

2001 No. 596

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 3)
Regulations 2001**

Made - - - - - 26th February 2001

Laid before Parliament 28th February 2001

Coming into force - - 6th April 2001

The Treasury, in exercise of the powers conferred upon them by sections 3(2), (2A), (3), 4(6) and (7), 10(9) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(a) and section 74(9) of the Child Support, Pensions and Social Security Act 2000(b), with the concurrence of the Secretary of State in so far as required, and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 3) Regulations 2001 and shall come into force on 6th April 2001.

(2) The amendment made by regulation 9 shall have effect in relation to any time in the tax year beginning with 6th April 2000, and to subsequent tax years, and the amendments made by the other provisions of these Regulations shall have effect in relation to the tax year beginning with 6th April 2001 and to subsequent tax years.

Interpretation

2. In these Regulations “the principal Regulations” means the Social Security (Contributions) Regulations 1979(c), and, in the following provisions of these Regulations, except where otherwise expressly provided, a reference to a numbered regulation or Schedule is a reference to the regulation of, or Schedule to, the principal Regulations which bears that number.

Amendment of the principal Regulations

3. Amend the principal Regulations in accordance with the following provisions of these Regulations.

(a) 1992 c. 4. Section 3(2) was amended by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the Transfer Act”), and subsection (2A) was inserted by section 48 of the Social Security Act 1998 (c. 14). Section 4(6) was substituted by section 74(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”), and section 4(7) inserted by paragraph 4 of Schedule 3 to the Transfer Act. Section 10 was substituted by section 74(2) of the 2000 Act. Section 175(4) was amended by paragraph 29(4) of Schedule 3 to the Transfer Act.

(b) 2000 c. 19.

(c) S.I. 1979/591: relevant amending instruments are S.I. 1985/397 and 1398, 1991/2505, 1992/97, 1998/2211, 1999/561 and 2000/2084, 2207 and 2744.

4. In regulation 1(2) (interpretation) after the definition of “British ship” insert—
 ““cash voucher” has the meaning given to it in section 143 of the Income and Corporation Taxes Act 1988 (cash vouchers taxable under PAYE)(a);”.
5. For regulation 18 (calculation of earnings) substitute—
“Calculation of earnings for the purpose of earnings-related contributions
 18. 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 1ZB (calculation of earnings for the purposes of earnings-related contributions in particular cases) and Schedule 1ZC to these Regulations (payments to be disregarded in the calculation of earnings).”.
6. For regulation 19 (payments to be disregarded in the calculation of earnings) substitute—
“Payments to be disregarded in the calculation of earnings for the purpose of earnings-related contributions
 19. Schedule 1ZC specifies payments which are to be disregarded in the calculation of earnings from employed earner’s employment for the purpose of earnings-related contributions.”.
- 7.—(1) Amend regulation 22HA (prescribed emoluments in respect of which Class 1A contributions are not payable)(b) as follows.
- (2) In paragraph (2), for the words from “by virtue of” to the end substitute—
 “by virtue of the following provisions of Schedule 1ZC to these Regulations—
 (a) in Part VI, paragraphs 4 to 7;
 (b) in Part VIII, paragraphs 4, 5 and 12;
 (c) in Part IX, paragraphs 2 to 7; and
 (d) in Part X, paragraphs 5, 9 and 11 to 13.”.
- (3) In paragraph (3)—
 (a) for “regulation 19(1)(d) of these Regulations” substitute “paragraph 1 of Part II of Schedule 1ZC to these Regulations (payments in kind);”
 (b) for “regulation 19(1)(zg) of these Regulations” substitute “paragraph 3 of Part VIII of Schedule 1ZC to these Regulations (qualifying travelling expenses);” and
 (c) for “regulation 19(4)(b) of these Regulations” substitute “paragraph 9 of Part VIII of Schedule 1ZC to these Regulations (specific and distinct expenses)”.
- (4) In paragraph (4) for “regulation 19(1)(zc)(ii) of these Regulations” substitute “paragraph 2(2)(b) of Part VIII of Schedule 1ZC to these Regulations (relocation expenses where the relevant change occurred before 6th April 1998)”.
- (5) In paragraph (7) for sub-paragraph (g) substitute—
 “(g) A57 (staff suggestion schemes);”.
8. In regulation 43D(2)(Class 2 and Class 3 contributions paid late through ignorance or error)(c) for the words from “the amount of such a contribution” to the end substitute—
 “the amount of that contribution shall be calculated by reference to the weekly rate at which a contribution paid under section 12 of the Social Security Contributions and Benefits Act 1992(d) would have been payable if it had been paid at the time when the period began.”.

(a) 1988 c. 1. Section 143 was amended by section 89(8) to (11) of the Finance Act 1994 (c. 9).

(b) Regulation 22HA was inserted by regulation 4 of S.I. 2000/2207.

(c) Regulation 43D was inserted by regulation 4 of S.I. 1985/397, and amended by regulation 5(9) of S.I. 1985/1398.

(d) Section 12 was amended by paragraph 13 of Schedule 3, and paragraph 3 of Schedule 9 to the Transfer Act.

9. In regulation 119(2)(b) (conditions as to residence or presence in Great Britain and liability for Class 1A contribution)(a) for “in respect of any car” substitute “in respect of something”.

10. After Schedule 1ZA (elections about share option gains)(b) insert (as Schedule 1ZB) the Schedule set out in Schedule 1 to these Regulations.

11. After Schedule 1ZB (inserted by regulation 10 of these Regulations) insert (as Schedule 1ZC) the Schedule set out in Schedule 2 to these Regulations.

12. Omit Schedules 1A(c), 1B(d) and 1C(e).

Clive Betts

Jim Dowd

20th February 2001

Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State hereby concurs.

Jeff Rooker

Minister of State

Department of Social Security

26th February 2001

(a) Regulation 119(2) has been amended: the relevant amendment was that made by regulation 8(c) of S.I. 1992/97.

(b) Schedule 1ZA was inserted by regulation 12 of S.I. 2000/2744.

(c) Schedule 1A was inserted by regulation 5 of S.I. 1991/2505.

(d) Schedule 1B was inserted by regulation 10 of S.I. 1998/2211.

(e) Schedule 1C was inserted by regulation 5 of S.I. 1999/561.

SCHEDULE TO BE INSERTED AS SCHEDULE 1ZB IN THE PRINCIPAL REGULATIONS

“SCHEDULE 1ZB

CALCULATION OF EARNINGS FOR THE PURPOSES OF EARNINGS-RELATED CONTRIBUTIONS IN PARTICULAR CASES

Calculation of earnings

1.—(1) This Schedule contains rules for the calculation of earnings in the assessment of earnings-related contributions in particular cases.

(2) In this Schedule—

“the Taxes Act” means the Income and Corporation Taxes Act 1988;

“Schedule 1ZC” means Schedule 1ZC to these Regulations; and

“Schedule E” means the Schedule referred to as Schedule E in the Taxes Act.

(3) In this Schedule unless the context otherwise requires—

- (a) a reference to a numbered paragraph, is a reference to the paragraph in this Schedule bearing that number;
- (b) a reference in a paragraph to a numbered sub-paragraph is a reference to the sub-paragraph of that paragraph bearing that number;
- (c) a reference in a sub-paragraph to a lettered paragraph is a reference to the paragraph of that sub-paragraph bearing that letter; and
- (d) a reference in a lettered paragraph to a numbered head is a reference to the head in that lettered paragraph bearing that number.

Calculation of earnings in respect of beneficial interest in assets within Part IV of Schedule 1ZC

2.—(1) Except where paragraph 3, 4, 5 or 6 applies, the amount of earnings comprised in any payment by way of the conferment of any beneficial interest in any asset specified in Part IV of Schedule 1ZC, and which falls to be taken into account in the calculation of a person’s earnings shall be calculated or estimated at a price which that beneficial interest might reasonably be expected to fetch if sold in the open market on the day on which it is conferred.

(2) For the purposes of sub-paragraph (1), where any asset is not quoted on a recognised stock exchange within the meaning of section 841 of the Taxes Act, it shall be assumed that, in the open market which is postulated, there is available to any prospective purchaser of the beneficial interest in the asset in question all the information which a prudent prospective purchaser might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm’s length.

Valuation of beneficial interest in units in a unit trust scheme

3. The amount of earnings which is comprised in any payment by way of the conferment of a beneficial interest in any units in a unit trust scheme (within the meaning of section 75(8) of the Financial Services Act 1986 (a)) having a published selling price and which falls to be taken into account in the calculation of a person’s earnings shall be calculated or estimated by reference to the published selling price on the day in question.

Here “published selling price” means the lowest selling price published on the date on which the payment in question is made, and where no such price is published on that date, it means the lowest selling price published on the last previous date on which such a price was published.

Conferment of a beneficial interest in an option to acquire an asset falling within Part IV of Schedule 1ZC

4. The amount of earnings which is comprised in a payment by way of the conferment of a beneficial interest in an option to acquire any asset falling within Part IV of Schedule 1ZC shall be calculated or estimated by reference to the amount which would be comprised in accordance with paragraph 2, or, if paragraph 3, 5 or 6 would apply in accordance with that paragraph, in a payment by way of the conferment of a beneficial interest—

- (a) in the asset which may be acquired by the exercise of the option; or

(a) 1986 c. 60.

- (b) where that asset (the first asset) may be exchanged for another asset (the second asset) and the value of the beneficial interest in the second asset is greater than that in the first, in that second asset,

on the day on which the beneficial interest in the option is conferred.

The amount shall be reduced by the amount or value, or, if variable, the least amount or value, of the consideration for which the asset may be so acquired.

Readily convertible assets

5.—(1) The amount of earnings which is comprised in—

- (a) any payment by way of the conferment of a beneficial interest in any asset falling within Part III of Schedule 1ZC;
- (b) any payment by way of the conferment of a beneficial interest in any asset falling within Part IV of Schedule 1ZC which is a readily convertible asset;
- (c) any payment by way of—
 - (i) a voucher falling within paragraph 12 of Part IV of that Schedule,
 - (ii) a non-cash voucher not falling within Part V (whether or not also falling within paragraph 12 of Part IV of that Schedule) which is capable of being exchanged for a readily convertible asset,

and which is to be taken into account in calculating a person's earnings, shall be calculated in accordance with sub-paragraphs (2) to (5).

(2) In the case of an asset falling within paragraph 1 of Part III of Schedule 1ZC, the amount is the best estimate that can reasonably be made of the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset.

(3) In the case of an asset falling within paragraph 2 of Part III of Schedule 1ZC, the amount is the best estimate that can reasonably be made of the amount of income likely to be chargeable to tax under Schedule E in respect of the enhancement of its value.

(4) In the case of a voucher falling within—

- (a) sub-paragraph (1)(c); or
- (b) paragraph 3 of Part III of Schedule 1ZC,

the amount is the best estimate that can reasonably be made of the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of any asset for which the voucher is capable of being exchanged.

(5) In the case of an asset falling within sub-paragraph (1)(b), the amount is the best estimate that can reasonably be made of the amount of income likely to be chargeable to tax under Schedule E in respect of the provision of the asset.

Assets not readily convertible: beneficial interests in alcoholic liquor on which duty has not been paid, gemstones and certain vouchers and non-cash vouchers

6. The amount of earnings comprised in any payment by way of the conferment of a beneficial interest in—

- (a) an asset which—
 - (i) falls within paragraph 9 or 10 of Part IV of Schedule 1ZC (payments by way of alcoholic liquor on which duty has not been paid or by way of gemstones not to be disregarded as payments in kind), and
 - (ii) is not a readily convertible asset;
- (b) a voucher which falls within paragraph 12 of Part IV of that Schedule; or
- (c) a non-cash voucher not excluded by virtue of Part V of that Schedule and which falls within paragraph 12 of Part IV of that Schedule (assets not to be disregarded as payments in kind);

shall be calculated or estimated on the basis of the cost of the asset in question.

Here "the cost of the asset" in relation to any voucher includes the cost of any asset for which that voucher is capable of being exchanged.

Conditional interest in shares

7.—(1) The amount of earnings comprised in any payment by way of the conferment of a conditional interest in shares, falling to be taken into account in calculating a person's earnings, shall be the difference between—

- (a) the market value of that person's interest immediately after—
 - (i) the interest ceases to be only conditional, or
 - (ii) if earlier, the sale or other disposal of that interest; and

- (b) the amount or value of the consideration given by that person for that interest together with any amounts which have previously been included in his earnings for the purpose of assessment of earnings-related contributions in respect of his acquisition of that interest.

The difference shall be calculated on the basis of the best estimate that can reasonably be made.

(2) In this paragraph—

- (a) “market value” has the meaning given in section 140A(6) of the Taxes Act(a); and
- (b) the amount or value of the consideration given shall be calculated in accordance with section 140B of that Act as it would be for the purposes of section 140A.

Convertible interest in shares

8.—(1) The amount of earnings comprised in any payment by way of the conferment of a beneficial interest in convertible shares and which falls to be taken into account in calculating a person’s earnings shall be the gain from their conversion.

The amount of the gain shall be calculated on the basis of the best estimate that can reasonably be made.

(2) In this paragraph the gain from the conversion of convertible shares is the amount found by the formula—

$$M-(S + C + P + E)$$

Here—

M is the market value at the time of conversion of the shares into which the convertible shares are converted.

For this purpose “market value” has the same meaning as in section 140F(3) of the Taxes Act(b).

S is the amount or value of any consideration given for the convertible shares.

For this purpose that amount or value shall be calculated in accordance with section 140E of the Taxes Act.

C is the amount or value of any consideration given for the conversion in question.

P is the amount (if any) which has previously been included in that person’s earnings for the purpose of assessment of his earnings-related contributions, in respect of his acquisition of the interest in the convertible shares.

E is the amount of any gain from an earlier conversion, if the convertible shares were acquired through a series of conversions, where that earlier conversion gave rise to a liability for earnings-related contributions, to the extent that that amount is not included in **P**.

For this purpose a conversion gives rise to a liability for earnings-related contributions if it—

- (a) gives rise to a gain treated as earnings under regulation 17A(3)(c) of these Regulations; or
- (b) would have given rise to such a gain but for the fact that the market value of the shares at the time of the conversion of the shares into which the convertible shares were converted did not exceed the amount produced by the addition of the values for **S**, **C**, **P** and **E** applicable at the time of the relevant conversion.

Assignment or release of right to acquire shares where neither right nor shares readily convertible

9.—(1) The amount of earnings comprised in any payment by way of a gain which a person realises by the assignment or release of a right to acquire shares in a body corporate—

- (a) obtained by that person as a director or employee of that or any other body corporate where neither that right nor those shares are readily convertible assets; and
- (b) falling to be taken into account in calculating a person’s earnings;

shall be calculated on the basis set out in sub-paragraph (2).

(2) The basis is the best estimate that can reasonably be made of the difference between—

- (a) the amount or value of the consideration for that assignment or release; and
- (b) the amount or value of the consideration (if any) given for the grant of the right.

(a) Sections 140A to 140C were inserted by section 50(1) of the Finance Act 1998 (c. 36).

(b) Sections 140D to 140F were inserted by section 51(1) of the Finance Act 1998.

(c) Regulation 17A was substituted by regulation 5 of S.I. 2000/2084.

In making the estimate, a just apportionment shall be made of any entire consideration given for the grant of the right to acquire those shares and other shares or otherwise for the grant of the right to acquire those shares and for something else besides.

(3) This paragraph is subject to paragraph 10.

Assignment or release of a right, acquired as director or employee before 6th April 1999, to acquire shares where neither right nor shares readily convertible

10.—(1) The amount of earnings comprised in any payment by way of a gain which a person realises by the assignment or release of a right to acquire shares in a body corporate (“the first body corporate”), obtained by that person before 6th April 1999 as a director or employee of that or any other body corporate where neither that right nor those shares are readily convertible assets, where—

- (a) a subsequent right forms all or part of the consideration given for the assignment or release of the first right; and
- (b) that subsequent right is—
 - (i) a right to acquire shares in the first body corporate or any other body corporate,
 - (ii) not treated as consideration for the assignment or release of the first right by virtue of section 136(1) of the Taxes Act, and
 - (iii) acquired at a total discount on the total market value which is substantially greater than the total discount on the total market value of the first right at the time of its assignment or release,

shall be calculated on the basis set out in sub-paragraph (2).

(2) The basis is the best estimate that can reasonably be made of the difference between the total discount on the subsequent right and the total discount on the first right.

Exercise of right to acquire shares gained as director or employee before 6th April 1999

11.—(1) The amount of earnings comprised in any payment by way of a gain which a person realises by the exercise of a right to acquire shares in a body corporate obtained by that person as a director or employee of that or any other body corporate, where—

- (a) that right—
 - (i) formed all or part of the consideration given for the assignment or release of a right which was obtained before 6th April 1999 (“the first right”) to acquire shares in a body corporate (“the first body corporate”),
 - (ii) is a right to acquire shares in the first body corporate or any other body corporate, and
 - (iii) was not treated as consideration for the assignment or release of the first right by virtue of section 136(1) of the Taxes Act; and
- (b) at the time of its acquisition, the total market value of the subsequent right was not similar to the total market value of the first right immediately before its assignment or release;

and which falls to be taken into account in calculating a person’s earnings, shall be calculated or estimated in accordance with sub-paragraph (2).

(2) The basis of calculating or estimating the amount of a gain realised by the exercise at any time of a subsequent right shall be the best estimate that can reasonably be made of such part of that gain as relates to the difference between—

- (a) the amount that a person might reasonably expect to obtain from a sale in the open market at the time that the shares were acquired pursuant to that subsequent right, less the amount or value of the consideration (if any) given for those shares and the grant of that right; and
- (b) the amount that a person might reasonably expect to obtain from a sale in the open market of the shares which were the subject of the first right at the time of its assignment or release, less the amount or value of the consideration (if any) given for those shares and the grant of that right.

(3) For the purposes of sub-paragraph (2) “gain” means the amount realised by the exercise of a subsequent right, less any amount which has previously been included in that person’s earnings for the purposes of assessing his earnings-related contributions in respect of his acquisition, assignment or release of the first right.

In making the estimate, a just apportionment shall be made of any entire consideration given for the grant of the right to acquire those shares and other shares or otherwise for the grant of the right to acquire those shares and for something else besides.

Interpretation of paragraphs 9, 10 and 11

12. For the purposes of paragraphs 9, 10 and 11—

- (a) “the total market value” means the price which the shares that are the subject of the right in question might reasonably be expected to fetch on sale in the open market;

- (b) the total market value of the subsequent right is similar to the total market value of the first right if it is not substantially greater than the first right;
- (c) “total discount” means the difference between the total value of the exercise price of the shares that are the subject of the right in question and the total market value of that right;
- (d) neither the consideration given for the grant of the right nor any entire consideration shall be taken to include the performance of any duties of or in connection with the office or employment by reason of which the right was granted and no part of the amount or value of the consideration given for the grant shall be deducted more than once;
- (e) “shares”, so far as the context permits, includes stock; and
- (f) “body corporate” includes—
 - (i) a body corporate constituted under the law of a country or territory outside the United Kingdom, and
 - (ii) an unincorporated association wherever constituted.

Apportionment of a payment from a retirement benefits scheme for benefit of two or more people

13.—(1) If, pursuant to a retirement benefits scheme, a payment is made with a view to providing any benefits under such a scheme in relation to more than one person, the amount of earnings which is comprised in that payment shall be calculated or estimated on the basis set out in whichever of sub-paragraphs (2) or (3) applies.

(2) If the separate benefits to be provided to each of the people referred to in sub-paragraph (1) are known at the time when the payment is made, the basis is that of the separate payments which would have had to have been paid to secure the benefits.

(3) In any other case, the amount of the payment shall be apportioned equally between all the persons in respect of whose earnings the payment is to be taken into account.

Valuation of non-cash vouchers

14.—(1) The amount of earnings comprised in any payment by way of a non-cash voucher which is not otherwise disregarded by these Regulations and which falls to be taken into account in calculating an employed earner’s earnings shall be calculated or estimated on the basis set out in sub-paragraph (2).

(2) The basis is that of an amount equal to the expense incurred (“the chargeable expense”)—

- (a) by the person at whose cost the voucher and the money, goods or services, for which it is capable of being exchanged, are provided;
- (b) in, or in connection with, that provision,

and any money, goods or services obtained by the employed earner or any other person in exchange for the voucher shall be disregarded.

This is subject to the following qualification.

(3) For the purpose of sub-paragraph (2)—

- (a) the chargeable expense shall be reduced by any part of it which the employed earner makes good to the person incurring it; and
- (b) in the case of a non-cash voucher which can be exchanged only for a meal which exceeds the limit specified in Inland Revenue Extra-Statutory Concession A2 (luncheon vouchers)^(a) as published at 1st September 2000, the chargeable expense shall be reduced by the amount (if any) by which it exceeds the face value of the voucher.

Apportionment of earnings comprised in a cash or non-cash voucher provided for benefit of two or more employed earners

15.—(1) The amount of earnings comprised in any payment by way of a cash voucher or a non-cash voucher provided for the benefit of two or more employed earners and which falls to be taken into account in calculating the earnings of each of those earners shall be calculated or estimated on the basis set out in whichever of sub-paragraphs (2) or (3) applies.

(2) If the respective proportion of the benefit of the voucher to which each of those earners is entitled is known at the time of the payment, the basis is that of a separate payment equal to that proportion.

(3) In any case where the respective proportions are not known at the time of the payment, the basis is equal apportionment between all those earners.

(a) Copies of Inland Revenue Extra-Statutory Concessions may be obtained from the Inland Revenue Leaflets and Booklets Orderline, PO Box 37, Saint Austell, Cornwall, PL25 5YN and are also available on the Inland Revenue’s website (<http://www.inlandrevenue.gov.uk>).

(4) In this paragraph—

- (a) “chargeable expense” has the same meaning, and is calculated in the same way, as in paragraph 14; and
- (b) if an employed earner makes good any part of the chargeable expense to the person incurring it, that chargeable expense in relation to that employed earner shall be reduced by that part.”.

SCHEDULE 2

Regulation 11

SCHEDULE TO BE INSERTED AS SCHEDULE 1ZC IN THE PRINCIPAL REGULATIONS

“SCHEDULE 1ZC

Regulation 19

PAYMENTS TO BE DISREGARDED IN THE CALCULATION OF EARNINGS FOR THE PURPOSES OF EARNINGS-RELATED CONTRIBUTIONS

PART I

INTRODUCTORY

Introduction

1.—(1) This Schedule contains provisions about payments which are to be disregarded in the calculation of earnings for the purposes of earnings-related contributions.

(2) Part II contains provisions about the treatment of payments in kind.

(3) Parts III and IV specify payments by way of assets which are not to be disregarded by virtue of paragraph 1 of Part II.

(4) Part V specifies non-cash vouchers which are to be disregarded by virtue of paragraph 1 of Part II.

(5) In calculating earnings there are also to be disregarded—

- (a) the pensions and pension contributions specified in Part VI;
- (b) the payments in respect of training and similar courses specified in Part VII;
- (c) the travelling, relocation and overseas expenses specified in Part VIII;
- (d) the share incentives specified in Part IX; and
- (e) the miscellaneous payments specified in Part X.

Interpretation

2.—(1) In this Schedule, unless the context otherwise requires—

- (a) a reference to a numbered Part is a reference to the Part of this Schedule which bears that number;
- (b) a reference in a Part to a numbered paragraph is a reference to the paragraph of that Part which bears that number; and
- (c) a reference in a paragraph to a lettered or numbered sub-paragraph is a reference to the sub-paragraph of that paragraph which bears that letter or number.

(2) In this Schedule—

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(a);

“the Taxes Act” means the Income and Corporation Taxes Act 1988(b); and

“Schedule E” means the Schedule referred to as Schedule E in the Taxes Act.

(a) 1992 c. 4.
(b) 1988 c. 1.

PART II
PAYMENTS IN KIND

Certain payments in kind to be disregarded

1. A payment in kind, or by way of the provision of services, board and lodging or other facilities is to be disregarded in the calculation of earnings.

This is subject to paragraph 2 and to any provision about a payment in kind of a particular description or in particular circumstances in any other Part of this Schedule.

Payments by way of assets not to be disregarded

2.—(1) Payments falling within paragraph 1 do not include any payment by way of—

- (a) the conferment of any beneficial interest in—
 - (i) any asset mentioned in Part III or Part IV,
 - (ii) any contract, the effecting and carrying out of which constitutes long term business falling within Class I (life and annuity business), Class III (linked long term business) or Class VI (capital redemption business) specified in Schedule 1 to the Insurance Companies Act 1982(a);
- (b) a non-cash voucher not of a description mentioned in Part V or to which paragraph 4 of Part X applies.

(2) Sub-paragraph (1)(a)(i) is subject to the qualification that an asset, which falls within either Part III or Part IV, may nevertheless be disregarded under paragraph 1 if it would be disregarded for the purposes of income tax under Inland Revenue Extra-Statutory Concession A22 (long service awards), as published at 1st September 2000.

(3) For the purposes of sub-paragraph (1)(a)(ii), if the provisions of a contract of insurance are such that the effecting and carrying out of the contract constitutes—

- (a) both long term business within the meaning of the Insurance Companies Act 1982 and general business within the meaning of that Act; or
- (b) by virtue of section 1(3) of that Act, long term business notwithstanding the inclusion of subsidiary general business terms,

the effecting and carrying out of that contract shall be treated as constituting long term business.

PART III
**PAYMENTS BY WAY OF READILY CONVERTIBLE ASSETS NOT
DISREGARDED AS PAYMENTS IN KIND**

1. A readily convertible asset.

For the purposes of this paragraph, subsections (3A) to (6) of section 203F of the Taxes Act (PAYE: readily convertible assets)(b) apply as they apply for the purposes of that section.

2. An asset which, in accordance with the provisions of section 203FA of the Taxes Act (PAYE: enhancing the value of an asset)(c), would be treated as a readily convertible asset for the purposes of section 203F of that Act.

3. Any voucher, stamp or similar document—
- (a) whether used singularly or together with other such vouchers, stamps or documents; and
 - (b) which is capable of being exchanged for an asset falling within paragraph 1 or 2.

PART IV
**PAYMENTS BY WAY OF SPECIFIC ASSETS NOT DISREGARDED AS
PAYMENTS IN KIND**

Shares and stock

1. Shares and stock in the share capital of a company.

(a) 1982 c. 50.
(b) Section 203F was inserted by section 127 of the Finance Act 1994 (c. 9) and amended by section 65 of the Finance Act 1998 (c. 36).
(c) Section 203FA was inserted by section 66(1) of the Finance Act 1998.

Here “company” includes—

- (a) any body corporate constituted under the law of, or of any part of, the United Kingdom or of any other country or territory and also any unincorporated body constituted under the law of a country or territory outside the United Kingdom; and
- (b) any body incorporated under the law of, or of any part of, the United Kingdom relating to a building society within the meaning of section 119(1) of the Building Societies Act 1986(a) or an industrial and provident society registered, or deemed to be registered, under the Industrial and Provident Societies Act 1965(b) or the Industrial and Provident Societies Act (Northern Ireland) 1969(c).

Certain debentures and other securities for loans

2. Debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness which are not instruments falling within paragraph 3.

Loan stock of public and local authorities

3. Loan stock, bonds and other instruments creating or acknowledging indebtedness issued by or on behalf of a government, local authority or public authority.

Here—

- (a) “government” means the government of the United Kingdom, of Northern Ireland, or of any country or territory outside the United Kingdom;
- (b) “local authority” means a local authority in the United Kingdom or elsewhere, and, in respect of a local authority in the United Kingdom, it has the meaning given in section 842A of the Taxes Act(d); and
- (c) “public authority” means any international organisation the members of which include the United Kingdom or another member State.

Warrants etc. for shares, loan stock and debentures

4. Warrants or other instruments entitling the holder to subscribe for assets falling within paragraph 1, 2 or 3.

For the purpose of this paragraph, it is immaterial whether the assets are for the time being—

- (a) in existence; or
- (b) identifiable.

Units in collective investment schemes

5. Units in a collective investment scheme, including shares or securities in an open-ended investment company.

Here—

- (a) “collective investment scheme” has the meaning given in section 75(1) of the Financial Services Act 1986(e); and
- (b) “open-ended investment company” has the meaning given in section 75(8) of that Act.

Options to acquire assets, currency, precious metals or other options

6. Options to acquire, or dispose of—

- (a) currency of the United Kingdom or any other country or territory;
- (b) gold, silver, palladium or platinum;
- (c) an asset falling within any other paragraph of this Part of this Schedule;
- (d) an option to acquire, or dispose of, an asset falling within sub-paragraph (a), (b) or (c).

(a) 1986 c. 53.

(b) 1965 c. 12.

(c) 1969 c. 24 (N.I.).

(d) Section 842A was inserted by section 127(1) of the Finance Act 1990 (c. 29), amended by section 117(2)(d) of, and paragraph 57 of Schedule 13 to, the Local Government Finance Act 1992 (c. 14), partly repealed by section 93 of and Part I of Schedule 9 to the Police and Magistrates’ Courts Act 1994 (c. 29), and further amended by paragraph 155 of Schedule 13 to the Local Government (Scotland) Act 1994 (c. 39), section 144 of the Finance Act 1995 (c. 4) and section 134(1) of, and paragraph 53 of Schedule 9 to, the Police Act 1997 (c. 50).

(e) 1986 c. 60. There are amendments to section 75 that are not relevant for the purposes of this instrument.

Contracts for futures

7. A contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

For the purposes of this paragraph, a price shall be taken to have been agreed upon when a contract is made—

- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that the provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.

Contracts for differences or to secure profit by references to movements of indices

8. A contract for differences or any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract.

Alcoholic liquor on which duty has not been paid

9. Any alcoholic liquor, within the meaning of section 1 of the Alcoholic Liquor Duties Act 1979(a) in respect of which no duty has been paid under that Act.

Gemstones

10. Any gemstone, including stones such as diamond, emerald, ruby, sapphire, amethyst, jade, opal or topaz and organic gemstones such as amber or pearl, whether cut or uncut and whether or not having an industrial use.

Certificates etc. conferring rights in respect of assets

11. Certificates or other instruments which confer—
- (a) property rights in respect of any asset falling within paragraphs 1 to 4, 9 or 10;
 - (b) any right to acquire, dispose of, underwrite or convert an asset, being a right to which the holder would be entitled if he held any such asset to which the certificate or instrument relates; or
 - (c) a contractual right, other than an option, to acquire any such asset otherwise than by subscription.

Vouchers

12. Any voucher, stamp or similar document—
- (a) whether used singularly or together with other such vouchers, stamps or documents; and
 - (b) which is capable of being exchanged for an asset falling within any other paragraph of this Part.

PART V

CERTAIN NON-CASH VOUCHERS TO BE DISREGARDED AS PAYMENTS IN KIND

1.—(1) Subject to sub-paragraph (2), a non-cash voucher provided, to or for the benefit of the employed earner, by the employer or any other person on his behalf is to be disregarded in the calculation of an employed earner's earnings by virtue of paragraph 1 of Part II only if it falls within any of paragraphs 2 to 8.

(2) A non-cash voucher may also be disregarded in the circumstances specified in paragraph 4 of Part X.

2. A non-cash voucher which is not treated as an emolument from employment for the purposes of section 141(1) of the Taxes Act (charge to tax in respect of non-cash vouchers)(b) by virtue of subsection (6)(c) of that section (exemptions for employees of certain passenger transport undertakings).

This paragraph applies only in the case of an employee whose earnings from the employment in question are less than £8,500, calculated in accordance with the Taxes Act.

(a) 1979 c. 4. Section 1 was amended by article 5 of S.I. 1979/241, section 1(5) of the Finance Act 1984 (c. 43), paragraph 1 of Part II of Schedule 1 and Part I of Schedule 14 to the Finance Act 1988 (c. 39) and section 3(1) and (3) of the Finance Act 1993 (c. 34).

(b) Subsection (1) was amended by section 89(2) of the Finance Act 1994.

(c) Subsection (6) was amended by section 46(1) of the Finance Act 1988.

3. A non-cash voucher which is not treated as an emolument from the employment for the purposes of section 141(1) of the Taxes Act by virtue of subsection (6A) of that section (exemption vouchers for car parking places provided at or near place of employment)(a).

Section 49(1) of the Finance Act 1999(b) applies for the construction of the reference to section 141(6A) of the Taxes Act in this paragraph.

4. A non-cash voucher in respect of which an employed earner is not chargeable to tax under section 141 of the Taxes Act by virtue of section 157(3)(b) of the Taxes Act (cars available for private use).

5. A non-cash voucher which is not chargeable to tax under Schedule E by virtue of the following provisions of the Taxes Act—

- (a) section 197 (leave travel facilities for members of the armed forces);
- (b) section 197AA (works bus services)(c);
- (c) section 197AC (cycles and safety equipment)(d); or
- (d) section 197G (sporting and recreational facilities)(e).

6. A non-cash voucher which is not charged to tax under Schedule E by virtue of any of the following Inland Revenue Extra-Statutory Concessions as published at 1st September 2000—

- (a) A2 (luncheon vouchers);
- (b) A22 (long service awards);
- (c) A57 (staff suggestion schemes);
- (d) A58 (travelling and subsistence allowance when public transport disrupted);
- (e) A59 (disabled persons' home to work travel);
- (f) A65 (workers on offshore oil and gas rigs or platforms; free transfers to or from mainland);
- (g) A66 (employees' journeys home: late night travel and breakdown in car sharing arrangements);
- (h) A70 (small gifts to employees by third parties and Christmas parties); and
- (i) A74 (meals provided for employees).

7. A non-cash voucher provided in connection with all or part of the costs of and expenses of child care (but not school fees) incurred by an employed earner in connection with a child not exceeding the age of 16 for whom he has parental responsibility.

For the purposes of this paragraph, child care includes—

- (a) care provided in accordance with the provisions of Part X of, and Schedule 9 to, the Children Act 1989 (child minding and day care for young children)(f);
- (b) in the case of a child aged 8 or over, care provided by a child minder;
- (c) in the case of a child under the age of 8, care provided by a child minder where that care does not exceed, in total, two hours a day;
- (d) care provided by a nanny or a relative (within the meaning respectively of section 71(13) and 105(1) of the Children Act 1989);
- (e) care provided during out-of-school hours or during school holidays; and
- (f) full-time and part-time care.

8. A non-cash voucher provided to or for the benefit of an employed earner in respect of employed earner's employment by a person who is not the secondary contributor in respect of the provision of that voucher.

PART VI

PENSIONS AND PENSION CONTRIBUTIONS

Pension payments and pension contributions to be disregarded

1. A payment by way of a pension is disregarded in the calculation of an employed earner's earnings, as are the payments mentioned in paragraphs 2 to 7.

In this Part "the Board" means the Commissioners of Inland Revenue.

(a) Subsection (6A) was inserted by section 46(1) of the Finance Act 1988.

(b) 1999 c.16.

(c) Section 197AA was inserted by section 48 of the Finance Act 1999.

(d) Section 197AC was inserted by section 50 of the Finance Act 1999.

(e) Section 197G was inserted by section 75(1) of the Finance Act 1993.

(f) 1989 c. 41. Schedule 9 was amended by section 116 of the Courts and Legal Services Act 1990 (c. 41) and section 582(1) of the Education Act 1996 (c. 56).

Personal pension contributions by employers

2. A payment by way of an employer's contribution towards a personal pension which, by virtue of section 643(1) of the Taxes Act (employers' contributions under personal pension arrangements)(a), is not to be regarded as an emolument of the employment chargeable to tax under Schedule E.

Approved schemes, relevant statutory schemes, pilots' benefit funds and schemes established by overseas governments

3. A payment—
- (a) to which section 595 of the Taxes Act (charge to tax in respect of certain sums paid by an employer pursuant to a retirement benefits scheme)(b) does not apply by virtue of section 596(1) or (2)(b) of that Act(c);
 - (b) to a pilots' benefit fund under section 607 of that Act(d);
 - (c) to which section 608 of that Act (superannuation funds approved before 6th April 1980) applies; or
 - (d) by way of any benefit pursuant to a scheme or fund falling within sub-paragraph (a), (b) or (c).

Funded unapproved retirement benefits schemes

4. A payment by way of relevant benefits pursuant to a retirement benefits scheme which has not been approved by the Board for the purposes of Chapter I of Part XIV of the Taxes Act and attributable to payments prior to 6th April 1998.

Here "relevant benefits" has the meaning given in section 612 of the Taxes Act.

Payments to pension previously taken into account in calculating earnings

5. A payment by way of any benefit pursuant to a retirement benefits scheme which has not been approved by the Board for the purposes of Chapter I of Part XIV of the Taxes Act and attributable to payments on or after 6th April 1998 which have previously been included in a person's earnings for the purpose of the assessment of his liability for earnings-related contributions.

Payments in good faith to scheme solely for providing approved benefits

6.—(1) A payment made in respect of a scheme which is established in good faith for the sole purpose of providing relevant benefits where at the time of the payment the conditions specified in sub-paragraphs (2) to (4) are satisfied and, if appropriate, the additional conditions in sub-paragraphs (5) and (6) are satisfied.

(2) The first condition is that an application has been made to the Board in accordance with section 604 of the Taxes Act(e) and has not been rejected.

(3) The second condition is that the payment represents contributions in respect of an employed earner's earnings not in excess of the permitted maximum in force at the time when the payment is made.

(4) The third condition is that the terms of the scheme do not permit any pension payable under it, in whole or in part, to be surrendered, commuted or assigned except in so far as to allow an employed earner on his retirement to obtain, by commutation of his pension, a lump sum or sums not exceeding in all 3/80ths of his final remuneration for each year of service up to a maximum of 40.

(5) The first additional condition is that if the scheme is connected with another scheme or schemes each of which is an approved scheme, the amount payable by way of pension or commuted pension under the scheme will not, when aggregated with any amount payable by way of pension or commuted pension under the other scheme or schemes, exceed the relevant amount.

- (6) The second additional condition is that if the scheme is a small self-administered scheme—
- (a) the requirements of regulation 9 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991 (independent pensioner trustees)(f) have been satisfied; and
 - (b) regulation 3 of those Regulations (restrictions on the Board's discretion to approve schemes) does not apply.

(a) There are amendments to section 643 that are not relevant for the purposes of this instrument.

(b) Section 595 was amended by paragraph 7 of Schedule 6 to the Finance Act 1989 (c. 26).

(c) Section 596 was amended by paragraph 8 of Schedule 6 to the Finance Act 1989.

(d) Section 607 was amended by section 104(2) of the Finance Act 1994.

(e) Section 604 was amended by paragraph 3 of Schedule 15 to the Finance Act 1998.

(f) S.I. 1991/1614. Regulation 9 was substituted by regulation 9 of S.I. 1998/728 and amended by regulation 6 of S.I. 1998/1315.

- (7) In this paragraph—
- (a) “permitted maximum” is the amount for the time being specified in an order made under section 590C(6) of the Taxes Act (earnings cap)(a);
 - (b) “relevant amount” shall be determined—
 - (i) in the case of a pension which is not a commuted pension, in accordance with the provisions of section 590B(3) and (7) to (11) of the Taxes Act (further supplementary provisions in respect of approval of retirement benefit schemes)(b), and
 - (ii) in the case of a pension which is a commuted pension, in accordance with the provisions of section 590B(4) and (7) to (11) of that Act;
 - (c) “relevant benefits” has the meaning given in section 612 of the Taxes Act;
 - (d) “small self-administered scheme” has the meaning given in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991; and
 - (e) whether or not a scheme is connected with another shall be determined in accordance with section 590A(2) to (4) of the Taxes Act (supplementary provisions in respect of approval of retirement benefit schemes)(c).

Pensions exempt from UK taxation under double taxation agreements

- 7.—(1) A payment to a pension scheme which is afforded relief from taxation by virtue of—
- (a) Article 25(8) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (France) Order 1968(d);
 - (b) Article 17A of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Republic of Ireland) Order 1976(e);
 - (c) Article 28(3) of the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1980(f).
- (2) For the purposes of sub-paragraph (1)(b), Article 17A of the Order shall be read as if “or is being considered for approval” were omitted.

PART VII

PAYMENTS IN RESPECT OF TRAINING AND SIMILAR COURSES

Payments in respect of training and similar expenses disregarded

1. The training payments and vouchers mentioned in this Part are disregarded in the calculation of an employed earner’s earnings.

Work-related training

2. A payment of, or contribution towards, expenditure incurred in providing work-related training which, by virtue of sections 200B, 200C and 200D of the Taxes Act (work-related training)(g), is not to be taken as an emolument of the office or employment in connection with which it is provided.

Education and training funded by employers

3. A payment in respect of expenditure which, by virtue of section 200E of the Taxes Act (exemption for education and training funded by employers)(h), is not to be taken as an emolument of the office or employment in connection with which it is provided.

New Deal 50plus: employment grant and training credit

4. A payment to a person, as a participant in the scheme arranged under section 2(2) of the Employment and Training Act 1973 and known as New Deal 50plus, of an employment credit or a training grant under that scheme.

(a) Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989.
 (b) Section 590B was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989 and amended by section 107(6) of the Finance Act 1993 (c. 34).
 (c) Section 590A was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989.
 (d) S.I. 1968/1869. Paragraph (8) was added to Article 25 by Article 16 of the Protocol set out in the Schedule to S.I. 1987/2055.
 (e) S.I. 1976/2151. Article 17A was added by Article I of the Protocol set out in the Schedule to S.I. 1995/764.
 (f) S.I. 1980/1960. Paragraph (3) was substituted by Article X(2) of the Protocol set out in Part I of the Schedule to S.I. 1996/3165.
 (g) Sections 200B to 200D were inserted by section 63(1) of the Finance Act 1997 (c. 16).
 (h) Section 200E was inserted by section 58 of the Finance Act 2000 (c. 17).

Retraining courses for claimants for jobseeker's allowance

5. A payment to a person as a participant in a scheme of the kind mentioned in section 60(1) of the Welfare Reform and Pensions Act 1999 (special schemes for claimants for jobseeker's allowances)(a).

Payments to Jobmatch participants

6. A payment made to a participant in a Jobmatch Scheme (including a pilot) arranged under section 2(1) of the Employment and Training Act 1973(b) in his capacity as such.

Vouchers provided to Jobmatch participants

7. A payment by way of the discharge of any liability by the use of a voucher, given to a participant in a Jobmatch Scheme (including a pilot) arranged under section 2(1) of the Employment and Training Act 1973 in his capacity as such.

PART VIII

TRAVELLING, RELOCATION AND OTHER EXPENSES AND ALLOWANCES OF THE EMPLOYMENT

Travelling, relocation and incidental expenses disregarded

1. The travelling, relocation and other expenses and allowances mentioned in this Part are disregarded in the calculation of an employed earner's earnings.

Relocation expenses

2.—(1) A payment of, or contribution towards, expenses reasonably incurred by a person in relation to a change of residence in connection with the commencement of, or an alteration in, the duties of the person's employment or the place where those duties are normally to be performed is disregarded if the conditions in sub-paragraphs (2) to (6) are met.

(2) The first condition is that—

(a) the payment or contribution—

(i) is not, by virtue of Schedule 11A to the Taxes Act (removal expenses and benefits)(c), regarded as an emolument of the employment for any purpose of Case I or Case II of Schedule E, or

(ii) would not have been so regarded, but is in fact disregarded for that purpose by virtue of another provision of the Taxes Act; or

(b) the person concerned commenced performance of the duties, or altered duties, of his employment at the place, or the altered place, of their performance before 6th April 1998.

(3) The second condition is that the change of residence must result from—

(a) the employee becoming employed by an employer;

(b) an alteration of the duties of the employee's employment (where his employer remains the same); or

(c) an alteration of the place where the employee is normally to perform the duties of his employment (where both the employer and the duties which the employee is to perform remain the same).

(4) The third condition is that the change of residence must be made wholly or mainly to allow the employee to have his residence within a reasonable daily travelling distance of—

(a) the place where he performs, or is to perform, the duties of his employment (in a case falling within paragraph (3)(a));

(b) the place where he performs, or is to perform, the new duties of his employment (in a case falling within paragraph (3)(b)); or

(c) the new place where he performs, or is to perform, the duties of his employment (in a case falling within paragraph (3)(c)).

References in this sub-paragraph and sub-paragraph (5) to the place where the employee performs, or is to perform, the duties of his employment are references to the place where he normally performs, or is normally to perform, the duties of the employment.

(5) The fourth condition is that the employee's former residence must not be within a reasonable daily travelling distance of the place where the employee performs or is to perform the duties of the employment.

(a) 1999 c. 30.

(b) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

(c) Schedule 11A was inserted by section 76 of, and paragraph 2 of Schedule 5 to, the Finance Act 1993.

(6) In a case to which sub-paragraph (2)(b) applies, expenditure incurred in pursuance of a contract or agreement entered into before 6th April 1998 does not, in the case of a contract or agreement varied at any time on or after that date, include so much of the expenditure incurred under that contract or agreement which would not have been incurred, or exceeds the amount of expenditure that would have been reasonably incurred, if that contract or agreement had not been so varied.

(7) For the purposes of this paragraph, Schedule 11A to the Taxes Act shall be read as if paragraphs 3(3), 4(3), 6 and 24 were omitted.

Travelling expenses—general

3. A payment of, or a contribution towards, qualifying travelling expenses which the holder of an office or employment is obliged to incur and defray out of the emoluments of the office or employment.

For the purposes of this paragraph—

- (a) “qualifying travelling expenses” means—
 - (i) amounts necessarily expended on travelling in the performance of the duties of the office or employment; or
 - (ii) other expenses of travelling which are attributable to the necessary attendance at any place of the holder of the office or employment in the performance of the duties of the office or employment and are not expenses of ordinary commuting or private travel (within the meaning of paragraph 2 of Schedule 12A to the Taxes Act^(a));
- (b) paragraphs 1(2) and 2 to 7 of that Schedule shall apply as they apply for the purposes of section 198(1A)(b) of that Act (relief for necessary expenses)^(b);
- (c) expenses of travel by the holder of an office or employment between two places at which he performs the duties of different offices or employments under or with companies in the same group are treated as necessarily expended in the performance of the duties which he is to perform at his destination; and
- (d) for the purpose of sub-paragraph (c), companies are to be taken to be members of the same group if and only if—
 - (i) one is a 51 per cent. subsidiary of the other, or
 - (ii) both are 51 per cent. subsidiaries of a third company,within the meaning of section 838(1)(a) of the Taxes Act (subsidiaries).

Travel and foreign travel expenses of overseas employees

4. A payment of, or a contribution towards, expenses which are deductible from the emoluments of the employment which are chargeable to tax under Schedule E under—

- (a) section 193(3), (4) or (6) of the Taxes Act (travel expenses where duties of office or employment are performed wholly or partly outside the United Kingdom); or
- (b) section 194(1) of that Act (foreign travel expenses where duties of office or employment are performed wholly or partly outside the United Kingdom);

or which would be so deductible if the emoluments of the employment were chargeable to tax under Schedule E.

Travel expenses of employees not domiciled in the United Kingdom

5. A payment of, or a contribution towards, expenses which are deductible from the emoluments of the employment which are chargeable to tax under Schedule E under section 195(7) of the Taxes Act (travel expenses of employees not domiciled in the United Kingdom) or, where the emoluments are not chargeable under Schedule E, would be so deductible if the emoluments of the employment were so chargeable.

Travelling expenses of workers on offshore gas and oil rigs

6. A payment of, or a contribution towards, expenses where that payment or contribution is disregarded for the purposes of calculating the emoluments of the employment which are charged to tax under Schedule E under Inland Revenue Extra-Statutory Concession A65 (workers on offshore oil and gas rigs or platforms; free transfers to or from mainland).

Incidental expenses in connection with cars provided for private use

7. A payment—

- (a) by way of the discharge of any liability, which by virtue of section 157(3)(a) of the Taxes Act (car available for private use); or

(a) Schedule 12A was inserted by section 61(2) of, and Schedule 10 to, the Finance Act 1998.

(b) Section 198(1A) was substituted by section 61(1) of the Finance Act 1998.

(b) of expenses, which by virtue of section 157(3)(c) of that Act; is not treated as an emolument of the employment chargeable to tax under Schedule E.

Car parking facilities

8. A payment of, or a contribution towards, the provision of car parking facilities at or near the earner's place of employment which, by virtue of section 197A of the Taxes Act(a), is not regarded as an emolument of the earner's employment.

Specific and distinct payments of, or towards, expenses actually incurred

9. For the avoidance of doubt, there shall be disregarded any specific and distinct payment of, or contribution towards, expenses which an employed earner actually incurs in carrying out his employment.

Council tax on accommodation provided for employee's use

10. A payment of, or a contribution towards meeting, a person's liability for council tax in respect of accommodation occupied by him and provided for him by reason of his employment if, by virtue of section 145(4) of the Taxes Act (living accommodation), he is not liable to tax under Schedule E in respect of the provision of that accommodation.

Foreign service allowance

11. A payment by way of an allowance which is not regarded as income for any income tax purpose by virtue of section 319 of the Taxes Act (Crown servants: foreign service allowance).

Commonwealth War Graves Commission and British Council: extra cost of living allowance

12. A payment by way of an allowance to a person in the service of the Commonwealth War Graves Commission or the British Council paid with a view to compensating him for the extra cost of living outside the United Kingdom in order to perform the duties of his employment.

Overseas medical treatment

13. A payment of, or a contribution towards, expenses incurred in—
- (a) providing an employee with medical treatment outside the United Kingdom (including providing for him to be an in-patient) in a case where the need for the treatment arises while the employee is outside the United Kingdom for the purposes of performing the duties of his employment; or
 - (b) providing insurance for the employee against the cost of such treatment in a case falling within sub-paragraph (a).

Here "medical treatment" includes all forms of treatment for, and all procedures for diagnosing, any physical or mental ailment, infirmity or defect.

PART IX

SHARE INCENTIVES

Certain payments by way of shares, interests in shares and gains arising from them disregarded

- 1.—(1) Payments by way of—
- (a) shares;
 - (b) conditional interests in shares; and
 - (c) other rights in or over shares;
- respectively mentioned in this Part are disregarded in the calculation of an employed earner's earnings.
- (2) For the purposes of paragraphs 13, 15 and 16—
- (a) "body corporate" includes—
 - (i) a body corporate constituted under the law of a country or territory outside the United Kingdom, and
 - (ii) an unincorporated association wherever constituted;
 - (b) "total discount" means the difference between the total value of the exercise price of the shares that are subject to the right in question and the total market value of that right;
 - (c) "total market value" means the price which the shares that are subject to the right in question might reasonably be able to fetch in the open market; and

(a) Section 197A was inserted by section 46(4) of the Finance Act 1988. Section 49(1) of the Finance Act 1999 extends its scope to cycle parking facilities.

- (d) the total market value of the subsequent right is similar to the total market value of the first right if it is not substantially greater than the first right.

Shares in secondary contributor or associated body

- 2.—(1) A payment by way of shares where such shares—
- (a) are not readily convertible assets; and
 - (b) form part of the ordinary share capital of—
 - (i) the secondary contributor,
 - (ii) a company which has control of the secondary contributor, or
 - (iii) a company which either is, or has control of, a body corporate which is a member of a consortium owning either that secondary contributor or a body corporate having control of that secondary contributor.
- (2) In this paragraph—
- (a) “body corporate” includes—
 - (i) a body corporate constituted under the law of a country or territory outside the United Kingdom, and
 - (ii) an unincorporated association, wherever constituted,but does not include a partnership, a local authority within the meaning of section 842A of the Taxes Act(a) or a local authority association within the meaning of section 519 of that Act(b);
 - (b) a body corporate (“A”) is a member of a consortium owning another body corporate (“B”) if—
 - (i) A is one of a number of such bodies which between them beneficially own not less than $\frac{3}{4}$ of B’s ordinary share capital, and
 - (ii) each of the bodies corporate owns not less than $\frac{1}{20}$ of B’s ordinary share capital;
 - (c) “company” means a body corporate having a share capital;
 - (d) “control” in relation to a body corporate means the power of a person to secure—
 - (i) by means of the holding of the shares or the possession of voting power in, or in relation to, that or any other body corporate,
 - (ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person;
 - (e) “ordinary share capital” in relation to a company means all the company’s issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- (3) In this paragraph and paragraph 3, “shares” includes stock.

Rights to acquire shares

3. A payment by way of a right to acquire shares where neither that right nor those shares are readily convertible assets.

Enterprise management incentives

4. A payment by way of the grant of a qualifying option within the meaning of Schedule 14 to the Finance Act 2000(c) which is capable of being exercised more than 10 years after the grant.

Priority share allocations

5. A payment by way of any benefit which by virtue of section 68(1) of the Finance Act 1988 (priority share allocations for directors or employees)(d) is not treated as an emolument of the employment chargeable to tax under Schedule E.

(a) Section 842A was inserted by section 127(1) of the Finance Act 1990 (c. 29), amended by section 117(2)(d) of, and paragraph 57 of Schedule 13 to, the Local Government Finance Act 1992 (c. 14), partly repealed by section 93 of and Part I of Schedule 9 to the Police and Magistrates’ Courts Act 1994 (c. 29), and further amended by paragraph 155 of Schedule 13 to the Local Government (Scotland) Act 1994 (c. 39), section 144 of the Finance Act 1995 (c. 4) and section 134(1) of, and paragraph 53 of Schedule 9 to, the Police Act 1997 (c. 50).

(b) Section 519(4) was repealed by paragraph 5(1) and (2) of Schedule 18, and the relevant entry in Part IV of Schedule 19 to the Finance Act 1990.

(c) 2000 c. 17.

(d) 1988 c. 39. Section 68(1) was amended by section 66(1) and (2) of the Finance Act 1989 (c. 26).

Partnership share agreements

6. A payment that is deducted from the earnings of the employment under a partnership share agreement.

Here “partnership share agreement” has the meaning given in paragraph 34 of Schedule 8 to the Finance Act 2000.

Shares under employee share ownership plan

7. A payment by way of shares under an award of shares under an employee share ownership plan.

Here “employee share ownership plan” has the meaning given in paragraph 1 (1) of Schedule 8 to the Finance Act 2000.

Shares under approved profit sharing schemes

8. A payment by way of shares appropriated under a profit sharing scheme to which section 186 of the Taxes Act(a) applies.

Conditional interest in shares

9. A payment by way of the conferment of a conditional interest in shares in respect of which, by virtue of section 140A(3) of the Taxes Act (conditional acquisition of shares)(b), no tax is chargeable under Schedule E other than by virtue only of section 135 or section 162 of that Act(c).

Conditional interest in shares: gains from exercise etc. of share options

10. A payment by way of a conditional interest in shares where, at the time of payment—
- (a) the earner is treated under section 203FB(4) of the Taxes Act (PAYE: gains from share options etc.)(d) as having been provided with a further interest;
 - (b) that further interest would not, for the purposes of section 140A of that Act, be treated as only conditional; and
 - (c) the conditional interest together with the further interest are not readily convertible assets.

Convertible shares

11. A payment by way of convertible shares in respect of which tax is not chargeable under section 140D of the Taxes Act(e) by virtue of either subsection (8) or (10) of that section.

Convertible shares: gains from the exercise etc. of share options

12. A payment by way of a beneficial interest in convertible shares where—
- (a) the earner is treated under section 203FB(5) of the Taxes Act as if the original provision of those shares included the shares into which they are converted; and
 - (b) neither those shares, nor the shares into which they are converted, are readily convertible assets.

Share option gains by directors and employees

13. A payment by way of a gain realised by the exercise of a right to acquire shares in a body corporate where—

- (a) that gain is chargeable to tax under Schedule E under section 135 of the Taxes Act; but
- (b) neither that right, nor those shares, are readily convertible assets.

Shares acquired under options granted before 9th April 1998

14. A payment by way of the acquisition of an interest in shares pursuant to a right to acquire such shares granted before 9th April 1998 where the acquisition of that interest would be treated as earnings under regulation 17A of these Regulations(f).

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- (a) Section 186 was amended by section 89(a) of the Finance Act 1988 (c. 39) and section 118(1) of, and paragraph 11 of Schedule 20 to, the Finance Act 1996 (c. 8).
 - (b) Section 140A was inserted by section 50(1) of the Finance Act 1998, and amended by sections 42 and 139 of, and Part III(8) of Schedule 20 to, the Finance Act 1999 (c. 16).
 - (c) Section 135 was amended by section 49(1) of the Finance Act 1998. Section 162 was amended by paragraph 3 of Schedule 13 to the Finance Act 1988, section 53(2) of the Finance Act 1989 and paragraph 14(11) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12).
 - (d) Section 203FB was inserted by section 67 of the Finance Act 1998.
 - (e) Section 140D was inserted by section 51(1) of the Finance Act 1998.
 - (f) Regulation 17A was substituted by regulation 5 of S.I. 2000/2084.

Assignment or release of option

15.—(1) A payment by way of a gain realised by the assignment or release of a right (“the first right”) to acquire shares in a body corporate (“the relevant body corporate”) chargeable to tax under Schedule E by virtue of section 135 of the Taxes Act if—

- (a) sub-paragraph (2) is satisfied; and
- (b) sub-paragraph (3) does not apply.

(2) This sub-paragraph is satisfied if a subsequent right forms all, or part, of the consideration given for the assignment or release of the first right.

(3) This paragraph applies if—

- (a) the first right was acquired before 6th April 1999; and
- (b) the total discount on the total market value of the subsequent right is substantially greater than the total discount on the total market value of the first right at the time of its assignment or release.

(4) In this paragraph “subsequent right” means a right—

- (a) to acquire shares in the relevant body corporate or any other body corporate; and
- (b) which is not treated as consideration for the assignment or release of the first right by virtue of section 136(1) of the Taxes Act.

Exercise, assignment or release of options acquired before 6th April 1999

16.—(1) A payment by way of a gain realised by the exercise, assignment or release of a right obtained before 6th April 1999 (“the relevant right”) to acquire shares in a body corporate (“the relevant body corporate”) where that gain is chargeable to tax under Schedule E by virtue of section 135 of the Taxes Act unless each of the conditions in sub-paragraphs (2) to (5) is met.

(2) The condition in this sub-paragraph is that the relevant right forms all or part of the consideration given for the assignment or release of a right to acquire shares in a body corporate (“the earlier right”).

(3) The condition in this sub-paragraph is that the relevant right is a right to acquire shares in the relevant body corporate or any other body corporate.

(4) The condition in this sub-paragraph is that the relevant right is not treated as consideration for the assignment or release of the first right by virtue of section 136(1) of the Taxes Act.

(5) The condition in this sub-paragraph is that, at the time of its acquisition, the total market value of the relevant right was not similar to the total market value of the earlier right immediately before its exercise, assignment or release.

PART X

MISCELLANEOUS AND SUPPLEMENTAL

Other miscellaneous payments to be disregarded

1.—(1) The payments listed in paragraphs 2 to 14 are disregarded in the calculation of earnings.

(2) Paragraph 4 contains additional rules about the way in which the components of a payment by way of expenses incidental to a qualifying absence from home are to be treated for the purpose of earnings-related contributions if the permitted maximum is exceeded.

Payments on account of sums already included in the calculation of earnings

2. A payment on account of a person’s earnings in respect of his employment as an employed earner which comprises, or represents and does not exceed sums which have previously been included in his earnings for the purpose of his assessment of earnings-related contributions.

Payments discharging liability for secondary Class 1 contributions following election under paragraph 3B of Schedule 1 to the Contributions and Benefits Act

3. A payment by way of the discharge of any liability for secondary Class 1 contributions which has been transferred from the secondary contributor to the employed earner by an election made jointly by them for the purposes of paragraph 3B(1) of Schedule 1 to the Contributions and Benefits Act (elections about contribution liability in respect of share option gains)(a).

(a) Paragraph 3B was inserted by section 77(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

Payments by way of incidental expenses

4.—(1) A payment by way of incidental expenses, in whatever form, which by virtue of section 200A of the Taxes Act^(a) is not regarded as an emolument of the employment chargeable to tax under Schedule E.

(2) If a payment is made by way of incidental expenses in connection with a qualifying absence from home, but the amount of that payment (calculated in accordance with section 200A of the Taxes Act) exceeds the authorised maximum, sub-paragraphs (3) to (6) apply.

(3) So much of the payment as is made by way of cash shall be included in the calculation of earnings.

(4) The amount of cash for which a cash voucher can be exchanged shall be included in the calculation of earnings.

(5) The cost of provision of any non-cash voucher shall be included in the calculation of earnings and anything for which the voucher can be exchanged shall be disregarded in that calculation.

(6) Any payment by way of a benefit in kind shall be disregarded in the calculation of earnings.

(7) In this paragraph—

“the authorised maximum” has the meaning given in section 200A(4) of the Taxes Act;

“the cost of provision” in relation to a non-cash voucher is the cost incurred by the person at whose expense the non-cash voucher is provided; and

“qualifying absence from home” has the meaning given in section 200A(3) of the Taxes Act.

Gratuities and offerings

5.—(1) A payment of, or in respect of, a gratuity or offering which satisfies either of the conditions in this paragraph.

(2) The first condition is that the payment—

(a) is not made, directly or indirectly, by the secondary contributor; and

(b) does not comprise or represent sums previously paid to the secondary contributor.

(3) The alternative condition is that the secondary contributor does not allocate the payment, directly or indirectly, to the earner.

Redundancy payments

6. For the avoidance of doubt, in calculating the earnings paid to or for the benefit of an earner in respect of an employed earner’s employment, any payment by way of a redundancy payment shall be disregarded.

Sickness payments attributable to contributions made by employed earner

7. If the funds for making a sickness payment under arrangements of the kind mentioned in section 4(1)(b) of the Contributions and Benefits Act are attributable in part to contributions to those funds made by the employed earner, for the purposes of section 4(1) of that Act the part of that payment which is attributable to those contributions shall be disregarded.

Expenses and other payments not charged to tax under Extra-Statutory Concessions

8. A payment which is not charged to tax under Schedule E by virtue of the following Inland Revenue Extra-Statutory Concessions as published at 1st September 2000—

(a) A57 (staff suggestion schemes);

(b) A58 (travelling and subsistence allowance when public transport disrupted);

(c) A59 (disabled persons’ home to work travel);

(d) A66 (employees’ journeys home: late night travel and breakdown in car sharing arrangements).

VAT on the supply of goods and services by employed earner

9. If—

(a) goods or services are supplied by an earner in employed earner’s employment;

(b) earnings paid to or for the benefit of the earner in respect of that employment include the remuneration for the supply of those goods or services; and

(c) value added tax is chargeable on that supply;

an amount equal to the value added tax chargeable on that supply shall be excluded from the calculation of those earnings.

(a) Section 200A was inserted by section 93(4) of the Finance Act 1995 (c. 4).

Employees' indemnity insurance

10. A payment which by virtue of section 201AA of the Taxes Act (employee liabilities and indemnity insurance)(a) is deductible from the emoluments of the employment chargeable to tax under Schedule E.

Fees and subscriptions to professional bodies, learned societies etc.

11. A payment of, or a contribution towards any fee, contribution or annual subscription which, under section 201(1) of the Taxes Act (fees and subscriptions to professional bodies, learned societies etc.) is deductible from the emoluments of any office or employment.

Holiday pay

12. A payment in respect of a period of holiday entitlement where—
- (a) the sum paid is derived directly or indirectly from a fund—
 - (i) to which more than one secondary contributor contributes, and
 - (ii) the management and control of which are not vested in those secondary contributors; or
 - (b) the person making the payment is entitled to be reimbursed from such a fund.

Payments to ministers of religion

13. A payment of a fee in respect of employment as a minister of religion which does not form part of the stipend or salary paid in respect of that employment.

Payments in lieu of coal

14. A payment in lieu of coal made to a miner, which he is entitled to receive by virtue of his employment as such.

Here "miner" means any person employed in or about a colliery, whether on the surface or below ground, except a person employed—

- (a) in a clerical, technical or administrative capacity; or
- (b) at a coke oven, brick works or other activity not ancillary to coal mining."

(a) Section 201AA was inserted by section 91(1) of the Finance Act 1995.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 1979 (S.I. 1979/591) (“the principal Regulations”).

Regulation 1 provides for the citation, commencement and effect of these Regulations.

Regulation 2 provides for the interpretation of references in these Regulations.

Regulation 3 introduces the amendments to the principal Regulations.

Regulation 4 amends regulation 1(2) of the principal Regulations by inserting a definition for “cash voucher”.

Regulations 5 and 6 substitute new regulations 18 and 19 in the principal Regulations. The substituted provisions respectively introduce a new Schedule 1ZB (calculation of earnings for the purposes of earnings-related contributions in particular cases) and Schedule 1ZC (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions). These Schedules are inserted into the principal Regulations by regulations 10 and 11 respectively.

Regulations 7 and 12 make amendments to the principal Regulations consequential on the restructuring of the provisions dealing with the calculation of earnings and payments to be disregarded in their calculation.

Regulation 8 amends regulation 43D of the principal Regulations (Class 2 and Class 3 contributions paid late through ignorance or error) so as to provide that the amount of a contribution paid in those circumstances is to be calculated by reference to the rate applicable at the start of the period within which the payment should have been made. Regulation 43D was inserted by regulation 4 of S.I. 1985/397.

Regulation 9 makes an amendment to regulation 119 of the principal Regulations in respect of liability for a Class 1A contribution in the case of a person neither ordinarily resident nor ordinarily employed in Great Britain. The effect of the amendment is to extend the application of the 52 week period (during which no contribution is payable) to something provided to the earner and on which a Class 1A contribution would be chargeable. The amendment applies to the tax year 2000–01 and subsequent tax years, whilst all other amendments made by these Regulations apply to the tax year 2001–02 and subsequent tax years.

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