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## STATUTORY INSTRUMENTS

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# 2001 No. 1004

## The Social Security (Contributions) Regulations 2001

### PART 2

#### ASSESSMENT OF EARNINGS RELATED CONTRIBUTIONS

##### Earnings periods

2. Except where regulation 8 applies, the amount, if any, of earnings-related contributions payable or, where section 6A of the Act <sup>F1</sup> applies, treated as having been paid, in respect of earnings paid to or for the benefit of an earner in respect of an employed earner's employment shall, subject to regulations 7 and 12 to 19, be assessed on the amount of such earnings paid, or treated as paid, in the earnings period specified in regulation 3, 4, 5, 6, or 9.

##### Textual Amendments

**F1** Section 6A was inserted by paragraph 3 of Part I of Schedule 9 to the Welfare Reform Act.

##### Earnings period for earnings normally paid or treated as paid at regular intervals

3.—(1) Where any part of such earnings as are specified in regulation 2 is normally paid or treated under regulation 7 as paid at regular intervals, the earnings period in respect of those earnings shall, subject to paragraphs (2) to (6), be the period—

- (a) the length of which is—
    - (i) in a case where there is one regular interval of 7 days or more, the length of that interval;
    - (ii) in a case where there are regular intervals of different lengths each of which is 7 days or more, the length of the shorter or, as the case may be, shortest interval;
    - (iii) in a case where the regular interval is less than 7 days or where there is more than one such interval, a week;
    - (iv) in a case where there is one or more than one regular interval of 7 days or more and one or more than one regular interval of less than 7 days, a week; or
  - (b) which is one of a succession of periods of the same length beginning in the case of the first such period in any year on the first day of that year, and in the case of each subsequent period immediately upon the ending of the period which last precedes it.
- (2) Without prejudice to the provisions of paragraph (1)(b), if the Board—
- (a) are satisfied that the greater part of the earnings specified in that paragraph is normally paid at intervals of greater length than the shorter or, as the case may be, shortest; and
  - (b) notify the earner and the secondary contributor accordingly,

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the length of the longer or, as the case may be, longest interval, shall be, from a date notified by the Board, the length of the earnings period in place of that specified in paragraph (1)(b).

(3) If the length of the earnings period determined in accordance with paragraph (2) is a year, then notwithstanding paragraph (1)(b), where the change in the length of the earnings period takes effect during the course of a year, the length of the earnings period in respect of any earnings in that year which are paid or treated as paid on or after the change shall be the number of weeks remaining in that year commencing with the week in which the change takes effect.

(4) If in any year there is a period between the end of the last earnings period of normal length and the beginning of the next year, the first mentioned period shall itself be treated as an earnings period of normal length.

(5) Where—

- (a) the employment in respect of which the earnings are paid has ended;
- (b) the employment in respect of which the earnings are paid was one in which, during its continuance, earnings were paid or treated under regulation 7 as paid at a regular interval; and
- (c) after the end of the employment, a payment of earnings is made which satisfies either or both of the conditions specified in paragraph (6),

the earnings period in respect of such payment of earnings shall, notwithstanding regulation 7, be the week in which the payment is made.

(6) The conditions referred to in paragraph (5) are that the payment is—

- (a) by way of addition to a payment made before the end of the employment; and
- (b) not in respect of a regular interval.

#### **Earnings period for earnings normally paid otherwise than at regular intervals and not treated as paid at regular intervals**

4. Subject to regulation 3(5) or regulation 5, where earnings are paid to or for the benefit of an earner in respect of an employed earner's employment, but no part of those earnings is normally paid or treated under regulation 7 as paid at regular intervals, the earnings period in respect of those earnings shall be a period of one of the following lengths—

- (a) the length of the period of that part of the employment for which the earnings are paid or a week, whichever is the longer; or
- (b) where it is not reasonably practicable to determine that period under paragraph (a)—
  - (i) the length of the period from the date on which the last payment of earnings, before the payment in question, was paid during the employment in respect of the employment (or, if there has been no such payment, from the date on which the employment began) to the date of the payment in question, unless the period so calculated would be of a length less than that of a week, in which case the earnings period shall be a week, or
  - (ii) where the payment is made before the employment begins or after it ends, a week.

#### **Earnings period for sums deemed to be earnings by virtue of regulations made under section 112 of the Act**

5. Where any sum or amount is deemed to be earnings by virtue of any regulations made under section 112 of the Act (sums to be earnings for the purposes of Part I to V of the Act) <sup>F2</sup>—

- (a) the earnings period in respect of any payment of those earnings shall be the length of the protected period (as referred to in section 189 of the Trade Union and Labour Relations

(Consolidation) Act 1992 <sup>F3</sup>) or, as the case may be, that part of it in respect of which the sum is paid, or a week whichever is the longer;

- (b) contributions paid in respect of such earnings shall, if the employed earner so requests—
- (i) if the period to which the payment of earnings relates falls wholly in a year other than the year in which they are paid, be treated as paid in respect of the year in which the period to which the payment of earnings relates falls, or
  - (ii) if the period to which the payment of earnings relates falls partly in the year in which they are paid and partly in one or more other years, be treated as paid proportionately in respect of each of the years in which the period to which the payment of earnings relates falls, or
  - (iii) if the period to which the payment of earnings relates falls wholly in two or more years other than the year in which they are paid, be treated as paid proportionately in respect of each of the years in which the period to which the payment of earnings relates falls.

#### Textual Amendments

- F2** Section 112 was amended by paragraph 51(4) of Schedule 1 to the [Employment Rights Act 1996](#) (c. 18) and paragraph 21 of Schedule 3 to the Transfer Act.
- F3** 1992 c. 52. Section 189(4) was amended by regulation 4(3) of [S.I. 1995/2587](#).

#### Earnings period for earnings to be aggregated where the earnings periods for those earnings otherwise would be of different lengths

- 6.—(1) Paragraphs (2) and (3) apply where—
- (a) earnings paid in respect of two or more employed earner’s employments fall to be aggregated; and
  - (b) the earnings periods in respect of those earnings are, by virtue of regulation 3, 4 or 5, of different lengths.
- (2) In a case to which this regulation applies, where (but for its provisions) the earnings period in respect of earnings derived from any of the employments is of a different length from the designated earnings period, the earnings period in respect of any payment of those earnings shall be the designated earnings period.
- (3) In this regulation “the designated earnings period” means—
- (a) where the earnings are derived from employments which include any contracted-out employment and any non-contracted-out employment and the employed earner is a person in respect of whom minimum contributions are paid by the Board in accordance with section 43 of the Pensions Act (payment of minimum contributions to personal pension schemes) <sup>F4</sup>, the earnings period in respect of earnings which are derived from such non-contracted-out employment or, if there is more than one such employment, the shorter, or as the case may be the shortest, of the earnings periods derived from such employments; or
  - (b) where the earnings are derived from employments which include any contracted-out employment and any non-contracted-out employment and the employed earner is not a person in respect of whom minimum contributions are paid by the Board in accordance with section 43 of the Pensions Act, and—
    - (i) any of the contracted-out employments is COMPS employment, the earnings period in respect of the earnings derived from that COMPS employment or, if there is more

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- than one such employment, the shorter, or as the case may be the shortest, of the earnings periods derived from such employments,
- (ii) the contracted-out employment is COSRS employment only, the earnings period in respect of the earnings derived from that COSRS employment or, if there is more than one such employment, the shorter, or (as the case may be) the shortest, of the earnings periods derived from such employments, or
- (c) where the earnings are derived from employments which are contracted-out employment only and—
- (i) any of the employments is COMPS employment, the earnings period in respect of the earnings derived from that COMPS employment or, if there is more than one such employment, the shorter, or as the case may be the shortest, of the earnings periods derived from such employments,
- (ii) all of those employments are COSRS employment, the shorter or shortest of the earnings periods derived from such employments, and
- (d) in any other case, the shorter or shortest of the earnings periods in respect of the earnings derived from the employments.

#### Textual Amendments

- F4** Section 43 was amended by paragraph 42 of Schedule 5 to the Pensions Act 1995 and paragraph 47 of Schedule 1 to the Transfer Act.

#### Treatment of earnings paid otherwise than at regular intervals

7.—(1) Subject to regulation 3(5) and paragraphs (2) and (3), for the purposes of assessing earnings-related contributions—

- (a) if on any occasion a payment of earnings which would normally fall to be made at regular interval is made otherwise than at the regular interval, it shall be treated as if it were a payment made at that regular interval;
- (b) if payments of earnings are made at irregular intervals which secure that one and only one payment is made in each of a succession of periods consisting of the same number of days, weeks or calendar months, those payments shall be treated as if they were payments made at the regular interval of one of those periods of days, weeks or, as the case may be, calendar months;
- (c) if payments of earnings, other than those specified in sub-paragraph (b), are made in respect of regular intervals, but otherwise than at regular intervals, each such payment shall be treated as made at the regular interval in respect of which it is due.

(2) Where under paragraph (1) a payment of earnings is treated as made at a regular interval, it shall for the purposes of assessment under these regulations of earnings-related contributions also be treated as paid—

- (a) in a case falling within paragraph (1)(a), on the date on which it would normally have fallen to be made;
- (b) in any other case, on the last day of the regular interval at which it is treated as paid.

(3) Paragraphs (1) and (2) shall not apply to a payment of earnings made in one year where by virtue of those paragraphs that payment would be treated as made in another year.

(4) Notwithstanding regulation 15, a payment to which paragraph (3) applies (“the relevant payment”) shall not be aggregated with any other earnings unless—

- (a) other earnings to which paragraphs (1) to (2) do not apply by virtue only of paragraph (3) are paid in the earnings period in which the relevant payment falls; and
  - (b) those other earnings would have been aggregated with the relevant payment had paragraph (3) not applied.
- (5) A relevant payment shall be aggregated only with the other earnings specified in paragraph (4).

### **Earnings periods for directors**

8.—(1) Where a person is, or is appointed, or ceases to be a director of a company during any year the amount, if any, of earnings-related contributions payable in respect of earnings paid to or for the benefit of that person in respect of any employed earner's employment with that company shall, subject to regulations 12 and 14 to 17, be assessed on the amount of all such earnings paid (whether or not paid weekly) in the earnings periods specified in paragraphs (2) to (5).

(2) Where on one or more than one occasion a person is appointed a director of a company during the course of a year the earnings period in respect of such earnings as are paid in so much of the year as remains in the period commencing with the week in which he is appointed or, as the case may be, first appointed shall be the number of weeks in that period.

(3) Where a person is a director of a company at the beginning of a year the earnings period in respect of such earnings shall be that year, whether or not he remains such a director throughout that year.

(4) Where the earnings paid in respect of two or more employed earner's employments fall to be aggregated and the earnings periods in respect of those earnings would be of different lengths, then—

- (a) if those periods are determined only by paragraphs (1) to (3); or
- (b) if the length of one or more of those periods is determined by those paragraphs and the length of one or more of the others is determined by any other provision of these Regulations,

the earnings period in respect of all those earnings shall be the period determined by those paragraphs or, where there is more than one such period, the longer or longest period so determined.

(5) Where a person is no longer a director of a company and, in any year after that in which he ceased to be a director of that company, he is paid earnings in respect of any period during which he was such a director, then—

- (a) notwithstanding regulation 15, those earnings shall not be aggregated with any other earnings with which they would otherwise fall to be aggregated; and
- (b) the earnings period in respect of those earnings shall be the year in which they are paid.

(6) Without prejudice to the paragraphs (1) to (5), a director and any company employing him may 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 those paragraphs did not apply.

### **Earnings period for statutory maternity pay and statutory sick pay paid by the Board**

9.—(1) In this regulation the expression “week”—

- (a) in paragraph (2)(a); and
- (b) in paragraph (2)(b) where it first occurs,

has the same meaning as in section 171(1) of the Act.

(2) If the Board make a payment of statutory maternity pay under regulations made under section 164(9)(b) of the Act (circumstances in which the Board are liable to pay statutory maternity pay) <sup>F5</sup>—

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- (a) a payment of statutory maternity pay for any week shall not be aggregated with any other earnings; and
  - (b) the earnings period for a payment of statutory maternity pay for any week, shall be a week.
- (3) If the Board make a payment of statutory sick pay under regulations made under section 151(6)<sup>F6</sup> of the Act (circumstances in which the Board are liable to pay statutory sick pay), the earnings period for that payment shall be—
- (a) a period of the same length as the period in respect of which the payment is made, or
  - (b) a week,
- whichever is the longer.

#### Textual Amendments

- F5** Section 164 was amended by paragraph 12 of Schedule 1 to the Transfer Act.
- F6** Section 151 was amended by paragraph 34 of Schedule 1 to the [Social Security \(Incapacity for Work\) Act 1994 \(c. 14\)](#) and paragraph 9 of Schedule 1 to the Transfer Act.

#### Earnings limits and thresholds

**10.** For the purposes of section 5(1) of the Act (earnings limits and thresholds to be specified for each tax year in respect of Class 1 contributions), for the tax year which begins on 6th April [<sup>F7</sup>2002]—

- (a) the lower earnings limit (for primary Class 1 contributions) shall be [<sup>F8</sup>£75] ;
- (b) the upper earnings limit (for primary Class 1 contributions) shall be [<sup>F9</sup>£585] ;
- (c) the primary threshold (for primary Class 1 contributions) shall be [<sup>F10</sup>£89] ; and
- (d) the secondary threshold (for secondary Class 1 contributions) shall be [<sup>F11</sup>£89] .

#### Textual Amendments

- F7** Word in [reg. 10](#) substituted (6.4.2002) by [Social Security \(Contributions\) \(Amendment\) Regulations 2002 \(S.I. 2002/238\)](#), [regs. 1\(1\), 3\(a\)](#)
- F8** Word in [reg. 10\(a\)](#) substituted (6.4.2002) by [Social Security \(Contributions\) \(Amendment\) Regulations 2002 \(S.I. 2002/238\)](#), [regs. 1\(1\), 3\(b\)](#)
- F9** Word in [reg. 10\(b\)](#) substituted (6.4.2002) by [Social Security \(Contributions\) \(Amendment\) Regulations 2002 \(S.I. 2002/238\)](#), [regs. 1\(1\), 3\(c\)](#)
- F10** Word in [reg. 10\(c\)](#) substituted (6.4.2002) by [Social Security \(Contributions\) \(Amendment\) Regulations 2002 \(S.I. 2002/238\)](#), [regs. 1\(1\), 3\(d\)](#)
- F11** Word in [reg. 10\(d\)](#) substituted (6.4.2002) by [Social Security \(Contributions\) \(Amendment\) Regulations 2002 \(S.I. 2002/238\)](#), [regs. 1\(1\), 3\(e\)](#)

#### Prescribed equivalents

**11.—(1)** The prescribed equivalents of the lower and upper earnings limits and the primary and secondary thresholds, for the purposes of—

- (a) sections 6(1), 6A(1), 8(1), and 9(1) of the Act (which provide liability for Class 1 contributions, notional payment of primary Class 1 contribution where earnings are not less than the lower earnings limit, the calculation of primary Class 1 contributions and the calculation of secondary Class 1 contributions respectively)<sup>F12</sup>; and

(b) sections 41(1) and 42A(1) of the Pensions Act (reduced rates of Class 1 contributions and rebates<sup>F13</sup>), shall be determined in accordance with paragraphs (2) to (5).

(2) Subject to paragraphs (4) and (5), the prescribed equivalents of the lower and upper earnings limits shall be—

- (a) where the earnings period is a multiple of a week, the amounts calculated by multiplying the lower and upper earnings limits (“the weekly limits”) by the corresponding multiple;
- (b) where the earnings period is a month, the amounts calculated by multiplying each of the weekly limits by 4 1/3;
- (c) where the earnings period is a multiple of a month, the amounts calculated by multiplying each of the weekly limits by 4 1/3 and multiplying each result by the corresponding multiple;
- (d) in any other case, the amounts calculated by dividing each of the weekly limits by 7 and multiplying each result by the number of days in the earnings period concerned.

(3) Subject to paragraphs (4) and (5), the prescribed equivalents of the primary and secondary thresholds shall be—

- (a) where the earnings period is a month, [F14£385] ;
- (b) where the earnings period is a year, [F15£4,615] ;
- (c) where the earnings period is a multiple of a week, the amount calculated by dividing the figure in sub-paragraph (b) by 52 and multiplying the result by the corresponding multiple;
- (d) where the earnings period is a multiple of a month, the amount calculated by dividing the figure in sub-paragraph (b) by 12 and multiplying the result by the corresponding multiple;
- (e) in any other case, the amount calculated by dividing the figure in sub-paragraph (b) by 365 and multiplying the result by the number of days in the earnings period concerned.

(4) The amounts determined in accordance with paragraph (2)(b) and (c) and paragraph (3)(c) and (d) if not whole pounds, shall be rounded up to the next whole pound.

(5) The amounts determined in accordance with paragraph (2)(d) and paragraph (3)(e) shall be calculated to the nearest penny, and any amount of a halfpenny or less shall be disregarded.

#### Textual Amendments

- F12** Sections 6, 8 and 9 were substituted, and section 6A inserted, by paragraphs 2 to 5 of Part I of Schedule 9 to the Welfare Reform Act.
- F13** Section 41(1) was substituted by paragraph 127 of Schedule 7 to the Social Security Act 1998 and amended by paragraph 6(2) of Part II of Schedule 9 to the Welfare Reform Act. Section 42A was inserted by section 137(5) of the [Pensions Act 1995 \(c. 26\)](#). Subsection (1) of section 42A was substituted by paragraph 128 of Schedule 7 to the Social Security Act 1998 and amended by paragraph 7(2) of Part II of Schedule 9 to the Welfare Reform Act.
- F14** Word in [reg. 11\(3\)\(a\)](#) substituted (6.4.2002) by [Social Security \(Contributions\) \(Amendment\) Regulations 2002 \(S.I. 2002/238\)](#), [regs. 1\(1\), 4\(a\)](#)
- F15** Word in [reg. 11\(3\)\(b\)](#) substituted (6.4.2002) by [Social Security \(Contributions\) \(Amendment\) Regulations 2002 \(S.I. 2002/238\)](#), [regs. 1\(1\), 4\(b\)](#)

#### Calculation of earnings-related contributions

**12.**—(1) Subject to paragraphs (3) and (4), earnings-related contributions shall be calculated as follows—

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- (a) primary and secondary Class 1 contributions under section 6 of the Act (liability for Class 1 contributions) and any primary and secondary Class 1 contributions at the normal rate and at the contracted-out rate shall each be calculated separately; and
  - (b) as regards the calculation referred to in sub-paragraph (a) primary and secondary Class 1 contributions shall be calculated to the nearest penny and any amount of a halfpenny or less shall be disregarded.
- (2) In the alternative, but subject to the provisions of paragraphs (3) to (5), the contributions specified in paragraph (1) may be calculated in accordance with the appropriate scale or, for contributions payable on earnings above the upper earnings limit or the prescribed equivalent of that limit, a contributions calculator prepared by the Board.
- (3) Where the amount of earnings to which—
- (a) the appropriate scale is to be applied does not appear in the scale, the amount of contributions payable shall be calculated by reference to the next smaller amount of earnings in the appropriate column in the scale;
  - (b) the appropriate contributions calculator is to be applied does not appear in the calculator, the amount of contributions payable shall be calculated—
    - (i) by obtaining from the calculator the amounts of contributions payable on the largest components of the earnings provided for in the calculator, and
    - (ii) by adding together the amounts so obtained.
- (4) Where a scale or a contributions calculator would, but for the period to which it relates, be appropriate and the earnings period in question is a multiple of the period in the scale or, as the case may be, calculator, the scale or calculator shall be applied by dividing the earnings in question so as to obtain the equivalent earnings for the period to which the scale or calculator relates and—
- (a) in the case of the scale, by multiplying the amount of contributions shown in the scale as appropriate to those equivalent earnings by the same factor as the earnings were divided;
  - (b) in the case of the calculator, by multiplying the amount of contributions shown in the calculator as appropriate to those equivalent earnings or, where no equivalent earnings are shown, the amount of contributions calculated in accordance with paragraph (3)(b), by the same factor as the earnings were divided.
- (5) Unless the Board agree to the contrary, all the contributions payable in a year in respect of the earnings paid to or for the benefit of an earner in respect of his employed earner's employment or, where he has more than one such employment and the earnings from those employments are aggregated under paragraph 1(1) of Schedule 1 to the Act (Class 1 contributions where more than one employment), in respect of those employments, shall be calculated either in accordance with paragraph (1) or paragraph (2) but not partly in accordance with one and partly in accordance with the other of those paragraphs, save that the contributions calculator may also be used where the contributions have been calculated in accordance with paragraph (1).

### **General provisions as to aggregation**

**13.** Where on one or more occasions the whole or any part of a person's earnings in respect of employed earner's employment is not paid weekly (whether or not it is treated for the purpose of earnings-related contributions as paid weekly), paragraph 1 of Schedule 1 to the Act (Class 1 contributions where more than one employment) shall have effect as if for the references to "week" there were substituted references to "earnings period".



### **Aggregation of earnings paid in respect of separate employed earner's employments under the same employer**

14. For the purpose of earnings-related contributions, where an earner is concurrently employed in more than one employed earner's employment under the same employer, the earnings paid to or for the benefit of the earner in respect of those employments shall not be aggregated if such aggregation is not reasonably practicable because the earnings in the respective employment are separately calculated.

### **Aggregation of earnings paid in respect of different employed earner's employments by different persons and apportionment of contribution liability**

15.—(1) Subject to regulation 7, for the purposes of determining whether earnings-related contributions are payable in respect of earnings paid to or for the benefit of an earner in a given earnings period, and, if so, the amount of contributions, where in that period earnings in respect of different employed earner's employments are paid to or for the benefit of the earner—

- (a) by different secondary contributors who in respect of those employments carry on business in association with each other;
- (b) by different employers, one of whom is, by virtue of Schedule 3 to the Social Security (Categorisation of Earners) Regulations 1978 <sup>F16</sup>, treated as the secondary contributor in respect of each of those employments; or
- (c) by different persons, in respect of work performed for those persons by the earner in those employments and in respect of those earnings, some other person is, by virtue of that Schedule, treated as the secondary contributor,

the earnings paid in respect of each of the employments referred to in this paragraph shall, unless in a case falling under sub-paragraph (a) it is not reasonably practicable to do so, be aggregated and treated as a single payment of earnings in respect of one such employment.

(2) Where, under paragraph (1), earnings are aggregated, liability for the secondary contributions payable in respect of those earnings shall, in a case falling within paragraph (1)(a), be apportioned between the secondary contributors in such proportions as they shall agree amongst themselves, or, in default of agreement, in the proportions which the earnings paid by each bearer to the total amount of the aggregated earnings.

#### **Textual Amendments**

**F16** S.I. 1978/1689. Schedule 3 was amended by regulation 4 of S.I. 1984/350, **regulation 3** of S.I. 1990/1894, **regulation 4** of S.I. 1994/726 and regulation 4 of S.I. 1998/1728.

### **Aggregation of earnings paid after pensionable age**

16. Notwithstanding the provisions of regulation 15, a payment of earnings to which regulation 28 applies shall not be aggregated with any other earnings.

### **Apportionment of single payment of earnings in respect of different employed earner's employments by different secondary contributors**

17. Where any single payment of earnings is made in respect of two or more employed earner's employments under different secondary contributions, liability for earnings-related contributions shall be determined by apportioning the payment as follows—

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- (a) where the secondary contributors are, in respect of those employments, carrying on business in association with each other, to the secondary contributor who makes the payment;
- (b) where the secondary contributors are not so carrying on business in association with each other, to each of those secondary contributors in the proportion which the earnings due in respect of that secondary contributor's employment bears to the total of the single payment.

### **Change of earnings period**

**18.**—(1) Paragraphs (2) and (3) apply where, by reason of a change in the regular interval at which any part of an earner's earnings is paid or treated as paid in respect of employed earner's employment ("the regular interval of payment"), that person's earnings period in any employment or employments under the same secondary contributor is, or is in the process of being, changed.

(2) Subject to paragraph (3), in relation to any payments made on or after the date of change the earnings period shall be determined in accordance with the new interval.

(3) Where the new period is longer than the old period and during the first new period any payment has also been made at the old interval, the earnings-related contributions payable on any payment made on or after the date of change shall not exceed in amount the total which would have been payable if all the payments during the new period had been made at the new interval.

(4) In this regulation—

- (a) the regular interval of payment which has been discontinued is referred to as "the old interval" and the interval which has, or is to, become the regular interval of payment is referred to as "the new interval";
- (b) the earnings period determined according to the old interval is referred to as "the old period" and that determined according to the new interval is referred to as "the new period";
- (c) reference to payment means payment of earnings actually made or, as the case may be, treated under regulation 7 as made, at an interval or date; and
- (d) "date of change" means the date on which the first payment of earnings at the new interval is made.

### **Holiday payments**

**19.** Where as respects an employed earner's employment in which the earner is paid or would, but for paragraph (b), be treated under regulation 7 as paid at a regular interval of a week or a fixed number of weeks, a payment of earnings includes or comprises a payment in respect of a period of holiday entitlement other than such a payment made to an earner in respect of a period of holiday entitlement outstanding on termination of that employment, for the purposes of calculating the earnings-related contributions payable in respect of that payment of earnings—

- (a) the earnings period may be the length of the period in respect of which the payment is made, but where the length of that earnings period includes a fraction of a week that fraction shall be treated as a whole week; and
- (b) where the earnings period is so determined, regulation 7 shall not apply.

### **Joint employment of husband and wife**

**20.** For the purposes of earnings-related contributions, where a husband and wife are jointly employed in employed earner's employment and earnings in respect of the employment are paid to them jointly, the amount of the earnings of each shall be calculated upon the same basis as that

upon which those earnings are calculated for the purposes of income tax and, in the absence of such calculation, upon such basis as may be approved by the Board.

### Annual maximum

21. Subject to section 12 of the Act (late paid Class 2 contributions) <sup>F17</sup> and regulations 63 to 65, for the purposes of section 19(1) and (2) of the Act (power to prescribe maximum amounts of contributions and repayment of excess), where an earner is employed in more than one employment but without prejudice to the earner's liability in the first instance for the full amounts payable apart from this regulation, liability in any year for primary Class 1 contributions, or, where both Class 1 and Class 2 contributions are payable by an earner in any year, for both primary Class 1 contributions and Class 2 contributions, shall not exceed an amount equal to 53 primary Class 1 contributions at the primary percentage payable on earnings at the upper earnings limit for that year.

#### Textual Amendments

**F17** Section 12 was amended by paragraph 13 of Schedule 3 and paragraph 3 of Schedule 9 to the Transfer Act.

### Payment to be treated as earnings

22.—(1) For the purposes of section 3 of the Act (earnings) <sup>F18</sup>, the amounts specified in paragraphs [<sup>F19</sup>(2) to (5)] shall be treated as remuneration derived from an employed earner's employment.

(2) The amount specified in this paragraph is the amount of any payment by a company to or for the benefit of any of its directors if—

- (a) apart from this regulation the payment would, when made, not be earnings for the purposes of the Act; and
- (b) the payment is made on account of or by way of an advance on a sum which would be earnings for those purposes.

(3) The amount specified in this paragraph is any amount in respect of which an employed earner is chargeable to income tax under Schedule E under any provision of sections 140A to 140H of the Taxes Act (conditional acquisition of shares and convertible shares) in respect of the acquisition, on or after 9th April 1998, of shares or an interest in shares.

(4) The amount specified in this paragraph is any amount in respect of which—

- (a) an employed earner is chargeable to income tax under Schedule E under any provision of Part X of Schedule 8 to the Finance Act 2000 (employee share ownership plans—income tax) <sup>F20</sup>; and
- (b) income tax is deductible under regulations made under section 203 of the Taxes Act (PAYE Regulations).

[<sup>F21</sup>(5) The amount specified in his paragraph is the amount equal to the cash equivalent, in respect of car fuel, which is chargeable to tax under Schedule E by virtue of section 158 of the Taxes Act.]

#### Textual Amendments

**F18** Section 3 was amended by sections 48 and 49 of the [Social Security Act 1998 \(c. 14\)](#) and paragraph 3 of Schedule 3 to the Transfer Act.

**F19** Words in [reg. 22\(1\)](#) substituted (6.4.2002) by [Social Security \(Contributions\) \(Amendment No.2\) Regulations 2002 \(S.I. 2002/307\)](#), regs. 1(1), [4\(2\)](#)

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**F20** 2000 c. 17.

**F21** Reg. 22(5) inserted (6.4.2002) by Social Security (Contributions) (Amendment No.2) Regulations 2002 (S.I. 2002/307), regs. 1(1), 4(3)

**[<sup>F22</sup>Amounts to be treated as earnings in connection with the use of qualifying vehicles other than cycles**

**22A.**—(1) To the extent that it would not otherwise be earnings, the amount specified in paragraph (2) shall be so treated.

(2) The amount is that produced by the formula—

Here—

**RME** is the aggregate of relevant motoring expenditure within the meaning of paragraph (3) in the earnings period; and

**QA** is the qualifying amount calculated in accordance with paragraph (4).

(3) A payment is relevant motoring expenditure if—

- (a) it is a mileage allowance payment within the meaning of section 197AD(2) of the Taxes Act;
- (b) it would be such a payment but for the fact that it is paid to another for the benefit of the employee; or
- (c) it is any other form of payment, except a payment in kind, made by or on behalf of the employer, and made to, or for the benefit of, the employee in respect of the use by the employee of a qualifying vehicle.

Here “qualifying vehicle” has the same meaning as in Schedule 12AA to the Taxes Act, but does not include a cycle within the meaning of section 192(1) of the Road Traffic Act 1988.

(4) The qualifying amount is the product of the formula—

Here—

**M** is the sum of—

- (a) the number of miles of business travel undertaken, at or before the time when the payment is made—
  - (i) in respect of which the payment is made, and
  - (ii) in respect of which no other payment has been made; and
- (b) the number of miles of business travel undertaken—
  - (i) since the last payment of relevant motoring expenditure was made, or, if there has been no such payment, since the employment began, and
  - (ii) for which no payment has been, or is to be, made; and

**R** is the rate applicable to the vehicle in question, at the time when the payment is made, in accordance with paragraph 4(2) of Schedule 12AA to the Taxes Act and, if more than one rate is applicable to the class of vehicle in question, is the higher or highest of those rates.]

**Textual Amendments**

**F22** Reg. 22A and cross-heading inserted (6.4.2002) by Social Security (Contributions) (Amendment No.2) Regulations 2002 (S.I. 2002/307), regs. 1(1), 5

### **Manner of making sickness payments treated as remuneration**

**23.** Where by virtue of section 4(1) of the Act (payments treated as remuneration and earnings) a sickness payment is treated as remuneration derived from an employed earner's employment, that payment shall be made through the person who is the secondary contributor in relation to the employment concerned except where—

- (a) the payment is payable by another person;
- (b) that person has agreed with the secondary contributor to make the payment; and
- (c) arrangements have been made between them for the person who has agreed to make the payment to furnish the secondary contributor with the information specified in paragraph 3(5)(a) of Schedule 4 (intermediate employers).

### **Calculation of earnings for the purposes of earnings-related contributions**

**24.** For the purpose of determining the amount of earnings-related contributions, the amount of a person's earnings from employed earner's employment shall be calculated on the basis of his gross earnings from the employment or employments in question.

This is subject to the provisions of Schedule 2 (calculation of earnings for the purposes of earnings-related contributions in particular cases) and Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions).

### **Payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions**

**25.** Schedule 3 specifies payments which are to be disregarded in the calculation of earnings from employed earner's employment for the purpose of earnings-related contributions.

### **Certain payments by trustees to be disregarded**

**26.—(1)** For the purposes of earnings-related contributions, there shall be excluded from the calculation of a person's earnings in respect of any employed earner's employment any payment, or any part of a payment—

- (a) which is made by trustees before 6th April 1990;
- (b) the amount of which is or may be dependent upon the exercise by the trustees of a discretion or the performance by them of a duty arising under the trust;
- (c) not being a sickness payment which by virtue of section 4(1) of the Act (payments treated as remuneration and earnings) is treated as remuneration derived from an employed earner's employment,

and in respect of which either paragraph (2) or (3) is satisfied.

(2) This paragraph is satisfied if the trust, under which the payment is made, was created before 6th April 1985.

(3) This paragraph is satisfied if—

- (a) the trust, under which the payment is made, was created on or after 6th April 1985;
- (b) that trust took effect immediately on the termination of a trust created before 6th April 1985;
- (c) the person to whom the payment is made either—
  - (i) was a beneficiary under the earlier trust, or
  - (ii) would have been such a beneficiary if, while the earlier trust was subsisting, he had held the employment in respect of which the payment is made; and

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- (d) there were or are payments under the earlier trust which in the case of payments made on or after 6th October 1987, are payments made in circumstances to which sub-paragraphs (a), (b) and (c) apply.

### **Payments to directors which are to be disregarded**

**27.—(1)** For the purposes of earnings-related contributions, there shall be excluded from the calculation of a person's earnings any payment in so far as it is a payment—

- (a) by a company;
  - (b) to or for the benefit of a director of that company;
  - (c) in respect of any employed earner's employment of that director with that company; and
  - (d) in respect of which paragraph (2), (3) or (4) is satisfied.
- (2) This paragraph is satisfied if—
- (a) the director is a partner in a firm carrying on a profession;
  - (b) being a director of a company is a normal incident of membership of that profession and of membership of the firm of the director;
  - (c) the director is required by the terms of his partnership to account to his firm for the payment; and
  - (d) the payment forms an insubstantial part of that firm's gross returns.
- (3) This paragraph is satisfied if—
- (a) the director was appointed to that office by a company having the right to do so by virtue of its shareholding in, or an agreement with, the company making the payment;
  - (b) by virtue of an agreement with the company that appointed him, the director is required to account for the payment to that company; and
  - (c) the payment forms part of the profits brought into charge to corporation tax or income tax of the company that appointed the director.
- (4) This paragraph is satisfied if—
- (a) the director was appointed to that office by a company other than the company making the payment;
  - (b) by virtue of an agreement with the company that appointed him, the director is required to account for the payment to that company;
  - (c) the payment forms part of the profits brought into charge to corporation tax of the company that appointed the director; and
  - (d) the company that appointed the director is not one over which—
    - (i) the director has, or
    - (ii) any person connected with the director has, or
    - (iii) the director and any persons connected with him together have, control.
- (5) In this regulation—
- (a) "company" has the meaning given by section 832(1) and (2) of the Taxes Act (interpretation of the Tax Acts);
  - (b) "the director" means the director to or for the benefit of whom the payment referred to in paragraph (1) is made; and
  - (c) in paragraph (4)(d)—

- (i) “control” has the same meaning as in section 840 of the Taxes Act,
- (ii) “any person connected with the director” means any of the following, namely the spouse, parent, child, son-in-law or daughter-in-law of the director.

#### **Liability for Class 1 contributions in respect of earnings normally paid after pensionable age**

**28.** Where in the year in which an earner attains pensionable age a payment of earnings is made to or for his benefit before the date he reaches pensionable age, and those earnings would normally fall to be paid in a year following that year, he shall be excepted from liability for primary Class 1 contributions payable in respect of those earnings.

#### **Liability for Class 1 contributions of persons over pensionable age**

**29.** If—

- (a) earnings are paid to or for the benefit of an earner after he attains pensionable age; and
- (b) those earnings would normally fall to be paid before the date on which he reaches pensionable age,

section 6(3) of the Act (liability for Class 1 contributions) <sup>F23</sup> shall not operate to except him from liability for primary Class 1 contributions in respect of those earnings.

#### **Textual Amendments**

**F23** Section 6 was substituted by paragraph 2 of Part I of Schedule 9 to the Welfare Reform Act.

#### **Abnormal pay practices**

**30.**—(1) This regulation shall not apply for the purpose of any decision of an authorised officer of the Board in so far as that decision relates to contributions based on payments made more than one year before the beginning of the year in which that decision is given.

(2) With a view to securing that liability for the payment of earnings-related contributions is not avoided or reduced by a secondary contributor following any practice, in the payment of earnings, which is abnormal for the employment in respect of which the earnings are paid (“an abnormal pay practice”), an authorised officer of the Board may, if he thinks fit, determine any question relating to a person’s earnings-related contributions where any such practice has been or is being followed, as if the secondary contributor concerned had not followed any abnormal pay practice, but had followed a practice or practices normal for the employment in question.

(3) With the view mentioned in paragraph (2), an authorised officer of the Board, in any case in which he has reason to believe that any abnormal pay practice has been or is being followed, may determine any such question, if he is satisfied that it ought properly to be so determined, as if application had been duly made to him for its determination.

#### **Practices avoiding or reducing liability**

**31.** The Board may, where they are satisfied as to the existence of any practice in respect of the payment of earnings whereby the incidence of earnings-related contributions is avoided or reduced by means of irregular or unequal payments, give directions for securing that such contributions are payable as if that practice were not followed.

The provision of this regulation does not limit the operation of regulation 30.

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