



# Child Support, Pensions and Social Security Act 2000

## 2000 CHAPTER 19

### PART IV

#### NATIONAL INSURANCE CONTRIBUTIONS

##### *Northern Ireland*

#### **81 Liability of earner for secondary contributions: Northern Ireland**

- (1) In paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (prohibition on deduction or recovery of Class 1 contributions), sub-paragraph (2) shall be omitted.
- (2) After that paragraph there shall be inserted—

*“Prohibition on recovery of employer’s contributions*

- 3A (1) Subject to sub-paragraph (2) below, a person who is or has been liable to pay any secondary Class 1 or any Class 1A or Class 1B contributions shall not—
  - (a) make, from earnings paid by him, any deduction in respect of any such contributions for which he or any other person is or has been liable;
  - (b) otherwise recover any such contributions (directly or indirectly) from any person who is or has been a relevant earner; or
  - (c) enter into any agreement with any person for the making of any such deduction or otherwise for the purpose of so recovering any such contributions.
- (2) Sub-paragraph (1) above does not apply to the extent that an agreement between—

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- (a) a secondary contributor, and
- (b) any person (“the earner”) in relation to whom the secondary contributor is, was or will be such a contributor in respect of the contributions to which the agreement relates,

allows the secondary contributor to recover (whether by deduction or otherwise) the whole or any part of any secondary Class 1 contribution payable in respect of a gain that is treated as remuneration derived from that earner’s employment by virtue of section 4(4)(a) above.

(3) Sub-paragraph (2) above does not authorise any recovery (whether by deduction or otherwise)—

- (a) in pursuance of any agreement entered into before 19th May 2000; or
- (b) in respect of any liability to a contribution arising before the day of the passing of the Child Support, Pensions and Social Security Act 2000.

(4) In this paragraph—

“agreement” includes any arrangement or understanding (whether or not legally enforceable); and

“relevant earner”, in relation to a person who is or has been liable to pay any contributions, means an earner in respect of whom he is or has been so liable.

*Transfer of liability to be borne by earner*

3B (1) This paragraph applies where—

- (a) an election is jointly made by—
  - (i) a secondary contributor, and
  - (ii) a person (“the earner”) in relation to whom the secondary contributor is or will be such a contributor in respect of contributions on share option gains by the earner,

for the whole or a part of any liability of the secondary contributor to contributions on any such gains to be transferred to the earner; and
- (b) the election is one in respect of which the Inland Revenue have, before it was made, given by notice to the secondary contributor their approval to both—
  - (i) the form of the election; and
  - (ii) the arrangements made in relation to the proposed election for securing that the liability transferred by the election will be met.

(2) Any liability which—

- (a) arises while the election is in force, and
- (b) is a liability to pay the contributions on share option gains by the earner, or the part of them, to which the election relates,

shall be treated for the purposes of this Act, the Administration Act and Part III of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 as a liability falling on the earner, instead of on the secondary contributor.

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- (3) Subject to sub-paragraph (7)(b) below, an election made for the purposes of sub-paragraph (1) above shall continue in force from the time when it is made until whichever of the following first occurs, namely—
  - (a) it ceases to have effect in accordance with its terms;
  - (b) it is revoked jointly by both parties to the election;
  - (c) notice is given to the earner by the secondary contributor terminating the effect of the election.
- (4) An approval given to the secondary contributor for the purposes of sub-paragraph (1)(b) above may be given either—
  - (a) for an election to be made by the secondary contributor and a particular person; or
  - (b) for all elections to be made, or to be made in particular circumstances, by the secondary contributor and particular persons or by the secondary contributor and persons of a particular description.
- (5) The grounds on which the Inland Revenue shall be entitled to refuse an approval for the purposes of sub-paragraph (1)(b) above shall include each of the following—
  - (a) that it appears to the Inland Revenue that adequate arrangements have not been made for securing that the liabilities transferred by the proposed election or elections will be met by the person or persons to whom they would be so transferred; and
  - (b) that it appears to the Inland Revenue that they do not have sufficient information to determine whether or not grounds falling within paragraph (a) above exist.
- (6) If, at any time after they have given an approval for the purposes of sub-paragraph (1)(b) above, it appears to the Inland Revenue—
  - (a) that the arrangements that were made or are in force for securing that liabilities transferred by elections to which the approval relates are met are proving inadequate or unsatisfactory in any respect, or
  - (b) that any election to which the approval relates has resulted, or is likely to result, in the avoidance or non-payment of the whole or any part of any secondary Class 1 contributions,the Inland Revenue may withdraw the approval by notice to the secondary contributor.
- (7) The withdrawal by the Inland Revenue of any approval given for the purposes of sub-paragraph (1)(b) above—
  - (a) may be either general or confined to a particular election or to particular elections; and
  - (b) shall have the effect that the election to which the withdrawal relates has no effect on contributions on share option gains in respect of any right to acquire shares obtained after—
    - (i) the date on which notice of the withdrawal of the approval is given; or
    - (ii) such later date as the Inland Revenue may specify in that notice.

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- (8) Where the Inland Revenue have refused or withdrawn their approval for the purposes of sub-paragraph (1)(b) above, the person who applied for it or, as the case may be, to whom it was given may appeal to the Special Commissioners against the Inland Revenue's decision.
- (9) On an appeal under sub-paragraph (8) above the Special Commissioners may—
- (a) dismiss the appeal;
  - (b) remit the decision appealed against to the Inland Revenue with a direction to make such decision as the Special Commissioners think fit; or
  - (c) in the case of a decision to withdraw an approval, quash that decision and direct that that decision is to be treated as never having been made.
- (10) Subject to sub-paragraph (12) below, an election under sub-paragraph (1) above shall not apply to any contributions in respect of gains realised before it was made.
- (11) Regulations made by the Inland Revenue may make provision with respect to the making of elections for the purposes of this paragraph and the giving of approvals for the purposes of sub-paragraph (1)(b) above; and any such regulations may, in particular—
- (a) prescribe the matters that must be contained in such an election;
  - (b) provide for the manner in which such an election is to be capable of being made and of being confined to particular liabilities or the part of particular liabilities; and
  - (c) provide for the making of applications for such approvals and for the manner in which those applications are to be dealt with.
- (12) Where—
- (a) an election is made under this paragraph before the end of the period of three months beginning with the date of the passing of the Child Support, Pensions and Social Security Act 2000, and
  - (b) that election is expressed to relate to liabilities for contributions arising on or after 19th May 2000 and before the making of the election,
- this paragraph shall have effect in relation to those liabilities as if sub-paragraph (2) above provided for them to be deemed to have fallen on the earner (instead of on the secondary contributor); and the secondary contributor shall accordingly be entitled to reimbursement from the earner for any payment made by that contributor in or towards the discharge of any of those liabilities.
- (13) In this paragraph references to contributions on share option gains by the earner are references to any secondary Class 1 contributions payable in respect of a gain that is treated as remuneration derived from the earner's employment by virtue of section 4(4)(a) above.
- (14) In this paragraph "the Special Commissioners" means the Commissioners for the special purposes of the Income Tax Acts."

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- (3) In section 6(4) of that Act (persons by whom Class 1 contributions are payable), for the words from “paragraph 3” onwards there shall be substituted “paragraphs 3 to 3B of Schedule 1 to this Act.”
- (4) In paragraph 8(1) of Schedule 1 to that Act (general regulations), after paragraph (c) there shall be inserted—
- “(ca) for requiring a secondary contributor to notify a person to whom any of his liabilities are transferred by an election under paragraph 3B above of—
    - (i) any transferred liability that arises;
    - (ii) the amount of any transferred liability that arises; and
    - (iii) the contents of any notice of withdrawal by the Inland Revenue of any approval that relates to that election;”.
- (5) In Article 7(1) of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (decisions to be taken by officers of the Inland Revenue), after sub-paragraph (i) there shall be inserted—
- “(ia) to decide whether to give or withdraw an approval for the purposes of paragraph 3B(1)(b) of Schedule 1 to the Contributions and Benefits Act;”.
- (6) In Article 9 of that Order (regulations about varying or superseding decisions), at the beginning of paragraph (1) there shall be inserted “Subject to paragraph (2A) below,”, and after paragraph (2) there shall be inserted—
- “(2A) The decisions in relation to which provision may be made by regulations under this Article shall not include decisions falling within Article 7(1)(ia) of this Order.”
- (7) In Article 11(4) of that Order (appeals to be heard by General Commissioners), after “Subject to” there shall be inserted “paragraph 3B(8) of Schedule 1 to the Contributions and Benefits Act (which provides for appeals under that paragraph to be heard by the Special Commissioners), to”.