable shall, when so required, assist the authorised officer in the execution of the warrant and in levying the distress in the premises.
- (4) A warrant to enter premises by force shall be executed by the authorised officer, or under his direction and in his presence.
- (5) A distress levied by the authorised officer shall be kept for five days, and any costs or charges shall be borne by the person in default.
- (6) If the person in default does not pay the sum due, together with the costs and charges, the distress shall be appraised by one or more independent persons appointed by the authorised officer, and shall be sold by public auction by the authorised officer for payment of the sum due and all costs and charges.
- (7) Any surplus arising from the distress, after the deduction of the costs and charges and of the sum due, shall be paid to the owner of the goods distrained.
- (8) Regulations may make provision with respect to—
  - (a) the fees chargeable on or in connection with the levying of distress; and
  - (b) the costs and charges recoverable where distress has been levied.
- (9) In this section “authorised officer” means an officer of the Secretary of State authorised by him for the purposes of this section.
- (10) The premises to which this section applies are premises where an authorised officer has reasonable grounds for believing that—
  - (a) any persons are employed; or
  - (b) a trade or business is being carried on;
 but this section does not apply to a private dwelling-house unless an authorised officer has reasonable grounds for believing that a trade or business is being carried on from the dwelling-house and that the trade or business is not also being carried on from premises other than a dwelling-house.

### **121B Recovery of contributions etc. in Scotland**

- (1) Where any contributions, interest or penalty remains unpaid 30 days after the service of a certificate under section 118(1) above, an authorised officer may apply to the sheriff for the grant of a summary warrant authorising the recovery of the amount remaining unpaid by any of the following diligences—
  - (a) a poinding and sale in accordance with Schedule 5 to the Debtors (Scotland) Act 1987;
  - (b) an earnings arrestment;
  - (c) an arrestment and action of furthcoming or sale.
- (2) An application under subsection (1) above shall be accompanied by—
  - (a) a copy of the certificate served under section 118(1) above; and
  - (b) a certificate by the authorised officer—
    - (i) stating that the certificate was served on the person specified in the application;
    - (ii) stating that the amount specified in the certificate, or any part of that amount, remains unpaid at the date of the application.

*Status: Point in time view as at 04/03/1999.*

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- (3) A summary warrant granted on an application under subsection (1) above shall be in such form as may be prescribed by Act of Sederunt.
- (4) Subject to subsection (5) below and without prejudice to paragraphs 25 to 34 of Schedule 5 to the Debtors (Scotland) Act 1987 (expenses of poinding and sale), the sheriff officer's fees, together with the outlays necessarily incurred by him, in connection with the execution of a summary warrant granted on an application under subsection (1) above shall be chargeable against the debtor.
- (5) No fee shall be chargeable by the sheriff officer against the debtor for collecting, and accounting to the Secretary of State, for sums paid to him by the debtor in respect of the amount owing.
- (6) In this section “authorised officer” means an officer of the Secretary of State authorised by him for the purposes of this section.”

#### Commencement Information

**I15** S. 63 in force at 4.3.1999 for specified purposes by S.I. 1999/526, art. 2(1)(2)(f)

## 64 Liability of directors etc. for company's contributions

After section 121B of the Administration Act there shall be inserted the following sections—

### “121C Liability of directors etc. for company's contributions

- (1) This section applies to contributions which a body corporate is liable to pay, where—
  - (a) the body corporate has failed to pay the contributions at or within the time prescribed for the purpose; and
  - (b) the failure appears to the Secretary of State to be attributable to fraud or neglect on the part of one or more individuals who, at the time of the fraud or neglect, were officers of the body corporate (“culpable officers”).
- (2) The Secretary of State may issue and serve on any culpable officer a notice (a “personal liability notice”)—
  - (a) specifying the amount of the contributions to which this section applies (“the specified amount”);
  - (b) requiring the officer to pay to the Secretary of State—
    - (i) a specified sum in respect of that amount; and
    - (ii) specified interest on that sum; and
  - (c) where that sum is given by paragraph (b) of subsection (3) below, specifying the proportion applied by the Secretary of State for the purposes of that paragraph.
- (3) The sum specified in the personal liability notice under subsection (2)(b)(i) above shall be—
  - (a) in a case where there is, in the opinion of the Secretary of State, no other culpable officer, the whole of the specified amount; and

*Status: Point in time view as at 04/03/1999.*

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- (b) in any other case, such proportion of the specified amount as, in the opinion of the Secretary of State, the officer's culpability for the failure to pay that amount bears to that of all the culpable officers taken together.
- (4) In assessing an officer's culpability for the purposes of subsection (3)(b) above, the Secretary of State may have regard both to the gravity of the officer's fraud or neglect and to the consequences of it.
- (5) The interest specified in the personal liability notice under subsection (2)(b)(ii) above shall be at the prescribed rate and shall run from the date on which the notice is issued.
- (6) An officer who is served with a personal liability notice shall be liable to pay to the Secretary of State the sum and the interest specified in the notice under subsection (2)(b) above.
- (7) Where, after the issue of one or more personal liability notices, the amount of contributions to which this section applies is reduced by a payment made by the body corporate—
- (a) the amount that each officer who has been served with such a notice is liable to pay under this section shall be reduced accordingly;
  - (b) the Secretary of State shall serve on each such officer a notice to that effect; and
  - (c) where the reduced liability of any such officer is less than the amount that he has already paid under this section, the difference shall be repaid to him together with interest on it at the prescribed rate.
- (8) Any amount paid under a personal liability notice shall be deducted from the liability of the body corporate in respect of the specified amount.
- (9) In this section—
- “contributions” includes any interest or penalty in respect of contributions;
- “officer”, in relation to a body corporate, means—
- (a) any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act as such; and
  - (b) in a case where the affairs of the body corporate are managed by its members, any member of the body corporate exercising functions of management with respect to it or purporting to do so;
- “the prescribed rate” means the rate from time to time prescribed by regulations under section 178 of the Finance Act 1989 for the purposes of the corresponding provision of Schedule 1 to the Contributions and Benefits Act, that is to say—
- (a) in relation to subsection (5) above, paragraph 6(2)(a);
  - (b) in relation to subsection (7) above, paragraph 6(2)(b).

### **121D Appeals in relation to personal liability notices**

- (1) No appeal shall lie in relation to a personal liability notice except as provided by this section.



*Status: Point in time view as at 04/03/1999.*

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- (2) An individual who is served with a personal liability notice may appeal to an appeal tribunal against the Secretary of State's decision as to the issue and content of the notice on the ground that—
- (a) the whole or part of the amount specified under subsection (2)(a) of section 121C above (or the amount so specified as reduced under subsection (7) of that section) does not represent contributions to which that section applies;
  - (b) the failure to pay that amount was not attributable to any fraud or neglect on the part of the individual in question;
  - (c) the individual was not an officer of the body corporate at the time of the alleged fraud or neglect; or
  - (d) the opinion formed by the Secretary of State under subsection (3)(a) or (b) of that section was unreasonable.
- (3) The Secretary of State shall give a copy of any notice of an appeal under this section, within 28 days of the giving of the notice, to each other individual who has been served with a personal liability notice.
- (4) On an appeal under this section, the burden of proof as to any matter raised by a ground of appeal shall be on the Secretary of State.
- (5) Where an appeal under this section—
- (a) is brought on the basis of evidence not considered by the Secretary of State, or on the ground mentioned in subsection (2)(d) above; and
  - (b) is not allowed on some other basis or ground,
- the appeal tribunal shall either dismiss the appeal or remit the case to the Secretary of State, with any recommendations it sees fit to make, for him to consider whether to revise his decision as to the issue and content of the personal liability notice.
- (6) In this section—
- “appeal tribunal” means an appeal tribunal constituted under Chapter I of Part I of the Social Security Act 1998;
  - “officer”, in relation to a body corporate, has the same meaning as in section 121C above;
  - “personal liability notice” has the meaning given by subsection (2) of that section;
  - “revise” means revise under section 9 of the Social Security Act 1998.”

## **65 Class 1B contributions: supplemental**

- (1) After section 143 of the Administration Act there shall be inserted the following section—

### **“143A Power to alter Class 1B contributions**

- (1) Without prejudice to section 141 above, the Secretary of State may at any time, if he thinks it expedient to do so—

*Status: Point in time view as at 04/03/1999.*

*Changes to legislation: Social Security Act 1998, Part II is up to date with all changes known to be in force on or before 14 June 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)*

- (a) with a view to adjusting the level at which the National Insurance Fund stands for the time being and having regard to the sums which may be expected to be paid from the Fund in any future period; or
  - (b) having regard to the percentage rate specified as the secondary percentage in section 9(2) of the Contributions and Benefits Act,
- make an order altering the percentage rate specified as the Class 1B percentage in section 10A(6) of the Contributions and Benefits Act.
- (2) No order shall be made under this section so as to increase for any tax year the percentage rate of the Class 1B percentage to a percentage rate more than 2 per cent higher than the percentage rate applicable at the end of the preceding tax year.”
- (2) In subsection (5) of section 162 of that Act (destination of contributions), after paragraph (c) there shall be inserted the following paragraph—
- “(ca) in the case of Class 1B contributions, 0.9 per cent of the amount estimated to be the aggregate of the emoluments and the amounts of income tax in respect of which those contributions were paid;”.

#### Commencement Information

**I16** S. 65 in force at 8.9.1998 for specified purposes by S.I. 1998/2209, art. 2(b)(c), Sch. Pts. II, III

## 66 Payments of certain contributions out of the Consolidated Fund

- (1) Subsection (4) of section 163 of the Administration Act (general financial arrangements) shall have effect, and shall be deemed always to have had effect, as if—
- (a) for the words “a secondary contributor” there were substituted the words “any person”; and
  - (b) after the words “any secondary Class 1 contributions” there were inserted the words “, or any Class 1A contributions,”.
- (2) Subsection (2) of section 1 of the Social Security (Miscellaneous Provisions) Act 1977 (from which subsection (4) of section 163 is derived) shall be deemed to have had effect with the same amendments as from the commencement of the Social Security (Contributions) Act 1991.

**Status:**

Point in time view as at 04/03/1999.

**Changes to legislation:**

Social Security Act 1998, Part II is up to date with all changes known to be in force on or before 14 June 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.