



# National Insurance Contributions and Statutory Payments Act 2004

## 2004 CHAPTER 3

### *Payment of Class 1 contributions*

#### **1 Payment of Class 1 contributions: Great Britain**

- (1) Paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (method of paying Class 1 contributions) is amended as follows.
- (2) In sub-paragraph (3) (deduction of contributions from earnings) for “sub-paragraph (4)” substitute “ sub-paragraphs (3A) to (5) ”.
- (3) After that sub-paragraph insert—
  - “(3A) Sub-paragraph (3B) applies where a person (“the employee”) who is employed by a particular employer (“the employer”) receives earnings in a form other than money (“non-monetary earnings”) from the employer in a tax year.
  - (3B) If and to the extent that regulations so provide, the employer may recover from the employee, in the prescribed manner, any primary Class 1 contributions paid or to be paid by him on the employee’s behalf in respect of those earnings.”
- (4) In sub-paragraph (4) (contributions in respect of ex-employees), in paragraph (b) for “earnings” to the end substitute “ or in the next tax year non-monetary earnings. ”
- (5) In sub-paragraph (5) (recovery of contributions in a case where sub-paragraph (4) applies) omit from “or” at the end of paragraph (a) to the end.

#### **2 Payment of Class 1 contributions: Northern Ireland**

- (1) Paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (method of paying Class 1 contributions) is amended as follows.

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- (2) In sub-paragraph (3) (deduction of contributions from earnings) for “sub-paragraph (4)” substitute “ sub-paragraphs (3A) to (5) ”.
- (3) After that sub-paragraph insert—
  - “(3A) Sub-paragraph (3B) applies where a person (“the employee”) who is employed by a particular employer (“the employer”) receives earnings in a form other than money (“non-monetary earnings”) from the employer in a tax year.
  - (3B) If and to the extent that regulations so provide, the employer may recover from the employee, in the prescribed manner, any primary Class 1 contributions paid or to be paid by him on the employee’s behalf in respect of those earnings.”
- (4) In sub-paragraph (4) (contributions in respect of ex-employees), in paragraph (b) for “earnings” to the end substitute “ or in the next tax year non-monetary earnings. ”
- (5) In sub-paragraph (5) (recovery of contributions in a case where sub-paragraph (4) applies) omit from “or” at the end of paragraph (a) to the end.

### **3 Agreements and joint elections: Great Britain**

- (1) Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (supplementary provisions relating to Class 1 contributions) is amended as follows.
- (2) In paragraph 3A (restrictions on recovery of employer’s contributions)—
  - (a) in sub-paragraph (2) for “a gain” to the end substitute “ relevant employment income of that earner. ”, and
  - (b) after that sub-paragraph insert—
    - “(2A) But an agreement in respect of relevant employment income is to be disregarded for the purposes of sub-paragraph (2) to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).
    - (2B) For the purposes of sub-paragraphs (2) and (2A) “relevant employment income”, in relation to the earner, means—
      - (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),
      - (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
      - (c) a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) above.”
- (3) In paragraph 3B (transfer of liability to be borne by the earner)—
  - (a) in sub-paragraph (1), in paragraph (a)—
    - (i) for “share option gains by the earner” substitute “ relevant employment income of the earner ”, and
    - (ii) for “such gains” substitute “ such income ”,

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- (b) after that sub-paragraph insert—
  - “(1A) In this paragraph “relevant employment income”, in relation to the earner, means—
    - (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),
    - (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
    - (c) a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) above, and references to contributions on relevant employment income are references to any secondary Class 1 contributions payable in respect of that income.”,
  - (c) in sub-paragraph (2)(b) for “share option gains by the earner, or the part of them” substitute “ relevant employment income of the earner, or the part of it ”,
  - (d) in sub-paragraph (3) for “sub-paragraph (7)(b)” substitute “ sub-paragraphs (7)(b) and (7B) ”,
  - (e) in sub-paragraph (7)(b) for “on share option” to the end substitute “on relevant employment income if—
    - (i) that income is within sub-paragraph (1A)(a) or (b) and the securities, or interest in securities, to which it relates were or was acquired after the withdrawal date, or
    - (ii) that income is within sub-paragraph (1A)(c) and the right to acquire securities to which it relates was acquired after that date.”,
  - (f) after sub-paragraph (7) insert—
    - “(7A) In sub-paragraph (7)(b) “the withdrawal date” means—
      - (a) the date on which notice of the withdrawal of the approval is given, or
      - (b) such later date as the Inland Revenue may specify in that notice.
    - (7B) An election is void for the purposes of sub-paragraph (1) to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).”,
  - (g) for sub-paragraph (10) substitute—
    - “(10) Subject to sub-paragraph (12) below, an election under sub-paragraph (1) above shall not apply to any contributions in respect of income which, before the election was made, counted as employment income for a tax year by virtue of Part 7 of ITEPA 2003.”, and
  - (h) omit sub-paragraph (13).
- (4) The amendments made by this section have effect in relation to—

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- (a) agreements entered into after the date of commencement of this section which are in respect of post-commencement employment income, and
  - (b) elections made after that date.
- (5) For the purposes of subsection (4), “post-commencement employment income” means income which is relevant employment income within paragraph 3A(2B) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) which, after the date of commencement of this section, counts as employment income for a tax year by virtue of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

#### **4 Agreements and joint elections: Northern Ireland**

- (1) Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (supplementary provisions relating to Class 1 contributions) is amended as follows.
- (2) In paragraph 3A (restrictions on recovery of employer’s contributions)—
- (a) in sub-paragraph (2) for “a gain” to the end substitute “ relevant employment income of that earner. ”, and
  - (b) after that sub-paragraph insert—
    - “(2A) But an agreement in respect of relevant employment income is to be disregarded for the purposes of sub-paragraph (2) to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).
    - (2B) For the purposes of sub-paragraphs (2) and (2A) “relevant employment income”, in relation to the earner, means—
      - (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),
      - (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
      - (c) a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) above.”
- (3) In paragraph 3B (transfer of liability to be borne by the earner)—
- (a) in sub-paragraph (1), in paragraph (a)—
    - (i) for “share option gains by the earner” substitute “ relevant employment income of the earner ”, and
    - (ii) for “such gains” substitute “ such income ”,
  - (b) after that sub-paragraph insert—
    - “(1A) In this paragraph “relevant employment income”, in relation to the earner, means—
      - (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),

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- (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
    - (c) a gain that is treated as remuneration derived from the earner's employment by virtue of section 4(4)(a) above,  
and references to contributions on relevant employment income are references to any secondary Class 1 contributions payable in respect of that income.”,
  - (c) in sub-paragraph (2)(b) for “share option gains by the earner, or the part of them” substitute “ relevant employment income of the earner, or the part of it ”,
  - (d) in sub-paragraph (3) for “sub-paragraph (7)(b)” substitute “ sub-paragraphs (7)(b) and (7B) ”,
  - (e) in sub-paragraph (7)(b) for “on share option” to the end substitute “on relevant employment income if—
    - (i) that income is within sub-paragraph (1A)(a) or (b) and the securities, or interest in securities, to which it relates were or was acquired after the withdrawal date, or
    - (ii) that income is within sub-paragraph (1A)(c) and the right to acquire securities to which it relates was acquired after that date.”,
  - (f) after sub-paragraph (7) insert—
    - “(7A) In sub-paragraph (7)(b) “the withdrawal date” means—
      - (a) the date on which notice of the withdrawal of the approval is given, or
      - (b) such later date as the Inland Revenue may specify in that notice.
    - (7B) An election is void for the purposes of sub-paragraph (1) to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).”,
  - (g) for sub-paragraph (10) substitute—
    - “(10) Subject to sub-paragraph (12) below, an election under sub-paragraph (1) above shall not apply to any contributions in respect of income which, before the election was made, counted as employment income for a tax year by virtue of Part 7 of ITEPA 2003.”, and
  - (h) omit sub-paragraph (13).
- (4) The amendments made by this section have effect in relation to—
  - (a) agreements entered into after the date of commencement of this section which are in respect of post-commencement employment income, and
  - (b) elections made after that date.
- (5) For the purposes of subsection (4), “post-commencement employment income” means income which is relevant employment income within paragraph 3A(2B) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) which, after the date of commencement of this section, counts as employment income

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*Changes to legislation: There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)*

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for a tax year by virtue of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

*Method of recovery of contributions etc*

## 5 Recovery of contributions, etc: Great Britain

<sup>F1</sup>(1) .....

(2) In section 121B(1) of that Act (time limit for compliance with certificate of non-payment of contributions, etc in Scotland), for “30 days” substitute “ 14 days ”.

(3) In section 121C of that Act (liability of directors etc for company’s contributions), after subsection (8) insert—

“(8A) The amount which an officer is liable to pay under this section is to be recovered in the same manner as a Class 1 contribution to which regulations under paragraph 6 of Schedule 1 to the Contributions and Benefits Act apply and for this purpose references in those regulations to Class 1 contributions are to be construed accordingly.”

(4) After paragraph 7B of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (collection of contributions otherwise than through PAYE system) insert—

“7BZA(1) The Inland Revenue may by regulations provide for Class 1, Class 1A, Class 1B or Class 2 contributions to which regulations under paragraph 7B apply to be recovered in a similar manner to income tax.

(2) Regulations under sub-paragraph (1) may apply or extend with or without modification in relation to such contributions any of the provisions of the Income Tax Acts or of PAYE regulations.

(3) Any reference to contributions in this paragraph 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 paragraph 7B(2).”

### Textual Amendments

**F1** S. 5(1) omitted (6.4.2014) by virtue of Finance Act 2008 (c. 9), s. 129(4), Sch. 43 para. 11(e); S.I. 2014/906, art. 2

## 6 Recovery of contributions, etc: Northern Ireland

(1) For section 115A of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (recovery of contributions, etc) substitute—

**“115A Recovery of contributions, etc**

(1) If—

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**Changes to legislation:** *There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)*

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- (a) a person is served at any time with a copy of a certificate under section 112(1), and
    - (b) he neglects or refuses to pay the contributions, interest or penalty to which the certificate relates within 7 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 a complaint on oath that there is reasonable ground for believing that the conditions in subsection (1) 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 5 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 made by the Inland Revenue 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 Inland Revenue authorised by them 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.”
- (2) In section 115B of that Act (liability of directors etc for company’s contributions), after subsection (8) insert—
- “(8A) The amount which an officer is liable to pay under this section is to be recovered in the same manner as a Class 1 contribution to which regulations under paragraph 6 of Schedule 1 to the Contributions and Benefits Act apply

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**Changes to legislation:** There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)

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and for this purpose references in those regulations to Class 1 contributions are to be construed accordingly.”

- (3) After paragraph 7B of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (collection of contributions otherwise than through PAYE system) insert—

“7BZA(1) The Inland Revenue may by regulations provide for Class 1, Class 1A, Class 1B or Class 2 contributions to which regulations under paragraph 7B apply to be recovered in a similar manner to income tax.

(2) Regulations under sub-paragraph (1) may apply or extend with or without modification in relation to such contributions any of the provisions of the Income Tax Acts or of PAYE regulations.

(3) Any reference to contributions in this paragraph 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 paragraph 7B(2).”

*Provision of information*

**7 Class 1, 1A, 1B or 2 contributions: powers to call for documents etc: Great Britain**

For section 110ZA of the Social Security Administration Act 1992 (c. 5) (powers exercisable by officers of Inland Revenue) substitute—

**“110ZA Class 1, 1A, 1B or 2 contributions: powers to call for documents etc**

(1) Section 20 of the Taxes Management Act 1970 (power to call for documents etc) applies (with sections 20B and 20BB) in relation to a person’s liability to pay relevant contributions as it applies in relation to a person’s tax liability (but subject to the modifications provided by subsection (2)).

(2) Those sections apply as if—

- (a) the references to the taxpayer, a taxpayer or a class of taxpayers were to the person, a person or a class of persons required to pay relevant contributions,
- (b) the references to an inspector were to an officer of the Inland Revenue,
- (c) the references to any provision of the Taxes Acts were to any provision of this Act or the Contributions and Benefits Act relating to relevant contributions,
- (d) the references to the assessment or collection of tax were to the assessment of liability for, and payment of, relevant contributions,
- (e) the reference to an appeal relating to tax were to an appeal relating to relevant contributions, and
- (f) the reference to believing that tax has been, or may have been, lost to the Crown were to believing that the Crown has, or may have, incurred a loss.



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*Changes to legislation: There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)*

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- (3) In this section “relevant contributions” means Class 1, Class 1A, Class 1B or Class 2 contributions.”

## **8 Class 1, 1A, 1B or 2 contributions: powers to call for documents etc: Northern Ireland**

For section 104ZA of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (powers exercisable by officers of Inland Revenue) substitute—

### **“104ZA Class 1, 1A, 1B or 2 contributions: powers to call for documents etc**

- (1) Section 20 of the Taxes Management Act 1970 (power to call for documents etc) applies (with sections 20B and 20BB) in relation to a person’s liability to pay relevant contributions as it applies in relation to a person’s tax liability (but subject to the modifications provided by subsection (2)).
- (2) Those sections apply as if—
- (a) the references to the taxpayer, a taxpayer or a class of taxpayers were to the person, a person or a class of persons required to pay relevant contributions,
  - (b) the references to an inspector were to an officer of the Inland Revenue,
  - (c) the references to any provision of the Taxes Acts were to any provision of this Act or the Contributions and Benefits Act relating to relevant contributions,
  - (d) the references to the assessment or collection of tax were to the assessment of liability for, and payment of, relevant contributions,
  - (e) the reference to an appeal relating to tax were to an appeal relating to relevant contributions, and
  - (f) the reference to believing that tax has been, or may have been, lost to the Crown were to believing that the Crown has, or may have, incurred a loss.
- (3) In this section “relevant contributions” means Class 1, Class 1A, Class 1B or Class 2 contributions.”

### *Statutory sick pay and statutory maternity pay*

## **9 Compliance regime for statutory sick pay and statutory maternity pay: Great Britain**

- (1) The Social Security Administration Act 1992 (c. 5) is amended as follows.
- (2) In section 130 (duties of employers: statutory sick pay and claims for other benefits), after subsection (4) insert—
- “(5) Regulations made with the concurrence of the Inland Revenue may require employers to produce wages sheets and other documents and records to officers of the Inland Revenue, within a prescribed period, for the purpose of enabling them to satisfy themselves that statutory sick pay has been paid,

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*Changes to legislation: There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)*

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and is being paid, in accordance with regulations under section 5 above, to employees or former employees who are entitled to it.”

- (3) In section 132 (duties of employers: statutory maternity pay and claims for other benefits), after subsection (3) insert—

“(4) Regulations made with the concurrence of the Inland Revenue may require employers to produce wages sheets and other documents and records to officers of the Inland Revenue, within a prescribed period, for the purpose of enabling them to satisfy themselves that statutory maternity pay has been paid, and is being paid, in accordance with regulations under section 5 above, to employees or former employees who are entitled to it.”

- (4) In section 113 (breach of regulations), in subsection (1A)(b) omit “, statutory sick pay or statutory maternity pay”.

- (5) After that section insert—

**“113A Statutory sick pay and statutory maternity pay: breach of regulations**

- (1) Where a person fails to produce any document or record, or provide any information, in accordance with—

- (a) regulations under section 5(1)(i) and (5), so far as relating to statutory sick pay or statutory maternity pay,
- (b) regulations under section 130 or 132, or
- (c) regulations under section 153(5)(b) of the Contributions and Benefits Act,

that person is liable to the penalties mentioned in subsection (2).

- (2) The penalties are—

- (a) a penalty not exceeding £300, and
- (b) if the failure continues after a penalty is imposed under paragraph (a), a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under that paragraph was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).

- (3) Where a person fails to maintain a record in accordance with regulations under section 130 or 132, he is liable to a penalty not exceeding £3,000.

- (4) No penalty may be imposed under subsection (1) at any time after the failure concerned has been remedied.

- (5) But subsection (4) does not apply to the imposition of a penalty under subsection (2)(a) in respect of a failure to produce any document or record in accordance with regulations under section 130(5) or 132(4).

- (6) Where, in the case of any employee, an employer refuses or repeatedly fails to make payments of statutory sick pay or statutory maternity pay in accordance with any regulations under section 5, the employer is liable to a penalty not exceeding £3,000.

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**Changes to legislation:** There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)

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- (7) Section 118(2) of the Taxes Management Act 1970 (extra time for compliance etc) applies for the purposes of subsections (1), (3) and (6) as it applies for the purposes of that Act.
- (8) Schedule 1 to the Employment Act 2002 (penalties relating to statutory paternity pay and statutory adoption pay: procedures and appeals) applies in relation to penalties imposed under this section (with the modifications set out in subsection (9)).
- (9) That Schedule applies as if—
  - (a) references to a penalty under section 11 or 12 of that Act were to a penalty under this section,
  - (b) in paragraph 1(2), the reference to section 11(2)(a) of that Act were to subsection (2)(a) of this section, and
  - (c) the provisions of the Taxes Management Act 1970 having effect in relation to an appeal mentioned in paragraph 3(2) of that Schedule did not include section 50(9) of that Act.

### **113B Statutory sick pay and statutory maternity pay: fraud and negligence**

- (1) Where a person fraudulently or negligently—
  - (a) makes any incorrect statement or declaration in connection with establishing entitlement to statutory sick pay or statutory maternity pay, or
  - (b) produces any incorrect document or record or provides any incorrect information of a kind mentioned in—
    - (i) regulations under section 5(1)(i) and (5), so far as relating to statutory sick pay or statutory maternity pay,
    - (ii) regulations under section 130 or 132, or
    - (iii) regulations under section 153(5)(b) of the Contributions and Benefits Act,he is liable to a penalty not exceeding £3,000.
- (2) Where an employer fraudulently or negligently makes an incorrect payment of statutory sick pay or statutory maternity pay, he is liable to a penalty not exceeding £3,000.
- (3) Where an employer fraudulently or negligently receives an overpayment in pursuance of regulations under section 167 of the Contributions and Benefits Act (statutory maternity pay: advance payments to employers), he is liable to a penalty not exceeding £3,000.
- (4) Schedule 1 to the Employment Act 2002 (penalties relating to statutory paternity pay and statutory adoption pay: procedures and appeals) applies in relation to penalties imposed under this section (with the modifications set out in subsection (5)).
- (5) That Schedule applies as if—
  - (a) references to a penalty under section 11 or 12 of that Act were to a penalty under this section, and

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*Changes to legislation: There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)*

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- (b) the provisions of the Taxes Management Act 1970 having effect in relation to an appeal mentioned in paragraph 3(2) of that Schedule did not include section 50(9) of that Act.”

#### Commencement Information

- II** S. 9 wholly in force at 6.4.2005; s. 9 not in force at Royal Assent, see s. 13; s. 9(1)-(3) in force at 1.1.2005 and s. 9(4)(5) in force at 6.4.2005 by S.I. 2004/1943, arts. 3(a), 4(c)

### 10 Compliance regime for statutory sick pay and statutory maternity pay: Northern Ireland

- (1) The Social Security Administration (Northern Ireland) Act 1992 (c. 8) is amended as follows.
- (2) In section 122 (duties of employers: statutory sick pay and claims for other benefits), after subsection (4) insert—
- “(5) Regulations made with the concurrence of the Inland Revenue may require employers to produce wages sheets and other documents and records to officers of the Inland Revenue, within a prescribed period, for the purpose of enabling them to satisfy themselves that statutory sick pay has been paid, and is being paid, in accordance with regulations under section 5 above, to employees or former employees who are entitled to it.”
- (3) In section 124 (duties of employers: statutory maternity pay and claims for other benefits), after subsection (3) insert—
- “(4) Regulations made with the concurrence of the Inland Revenue may require employers to produce wages sheets and other documents and records to officers of the Inland Revenue, within a prescribed period, for the purpose of enabling them to satisfy themselves that statutory maternity pay has been paid, and is being paid, in accordance with regulations under section 5 above, to employees or former employees who are entitled to it.”
- (4) In section 107 (breach of regulations), in subsection (1A)(b) omit “, statutory sick pay or statutory maternity pay”.
- (5) After that section insert—

#### “107A Statutory sick pay and statutory maternity pay: breach of regulations

- (1) Where a person fails to produce any document or record, or provide any information, in accordance with—
- (a) regulations under section 5(1)(j) and (4), so far as relating to statutory sick pay or statutory maternity pay,
  - (b) regulations under section 122 or 124, or
  - (c) regulations under section 149(5)(b) of the Contributions and Benefits Act,
- that person is liable to the penalties mentioned in subsection (2).
- (2) The penalties are—

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**Changes to legislation:** *There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)*

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- (a) a penalty not exceeding £300, and
  - (b) if the failure continues after a penalty is imposed under paragraph (a), a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under that paragraph was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (3) Where a person fails to maintain a record in accordance with regulations under section 122 or 124, he is liable to a penalty not exceeding £3,000.
- (4) No penalty may be imposed under subsection (1) at any time after the failure concerned has been remedied.
- (5) But subsection (4) does not apply to the imposition of a penalty under subsection (2)(a) in respect of a failure to produce any document or record in accordance with regulations under section 122(5) or 124(4).
- (6) Where, in the case of any employee, an employer refuses or repeatedly fails to make payments of statutory sick pay or statutory maternity pay in accordance with any regulations under section 5, the employer is liable to a penalty not exceeding £3,000.
- (7) Section 118(2) of the Taxes Management Act 1970 (extra time for compliance etc) applies for the purposes of subsections (1), (3) and (6) as it applies for the purposes of that Act.
- (8) Schedule 1 to the Employment (Northern Ireland) Order 2002 (penalties relating to statutory paternity pay and statutory adoption pay: procedures and appeals) applies in relation to penalties imposed under this section (with the modifications set out in subsection (9)).
- (9) That Schedule applies as if—
  - (a) references to a penalty under Article 12 or 13 of that Order were to a penalty under this section,
  - (b) in paragraph 1(2), the reference to Article 12(2)(a) of that Order were to subsection (2)(a) of this section, and
  - (c) the provisions of the Taxes Management Act 1970 having effect in relation to an appeal mentioned in paragraph 3(2) of that Schedule did not include section 50(9) of that Act.

### **107B Statutory sick pay and statutory maternity pay: fraud and negligence**

- (1) Where a person fraudulently or negligently—
  - (a) makes any incorrect statement or declaration in connection with establishing entitlement to statutory sick pay or statutory maternity pay, or
  - (b) produces any incorrect document or record or provides any incorrect information of a kind mentioned in—
    - (i) regulations under section 5(1)(j) and (4), so far as relating to statutory sick pay or statutory maternity pay,
    - (ii) regulations under section 122 or 124, or

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(iii) regulations under section 149(5)(b) of the Contributions and Benefits Act,

he is liable to a penalty not exceeding £3,000.

- (2) Where an employer fraudulently or negligently makes an incorrect payment of statutory sick pay or statutory maternity pay, he is liable to a penalty not exceeding £3,000.
- (3) Where an employer fraudulently or negligently receives an overpayment in pursuance of regulations under section 163 of the Contributions and Benefits Act (statutory maternity pay: advance payments to employers), he is liable to a penalty not exceeding £3,000.
- (4) Schedule 1 to the Employment (Northern Ireland) Order 2002 (penalties relating to statutory paternity pay and statutory adoption pay: procedures and appeals) applies in relation to penalties imposed under this section (with the modifications set out in subsection (5)).
- (5) That Schedule applies as if—
  - (a) references to a penalty under Article 12 or 13 of that Order were to a penalty under this section, and
  - (b) the provisions of the Taxes Management Act 1970 having effect in relation to an appeal mentioned in paragraph 3(2) of that Schedule did not include section 50(9) of that Act.”

#### Commencement Information

- I2** S. 10 wholly in force at 6.4.2005; s. 10 not in force at Royal Assent, see s. 13; s. 10(1)-(3) in force at 1.1.2005 and s. 10(4)(5) in force at 6.4.2005 by S.I. 2004/1943, arts. 3(b), 4(d)

### Miscellaneous and general

## 11 Minor and consequential amendments

Schedule 1 (which makes minor and consequential amendments) has effect.

#### Commencement Information

- I3** S. 11 wholly in force at 6.4.2005; s. 11 not in force at Royal Assent, see s. 13; s. 11 in force for certain purposes at 1.9.2004 and s. 11 otherwise in force at 6.4.2005 by S.I. 2004/1943, art. 5(a){(b)}

## 12 Repeals and revocations

The enactments and instruments mentioned in Schedule 2 are repealed or revoked to the extent specified.

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

- C1** S. 12 wholly in force at 6.4.2005; s. 12 not in force at Royal Assent, see s. 13; s. 12 in force for certain purposes at 1.9.2004 and s. 12 in force otherwise at 6.4.2005 by S.I. 2004/1943, art. 6

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**Changes to legislation:** There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004. (See end of Document for details)

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### **13 Commencement**

- (1) The preceding provisions of this Act come into force in accordance with provision made by the Treasury by order.
- (2) The power to make an order under subsection (1) is exercisable by statutory instrument.
- (3) An order under this section—
  - (a) may include incidental, supplementary, consequential or transitional provision or savings;
  - (b) may make different provision for different purposes.

### **14 Extent**

- (1) Sections 1, 3, 5, 7 and 9 extend to England and Wales and Scotland only.
- (2) Sections 2, 4, 6, 8 and 10 extend to Northern Ireland only.
- (3) An amendment, repeal or revocation contained in Schedule 1 or 2 has the same extent as the enactment or instrument to which it relates.
- (4) Subject to subsections (1) to (3) this Act extends to England and Wales, Scotland and Northern Ireland.

### **15 Short title**

This Act may be cited as the National Insurance Contributions and Statutory Payments Act 2004.

**Changes to legislation:**

There are currently no known outstanding effects for the National Insurance Contributions and Statutory Payments Act 2004.