



National Insurance Contributions Act 2006

2006 CHAPTER 10

Power to make provision in consequence of retrospective tax legislation

1 Earnings: power to make provision in consequence of retrospective tax legislation: Great Britain

- (1) After section 4A of the Social Security Contributions and Benefits Act 1992 (c. 4) insert—

“4B Earnings: power to make retrospective provision in consequence of retrospective tax legislation

- (1) This section applies where—
- a provision of the Income Tax Acts which relates to income tax chargeable under the employment income Parts of ITEPA 2003 is passed or made so as to have retrospective effect (“the retrospective tax provision”), and
 - it appears to the Treasury to be appropriate to make regulations under a relevant power for the purpose of reflecting the whole or part of the provision made by the retrospective tax provision.
- (2) Those regulations may be made so as to have retrospective effect if it appears to the Treasury to be expedient, in consequence of the retrospective tax provision, for the regulations to have that effect.
- (3) A “relevant power” means a power to make regulations under any of the following provisions—
- section 3 (power to prescribe the manner and basis of the calculation or estimation of earnings);
 - section 4(6) (power to treat amounts chargeable to income tax under the employment income Parts of ITEPA 2003 as earnings);
 - section 4A (power to treat payments or benefits to workers supplied by service companies etc as earnings).

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- (4) It does not matter whether the retrospective tax provision in question was passed or made before the day on which the National Insurance Contributions Act 2006 was passed.
- (5) But nothing in subsection (2) authorises regulations to be made which have effect in relation to any time before 2nd December 2004.
- (6) Regulations under a relevant power made by virtue of subsection (2) may affect, for the purposes of any contributions legislation for the purposes of which the regulations are made, the earnings in respect of an employment paid to or for the benefit of an earner at a time before the regulations are made.
- (7) In such a case, subsections (8) and (9) apply and in those subsections and this subsection—
- “relevant contributions legislation” means any contributions legislation for the purposes of which the regulations have the effect mentioned in subsection (6);
- “the relevant time” means the time before the regulations are made mentioned in that subsection;
- “the revised earnings” means the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time as determined after applying the regulations.
- (8) References in any relevant contributions legislation, or any provision made under any such legislation, which relate to—
- (a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or
- (b) the amount of such earnings so paid at that time,
- are to be read, in so far as they so relate, as references which relate to the revised earnings or, as the case may be, the amount of those earnings.
- (9) Any matter which, at the time when the regulations are made, has been determined for the purposes of any relevant contributions legislation, or any provision made under any such legislation, wholly or partly by reference to—
- (a) the earnings, in respect of the employment, paid to or for the benefit of the earner at the relevant time, or
- (b) the amount of such earnings so paid at that time,
- is to be redetermined as it would have been determined at the time of the original determination if it had been determined wholly or partly, as the case may be, by reference to the revised earnings or the amount of those earnings.
- (10) The matters referred to in subsection (9) may include—
- (a) whether Class 1 contributions are payable in respect of earnings paid to or for the benefit of the earner in a tax week, and
- (b) the amount of any such contribution.
- (11) Subsections (7) to (10) are subject to any express provision to the contrary (including any such provision made by regulations under section 4C(1)).
- (12) The power conferred by subsection (2) is without prejudice to any powers conferred by or by virtue of any other provision of this Act or of any other enactment (including any instrument made under an Act).

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- (13) For the purposes of this section “contributions legislation” means any Part of this Act or provision of such a Part.

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

- (1) The Treasury may by regulations made with the concurrence of the Secretary of State make such provision as appears to the Treasury to be expedient for any of the purposes mentioned in subsection (2) in consequence of any provision made by or by virtue of section 4B(2).
- (2) Those purposes are—
- (a) any purpose relating to any contributions;
 - (b) any purpose relating to any contributory benefit or contribution-based jobseeker's allowance;
 - (c) any purpose relating to any statutory payment;
 - (d) any purpose relating to minimum payments (within the meaning of the Pensions Act) by employers to occupational pension schemes;
 - (e) any purpose of Chapter 2 of Part 3 of that Act (reduction in state scheme contributions and benefits for members of certified schemes);
 - (f) such other purposes as may be prescribed by regulations made by the Treasury with the concurrence of the Secretary of State.
- (3) Regulations under subsection (1) may, in particular, make provision—
- (a) modifying any provision of any enactment (including this Act and any enactment passed or made on or after the commencement day);
 - (b) for any provision of any such enactment to apply in such cases, and with such modifications (if any), as the regulations may prescribe.
- (4) Regulations under subsection (1) may be made so as to have retrospective effect but must not have effect in relation to any time before 2nd December 2004.
- (5) In particular, regulations under subsection (1) made by virtue of subsection (4) may affect any of the following matters—
- (a) liability to pay contributions, including liability to pay Class 1 contributions at a reduced rate by virtue of Chapter 2 of Part 3 of the Pensions Act;
 - (b) the amount of any contribution, including the amount of any such reduced rate contribution and of any related rebate under section 41(1D) or 42A(2C) of that Act;
 - (c) entitlement to a contributory benefit or contribution-based jobseeker's allowance;
 - (d) the amount of any such benefit or allowance;
 - (e) entitlement to a statutory payment;
 - (f) the amount of any such payment;
 - (g) liability to make minimum payments (within the meaning of the Pensions Act) to occupational pension schemes;
 - (h) the amount of any such payment;

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- (i) liability to make payments under section 42A(3) of the Pensions Act or to pay minimum contributions under section 43 of that Act;
 - (j) the amount of any such payment or contribution.
- (6) In such a case, where the matter has been determined before the time when the regulations are made, the regulations may provide for the matter to be redetermined accordingly.
- (7) If (ignoring this subsection) the operative provisions would directly or indirectly have effect in any case so as—
 - (a) to remove a person's entitlement to a contributory benefit, contribution-based jobseeker's allowance or statutory payment, or
 - (b) to reduce the amount of any such benefit, allowance or payment to which a person has an entitlement,
 those provisions are to be read with such modifications as are necessary to ensure that they do not have that effect.
- (8) For the purposes of subsection (7)—
 - (a) “the operative provisions” are section 4B(7) to (10) and any provision made by virtue of section 4B(2) or under subsection (1) of this section;
 - (b) a person's “entitlement” includes any future entitlement which the person may have.
- (9) The powers conferred by this section are without prejudice to any powers conferred by or by virtue of any other provision of this Act or any other enactment.
- (10) In particular, any modification of any provision of an instrument by regulations made under subsection (1) is without prejudice to any other power to amend or revoke the provisions of the instrument (including the modified provision).
- (11) For the purposes of this section—
 - “the commencement day” means the day on which the National Insurance Contributions Act 2006 was passed;
 - “enactment” includes an instrument made under an Act;
 - “statutory payment” means—
 - (a) statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay; or
 - (b) any other payment prescribed by regulations made by the Treasury with the concurrence of the Secretary of State.”
- (2) In section 176 of that Act (parliamentary control of statutory instruments)—
 - (a) in subsection (1)(a), at the appropriate place in the list insert—
 - “section 4B(2);
 - section 4C;”, and
 - (b) after subsection (2) insert—
 - “(2A) In the case of a statutory instrument containing (whether alone or with other provisions) regulations made by virtue of section 4B(2) to which subsection (1) above applies, the draft of the instrument must be laid

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before Parliament before the end of the period of 12 months beginning with the appropriate date.

- (2B) For the purposes of subsection (2A), the “appropriate date” means—
- (a) where the corresponding retrospective tax provision was passed or made before the day on which the National Insurance Contributions Act 2006 was passed, the date upon which that Act was passed, and
 - (b) in any other case, the date upon which the corresponding retrospective tax provision was passed or made.
- (2C) For the purposes of subsection (2B), “the corresponding retrospective tax provision” in relation to the regulations means—
- (a) the retrospective tax provision mentioned in subsection (1) of section 4B in relation to which the regulations are to be made by virtue of subsection (2) of that section, or
 - (b) where there is more than one such tax provision, whichever of those provisions was the first to be passed or made.”

Changes to legislation:

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