



# Social Security Act 1998

## 1998 CHAPTER 14

### PART II

#### CONTRIBUTIONS

##### *Amendments of Administration Act*

#### **60 Breach of regulations**

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

##### **“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;

*Status: Point in time view as at 12/01/2010.*

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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 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**

- II** S. 60 in force at 4.3.1999 for specified purposes and 6.4.1999 in so far as not already in force by S.I. 1999/526, art. 2(1)(2)(d)

**61 Offences and penalties relating to contributions**

[<sup>F1</sup>For section 114 of the Administration Act there shall be substituted the following sections—

**“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.

**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—

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- (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.”]

#### Textual Amendments

- F1** S. 61 repealed (so far as relating to Social Security Administration Act 1992, s. 114A) (1.4.1999) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(3), Sch. 10 Pt. I (with Sch. 8); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)

#### Commencement Information

- I2** S. 61 in force at 4.3.1999 for specified purposes and 6.4.1999 for specified purposes by S.I. 1999/526, art. 2(1)(2)(e)

## 62 Evidence of non-payment

<sup>F2</sup>(1) .....

<sup>F3</sup>(2) .....

(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.

<sup>F3</sup>(4) .....

#### Textual Amendments

- F2** S. 62(1) omitted (21.7.2008) by virtue of Finance Act 2008 (c. 9), Sch. 44 para. 11(b)
- F3** S. 62(2)(4) repealed (6.4.1999) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(3), Sch. 10 Pt. I (with Sch. 8); S.I. 1999/527, art. 2(c), Sch. 3 (with arts. 3-6)

#### Commencement Information

- I3** S. 62 in force at 6.4.1999 by S.I. 1999/526, art. 2(3)(4)(a)

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## 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.
- (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.

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### **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.
- (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**

**I4** S. 63 in force at 4.3.1999 for specified purposes and 6.4.1999 in so far as not already in force 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

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- (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
  - (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—

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“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.
- (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—

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“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.”

#### Commencement Information

**I5** S. 64 in force at 6.4.1999 by S.I. 1999/526, art. 2(3)(4)(a)

### 65 Class 1B contributions: supplemental

<sup>F4</sup>(1) .....

(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;”.

#### Textual Amendments

**F4** S. 65(1) repealed (6.4.2000) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(3)(c), Sch. 13 Pt. VI; S.I. 1999/3420, art. 4(c)(e)

#### Commencement Information

**I6** S. 65 in force at 8.9.1998 for specified purposes and 6.4.1999 in so far as not already in force 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.



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