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STATUTORY INSTRUMENTS

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**1999 No. 567**

**SOCIAL SECURITY**  
**TERMS AND CONDITIONS OF EMPLOYMENT**

The Social Security Contributions, Statutory  
Maternity Pay and Statutory Sick Pay  
(Miscellaneous Amendments) Regulations 1999

*Made* - - - - *5th March 1999*  
*Laid before Parliament* *11th March 1999*  
*Coming into force in accordance with regulation 1*

The Secretary of State for Social Security, with the concurrence of the Inland Revenue in so far as required<sup>(1)</sup>, in exercise of powers conferred by sections 1(6)<sup>(2)</sup>, 3(2) and (3), 10A(7)<sup>(3)</sup>, 122(1), 163(3), 171(5) and 175(1) to (3) of, and paragraphs 3(5)<sup>(4)</sup>, 5A<sup>(5)</sup>, 6<sup>(6)</sup> and 8(1)(g)<sup>(7)</sup>, (1)<sup>(8)</sup>, (m), (n) and (q) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992<sup>(9)</sup>, and sections 182C and 189(1) of the Social Security Administration Act 1992<sup>(10)</sup>, and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made by virtue of, or consequential upon, the Social Security Act 1998<sup>(11)</sup> and the Social Security Contributions (Transfer of Functions, etc.) Act 1999, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1999 and shall come into force on—

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- (1) See paragraph 6(1) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4).  
(2) Section 1(6) was amended by paragraph 56(3) of Schedule 7 to the Social Security Act 1998 (c. 14).  
(3) Section 10A was inserted by section 53 of the Social Security Act 1998.  
(4) Sub-paragraph (5) was inserted by section 55 of the Social Security Act 1998.  
(5) Paragraph 5A was inserted by paragraph 77(7) of Schedule 7 to the Social Security Act 1998.  
(6) Paragraph 6 was amended by paragraph 77(8) to (11) of Schedule 7 to the Social Security Act 1998.  
(7) Paragraph 8(1)(g) was amended by section 151 of, and paragraph 14 of Schedule 5 to, the Pensions Act 1995 (c. 26).  
(8) Paragraph 8(1)(l) was amended by paragraph 77(16) of Schedule 7 to the Social Security Act 1998.  
(9) Section 122(1) is cited because of the meaning ascribed to the word “prescribe”.  
(10) 1992 c. 5. Section 182C was inserted by paragraph 9 of Schedule 1 to the Social Security Administration (Fraud) Act 1997 (c. 47) and amended by paragraph 31 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).  
(11) See section 173(5)(b) of the Social Security Administration Act 1992 (c. 5).

- (a) for the purposes of regulation 7, 1st April 1999;
- (b) for all other purposes, 6th April 1999.

(2) In these Regulations “the principal Regulations” means the Social Security (Contributions) Regulations 1979(12).

### **Amendment of regulation 18 of the principal Regulations**

2.—(1) Regulation 18 of the principal Regulations (calculation of earnings) shall be amended in accordance with the following provisions of this regulation.

- (2) In paragraph (2)(13), omit “(4),”.
- (3) Omit paragraphs (2A), (2B), (4), (5), (5A) and (9A)(14).
- (4) In paragraph (7A)(15), omit “(4),”.
- (5) In paragraph (9)(16) for “(2A), (5A) and (9A)”, substitute “(17) to (19)”.
- (6) After paragraph (15)(17), add—

“(16) Subject to paragraph (17) of this regulation, the amount of earnings which is 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, obtained by that person as a director or employee of that or any other body corporate where that right or those shares are not readily convertible assets(18), and which falls to be taken into account in the computation of a person’s earnings, shall, for the purposes of earnings-related contributions, be calculated on the basis of 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 just apportionment being 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).

(17) The amount of earnings which is 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 that right or those shares are not readily convertible assets, where a subsequent right—

- (a) forms all, or part of, the consideration given for the assignment or release of the first right; and
- (b) the subsequent right is—
  - (i) a right to acquire shares in the first body corporate or any other body corporate,

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(12) S.I. 1979/591; the relevant amending instruments are S.I. 1981/82, 1982/1033, 1983/395, 1984/77, 1985/396, 1398 and 1411, 1987/413 and 2111, 1988/992, 1989/572 and 1677, 1990/605, 1935 and 2894, 1991/1632 and 2505, 1992/97, 1440 and 2595, 1993/821, 1994/667, 1995/512 and 730, 1996/195, 777, 1245, 2407 and 3031, 1997/820 and 1998/2211, 2320 and 2894.

(13) Paragraph (2) was added by regulation 2(3) of S.I. 1991/2505 and regulation 3(a) of S.I. 1996/3031.

(14) Paragraphs (2A), (2B), (5A) and (9A) were inserted by regulation 2(a), (b) and (d) of S.I. 1998/2894 respectively. Paragraphs (4) and (5) were added by regulation 2(3) of S.I. 1991/2505.

(15) Paragraph (7A) was inserted by regulation 3(b) of S.I. 1996/3031.

(16) Paragraph (9) was substituted by regulation 5(4) of S.I. 1998/2211 and amended by regulation 2(c) of S.I. 1998/2894.

(17) Paragraph (15) was substituted by regulation 5(4) of S.I. 1998/2211.

(18) The definition of “readily convertible asset” was inserted by regulation 2(1)(a) of S.I. 1998/2211.

- (ii) not treated as consideration for the assignment or release of the first right by virtue of section 136(1) of the Income and Corporation Taxes Act 1988 (provisions supplementary to section 135)(19), 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,

and which falls to be taken into account in the computation of a person's earnings, shall, for the purposes of earnings-related contributions, be calculated on the basis of 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.

(18) The amount of earnings which is 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 Income and Corporation Taxes Act 1988; 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 the computation of a person's earnings, shall, for the purposes of earnings-related contributions, be calculated or estimated in accordance with the provisions of paragraph (19) of this regulation.

(19) The amount referred to in paragraph (18) of this regulation shall be calculated or estimated in respect of a gain realised by the exercise at any time of a subsequent right, on the basis of the best estimate that can reasonably be made of such part of that gain which 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;

for the purposes of this paragraph “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 his assessment of earnings-related contributions in respect of his acquisition, assignment or release of the first right, (a just apportionment being 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).

- (20) For the purposes of paragraphs (16) to (19) and this paragraph of this regulation—
- (a) “total market value” means the price which the shares which 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 that latter 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 such 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) in so far as the context permits, “shares” include stock;
  - (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.”.

### **Amendment of regulation 19 of the principal Regulations**

**3.—(1)** Regulation 19 of the principal Regulations (payments to be disregarded) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

- (a) omit sub-paragraph (mm)(**20**);
- (b) after sub-paragraph (zg)(**21**), add—
  - “(zh) a payment by way of—
    - (i) a gain realised by the exercise of a right to acquire shares in a body corporate chargeable to tax under Schedule E by virtue of section 135 of the Income and Corporation Taxes Act 1988 (gains by directors and employees from share options),
    - (ii) the grant of a right to acquire shares obtained on, or after, 6th April 1999 which is capable of being exercised more than ten years after it is obtained, where that right and those shares are not readily convertible assets;
  - (zi) a payment by way of the grant of a right obtained on, or after, 6th April 1999 to acquire shares which is not capable of being exercised more than ten years after it is obtained;
  - (zj) a payment by way of the conferment of a conditional interest in shares where that interest will, or might, remain only conditional until a time more than five years after its acquisition, which is acquired pursuant to the exercise of a right to acquire shares granted on, or after, 6th April 1999 where—

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(20) Sub-paragraph (mm) was inserted by regulation 2 of S.I. 1998/2320.

(21) Sub-paragraph (zg) was added by regulation 6(4) of S.I. 1998/2211.

- (i) the conferment of that interest would otherwise be chargeable to tax by virtue of section 135 of the Income and Corporation Taxes Act 1988, and
    - (ii) the acquisition of that interest would be treated as earnings by virtue of regulation 17AB of these Regulations (further provision as to payments to be treated as earnings)(22);
  - (zk) a payment by way of the acquisition of an interest in shares pursuant to a right to acquire shares granted before 9th April 1998 where the acquisition of that interest would be treated as earnings by virtue of regulation 17AB of these Regulations;
  - (zl) 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 first body corporate”) chargeable to tax under Schedule E by virtue of section 135 of the Income and Corporation Taxes Act 1988 where a subsequent right—
    - (i) forms all, or part of, the consideration given for the assignment or release of the first right, and
    - (ii) the subsequent right is—
      - (aa) a right to acquire shares in the first body corporate or any other body corporate; and
      - (bb) not treated as consideration for the assignment or release of the first right by virtue of section 136(1) of the Income and Corporation Taxes Act 1988,but this sub-paragraph shall not apply where the first right was acquired before 6th April 1999 and 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;
  - (zm) a payment by way of a gain realised by the exercise, or by the assignment or release, of a right obtained before 6th April 1999 to acquire shares in a body corporate chargeable to tax under Schedule E by virtue of section 135 of the Income and Corporation Taxes Act 1988, unless—
    - (i) that right (“the subsequent right”)—
      - (aa) forms all, or part of, the consideration given for the assignment or release of a right to acquire shares in a body corporate (“the first right”);
      - (bb) is a right to acquire shares in the first body corporate or any other body corporate;
      - (cc) is not treated as consideration for the assignment or release of the first right by virtue of section 136(1) of the Income and Corporation Taxes Act 1988; and
    - (ii) 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.”.
- (3) After paragraph (10)(23), add—
- “(11) For the purposes of paragraphs (1)(zh), (zl) and (zm) and this paragraph of this regulation—
- (a) “body corporate” includes—

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(22) Regulation 17AB was inserted by regulation 4 of S.I. 1998/2211.

(23) Paragraph (10) was added by regulation 6(9) of S.I. 1998/2211.

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

### **Insertion of Part IIB into the principal Regulations**

4. After regulation 22H (calculation of Class 1A contributions)(**24**), insert—

## **“PART IIB**

### **CALCULATION OF, AND EXCEPTION FROM, LIABILITY FOR CLASS 1B CONTRIBUTIONS**

#### **Calculation of Class 1B contributions**

**22I.** Where a person is liable to pay a Class 1B contribution in accordance with the provisions of section 10A of the Social Security Contributions and Benefits Act 1992 (Class 1B contributions), the amount of that contribution shall be calculated to the nearest £0.01 and any amount of £0.005 or less shall be disregarded.

#### **Exception from liability to pay Class 1B contributions**

**22J.—**(1) A person shall be excepted from liability to pay a Class 1B contribution for any year in respect of—

- (a) the amount of any of the chargeable emoluments under section 10A(4) of the Social Security Contributions and Benefits Act 1992 of an employee included in a PAYE settlement agreement; and
- (b) the total amount of income tax in respect of which that person is accountable to the Board of Inland Revenue in relation to emoluments of such an employee in accordance with a PAYE settlement agreement,

where the employee is—

- (i) subject to the legislation of a contracting party, other than the United Kingdom, to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(**25**), or
- (ii) a person subject to the legislation of a country outside the United Kingdom in respect of whom there is an Order in Council under section 179 of the Social Security Administration Act 1992 (reciprocal agreements with

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(24) Regulation 22H was inserted by regulation 7 of S.I. 1998/2211.

(25) OJNo. L1, 3.1.1994, p. 7.

countries outside the United Kingdom)(26) giving effect to a reciprocal agreement.

(2) Where under the foregoing provisions of this regulation, a person is excepted from liability to pay a Class 1B contribution for any year, that person shall be entitled, if he so wishes, to pay that contribution for that year.”

#### **Amendment of regulation 31 of the principal Regulations**

5. In regulation 31 (disposal of contributions not properly paid)(27)—

- (a) in paragraph (1) after “Class 1A”, insert “, Class 1B”;
- (b) for paragraph (2), substitute—

“(2) Where the whole or any part of a Class 1A contribution or a Class 1B contribution falls to be returned by the Secretary of State to any person under regulation 32(1)(28) of these Regulations, or any part of a Class 1A contribution falls to be repaid by the Secretary of State to any person under regulation 33A(1)(29) of these Regulations, the Secretary of State may treat—

- (a) the amount of that Class 1A contribution or, as the case may be, any part of such a contribution, as a payment on account of any secondary Class 1 contributions, Class 1B contribution or Class 2 contributions;
- (b) the amount of that Class 1B contribution or, as the case may be, any part of such a contribution, as a payment on account of any secondary Class 1 contributions, Class 1A contribution or Class 2 contributions,

properly payable by that person.”

#### **Amendment of regulation 32 of the principal Regulations**

6. In regulation 32(1)(a) (which provides for the return of contributions paid in error or in excess of the annual maximum) after “Class 1A contributions”, insert “and Class 1B contributions”.

#### **Amendment of regulation 44 of the principal Regulations**

7. In regulation 44(1) of the principal Regulations (application for allocation of national insurance number) for “to the Secretary of State”, substitute “either to the Secretary of State or to the Commissioners of Inland Revenue”.

#### **Amendment of regulation 46 of the principal Regulations**

8. In regulation 46 (collection and recovery of earnings-related contributions and Class 1A contributions)(30) for the words “and Class 1A contributions” in the heading to the regulation and in both places where they occur, substitute “, Class 1A contributions and Class 1B contributions”.

#### **Amendment of regulation 119 of the principal Regulations**

9. In regulation 119 (conditions as to residence or presence in Great Britain)(31)—

- (a) in paragraph (1) after “Class 1A contributions”, insert “or Class 1B contributions”;

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(26) Section 179 was amended by paragraph 70 of Schedule 2 to, the Jobseekers Act 1995 (c. 18).

(27) Regulation 31 was amended by regulation 2 of S.I. 1992/97.

(28) Paragraph (1) was amended by regulation 11(a) of S.I. 1984/77, regulation 3 of S.I. 1992/97 and regulation 2 of S.I. 1992/1440.

(29) Regulation 33A was inserted by regulation 4 of S.I. 1992/97 and amended by regulation 3 of S.I. 1992/1440.

(30) Regulation 46 was amended by regulation 5 of S.I. 1992/97.

(31) Regulation 119 was amended by regulation 3 of S.I. 1989/572 and regulation 8 of S.I. 1992/97.

- (b) in paragraph (1)(b) for “or Class 1A contributions,” substitute “, Class 1A contributions or Class 1B contributions,” and after “secondary contributor”, insert “or the person liable for the payment of Class 1B contributions”;
- (c) after paragraph (2)(b), add—
  - “(c) no Class 1B contribution shall be payable in respect of any PAYE settlement agreement in connection with such employment,”.

### **Amendment of regulation 120 of the principal Regulations**

**10.** In regulation 120(2)(c) (which provides that a Class 1A contribution is to be payable in respect of the first 52 weeks of employment abroad)(**32**) after “Class 1A contributions”, insert “and Class 1B contributions”.

### **Amendment of Schedule 1 to the principal Regulations**

**11.**—(1) Schedule 1 to the principal Regulations (which, with extensions and modifications, contains provisions formerly contained in the Income Tax (Employments) Regulations 1973(**33**) as they applied to earnings-related contributions under the Social Security Act 1975 and subsequently to Class 1A contributions under the Social Security Contributions and Benefits Act 1992(**34**)) shall be amended in accordance with the following provisions of this regulation.

(2) In the heading(**35**) to Schedule 1 and in the heading to Part IV of that Schedule(**36**) for “AND CLASS 1A CONTRIBUTIONS”, substitute “, CLASS 1A CONTRIBUTIONS AND CLASS 1B CONTRIBUTIONS”.

(3) In Regulation 13 (calculation of deduction) of Schedule 1 to the principal Regulations—

- (a) in paragraph (1) for “section 4(3) of the Act”, substitute “section 6(3) of the Social Security Contributions and Benefits Act 1992”;
- (b) in paragraph (2A)—
  - (i) in head (ii) of sub-paragraph (b) for “section 18 of the Social Security (Miscellaneous Provisions) Act 1977”, substitute “section 112 of the Social Security Contributions and Benefits Act 1992 (certain sums to be earnings)(**37**)”,
  - (ii) in head (iii)(**38**) of sub-paragraph (b) omit the words from “except where,” to “apply”;
- (c) in paragraph (3A)(**39**)—
  - (i) for “the provisions of the preceding paragraph”, substitute “paragraphs (2A), (3C) and (3F)”,
  - (ii) for the words “that paragraph” in both places where they occur, substitute “those paragraphs”;
- (d) after paragraph (3A), insert—

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(32) Sub-paragraph (c) was added by regulation 9 of [S.I. 1992/97](#).

(33) [S.I. 1973/334](#); this and its subsequent amending instruments were consolidated as [S.I. 1993/744](#).

(34) The Social Security Contributions and Benefits Act 1992 consolidated, inter alia, the Social Security Act 1975 (c. 14) (“the 1975 Act”). Schedule 1 to the Social Security (Contributions) Regulations 1979 which was made, inter alia, pursuant to powers in Schedule 1 to the 1975 Act, contained provisions of the Income Tax (Employment) Regulations 1973 as they applied (with extensions and modifications) to earnings-related and Class 1A contributions under the 1975 Act.

(35) The heading to Schedule 1 was amended by regulation 10 of [S.I. 1992/97](#).

(36) The heading to Part IV was amended by regulation 14 of [S.I. 1992/97](#).

(37) Section 112 was amended by paragraph 51(4) of Schedule 1 to the Employment Rights Act 1996 (c. 18).

(38) Head (iii) was amended by regulation 3 of [S.I. 1982/1033](#).

(39) Paragraph (3A) was amended by regulation 16(b) of [S.I. 1984/77](#).

“(3B) Paragraph (3C) of this Regulation applies where an employer makes a payment consisting of solely non-monetary earnings, or a combination of monetary and non-monetary earnings, to—

- (a) an employee;
- (b) an ex-employee,

and at the time of the payment of those earnings there are no, or insufficient, monetary earnings from which the employer could deduct the amount of earnings-related contributions which the employee, or ex-employee as the case may be, is liable to pay under section 6(3)(a) of the Social Security Contributions and Benefits Act 1992;

for these purposes an “ex-employee” means a person who—

- (i) ceases to be employed by the employer in a particular year (“the cessation year”), and
- (ii) receives such earnings from the employer after the cessation of employment but in the cessation year.

(3C) Where, in the circumstances specified in paragraph (3B) of this Regulation, the employer does not deduct from the earnings referred to in that paragraph the full amount of earnings-related contributions which by virtue of these Regulations he is entitled to deduct, he may, subject to the provisions of paragraph (3A) of this Regulation, recover the amount so underdeducted by deduction from any subsequent payment of monetary earnings to that employee, or ex-employee as the case may be, during the same year.

(3D) Paragraph (3F) of this Regulation applies where—

- (a) a person (“the ex-employee”) ceases in a particular tax year (“the cessation year”) to be employed by a particular employer (“the employer”); and
- (b) the ex-employee receives from the employer in the cessation year, after the cessation of employment, earnings in the form of—
  - (i) a beneficial interest in shares,
  - (ii) a conditional interest in shares or a beneficial interest in convertible shares treated as earnings by virtue of regulation 17AB of the Main Regulations (further provision as to payments to be treated as earnings),
  - (iii) any gain on which the ex-employee is chargeable to tax by virtue of section 135 of the Income and Corporation Taxes Act 1988 (gains by directors and employees from share options); and
- (c) at the time of the payment of those earnings there are no, or insufficient, monetary earnings from which the employer could deduct the amount of earnings-related contributions which the employee is liable to pay under section 6(3)(a) of the Social Security Contributions and Benefits Act 1992.

(3E) For the purposes of paragraph (3D) of this Regulation—

- (a) “conditional shares” means shares within the meaning given for the purposes of sections 140A and 140B of the Income and Corporation Taxes Act 1988<sup>(40)</sup> in section 140C of that Act and, by virtue of section 140A(9) of that Act, includes securities issued by a company;
- (b) “convertible shares” means shares which are convertible within the meaning of section 140D of the Income and Corporation Taxes Act 1988.

(3F) Where, in the circumstances specified in paragraph (3D) of this Regulation, the employer has not deducted from the earnings referred to in sub-paragraph (b) of

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<sup>(40)</sup> Sections 140A-H were inserted by sections 50-53 of the Finance Act 1998 (c. 36).

that paragraph the full amount of earnings-related contributions which by virtue of these Regulations he is entitled to deduct, he may, without prejudice to the provisions of paragraph (3C) of this Regulation and subject to the provisions of paragraph (3G)(b) below, recover the amount so underdeducted by deduction from the proceeds of sale of some, or all, of—

- (a) the shares referred to in sub-paragraph (b)(i) and (ii) of paragraph (3D),
- (b) the shares which form the subject matter of the option referred to in sub-paragraph (b)(iii) of paragraph (3D).

(3G) For the purposes of paragraph (3F) of this Regulation—

- (a) the whole of the amount underdeducted may be recovered from the proceeds of sale of some, or all, of the shares referred to in that paragraph; and
- (b) the employee's prior written consent to that sale and the recovery of all or part of the underdeduction from the proceeds thereof, shall be required.”.

(4) In Regulation 26C (payment of Class 1A contributions)(41)—

- (a) in the heading after “Class 1A contributions”, add “and Class 1B contributions”;
- (b) after paragraph (1)(42), insert—

“(1A) A person who is liable to pay a Class 1B contribution (“the employer”), shall pay that Class 1B contribution to the Collector not later than 19th October in the year immediately following the end of the year in respect of which that contribution is payable.”;

- (c) in paragraph (3) after “Class 1A contributions”, insert “or Class 1B contributions”.

(5) For Regulation 28 (recovery of earnings-related contributions or Class 1A contributions)(43), substitute—

**“Recovery of earnings-related contributions, Class 1A contributions or Class 1B contributions**

**28.**—(1) The provisions of the Income Tax Acts and of any regulations under section 203 of the Income and Corporation Taxes Act 1988 (pay as you earn)(44) relating to the recovery of tax shall apply to the recovery of—

- (a) any amount of earnings-related contributions which an employer is liable to pay to the Collector for any income tax period in accordance with Regulation 26(45) or 26A(46) or which he is deemed to be liable to pay to the Collector for any income tax period under Regulation 27A(47);
- (b) any amount of Class 1A contributions which an employer is liable to pay to the Collector in respect of any year in accordance with Regulation 26C(1) or 26D(5)(48)

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(41) Regulation 26C was inserted by regulation 15 of S.I. 1992/97.

(42) Paragraph (1) was amended by regulation 8 of S.I. 1992/1440 and regulation 7(3) of S.I. 1996/2407.

(43) Regulation 28 was substituted by regulation 18 of S.I. 1992/97 and amended by regulation 12 of S.I. 1992/1440 and regulation 7(4)(c) of S.I. 1996/2407.

(44) Section 203 was amended by section 128 of, and paragraph 4 of Schedule 3 to, the Finance Act 1988 (c. 39), section 45(3) of the Finance Act 1989 (c. 26) and paragraph 38 of Part II of Schedule 19 and Part V of Schedule 26 to, the Finance Act 1994 (c. 9) and section 119 of the Finance Act 1998 (c. 36).

(45) Regulation 26 was substituted by regulation 2(3) of S.I. 1991/1632 and amended by regulation 13(3) of S.I. 1996/195.

(46) Regulation 26A was substituted by regulation 2(3) of S.I. 1991/1632 and amended by regulation 3(2) of S.I. 1995/730 and regulation 13(4) of S.I. 1996/195.

(47) Regulation 27A was inserted by regulation 3 of S.I. 1985/396 and amended by regulation 2(2) of S.I. 1990/605, regulation 2(5) of S.I. 1991/1632 and regulation 3(3) of S.I. 1995/730.

(48) Regulation 26D was inserted by regulation 9 of S.I. 1992/1440 and amended by regulation 3 of S.I. 1997/820.

or which he is deemed to be liable to pay to the Collector in respect of any year under Regulation 27B(49); or

- (c) any amount of Class 1B contributions which an employer is liable to pay to the Collector in respect of any year in accordance with Regulation 26C(1A),

as if each of those amounts had been charged to tax by way of an assessment on the employer under Schedule E:

Provided that, in the application to any proceedings taken by virtue of this Regulation of any such provisions limiting the amount which is recoverable in those proceedings, there shall be disregarded any amount of tax which may by virtue of paragraphs (2) to (4) of this Regulation be included as part of the cause of action or matter of complaint in those proceedings.

- (2) Proceedings may be brought for the recovery of the total amount of—
  - (a) earnings-related contributions which the employer is liable to pay to the Collector for any income tax period;
  - (b) Class 1A contributions which the employer is liable to pay to the Collector in respect of any year;
  - (c) Class 1B contributions which the employer is liable to pay to the Collector in respect of any year;
  - (d) a combination of those classes of contributions as specified in sub-paragraphs (a), (b) and (c) of this paragraph; or
  - (e) any of the contributions as specified in sub-paragraph (a), (b), (c) or (d) of this paragraph in addition to any tax which the employer is liable to pay to the Collector for any income tax period,

without specifying the respective amounts of those contributions and of tax, or distinguishing the amounts which the employer is liable to pay in respect of each employee and without specifying the employees in question.

- (3) For the purposes of—
  - (a) proceedings under section 66 of the Taxes Management Act 1970(50) (including proceedings under that section as applied by the provisions of this Regulation);
  - (b) summary proceedings (including in Scotland proceedings in the sheriff court or in the sheriff's small debt court),

the total amount of contributions, in addition to any tax which the employer is liable to pay to the Collector for any income tax period, referred to in paragraph (2) of this Regulation shall, subject to the provisions of the proviso to paragraph (1) of this Regulation, be one cause of action or one matter of complaint.

- (4) Nothing in paragraph (2) or (3) of this Regulation shall prevent the bringing of separate proceedings for the recovery of each of the several amounts of—
  - (a) earnings-related contributions which the employer is liable to pay for any income tax period in respect of each of his several employees;
  - (b) Class 1A contributions which the employer is liable to pay in respect of any year in respect of each of his several employees;

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(49) Regulation 27B was inserted by regulation 17 of S.I. 1992/97 and amended by regulation 11 of S.I. 1992/1440, regulation 3(4) of S.I. 1995/730 and regulation 7(4)(b) of S.I. 1996/2407.

(50) 1970 c. 9. Section 66 was amended by Part II of Schedule 1 to the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397), section 57(2) of the Finance Act 1984 (c. 34) and the Schedule to the High Court and County Courts Jurisdiction Order 1991 (S.I. 1991/724).

- (c) Class 1B contributions which the employer is liable to pay in respect of any year in respect of each of his several employees; or
- (d) tax which the employer is liable to pay for any income tax period in respect of each of his several employees.”.

(6) In Regulation 28A (interest on overdue earnings-related contributions or Class 1A contributions)(51)—

(a) in the heading for “or Class 1A contributions”, substitute “, Class 1A contributions or Class 1B contributions”;

(b) for paragraph (1), substitute—

“(1) Subject to Regulation 28D(52), where, in relation to the year ended 5th April 1993 or any subsequent year, an employer has not—

(a) within 14 days of the end of the year paid an earnings-related contribution which he is liable to pay in respect of that year or a Class 1A contribution which he is liable to pay in that year;

(b) by 19th October next following the year in respect of which it was due paid a Class 1B contribution,

any contribution not so paid shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 from the reckonable date until payment.”;

(c) in paragraph (2) for “or a Class 1A contribution,” substitute, “, a Class 1A contribution or a Class 1B contribution,”;

(d) for paragraph (3), substitute—

“(3) For the purposes of this Regulation—

(a) “employer” means, in relation to a Class 1B contribution, the person liable to pay such a contribution in accordance with section 10A of the Social Security Contributions and Benefits Act 1992;

(b) “the reckonable date” means, in relation to—

(i) an earnings-related contribution, the 14th day after the end of the year in respect of which it was due;

(ii) a Class 1A contribution, the 14th day after the end of the year in which it was due to be paid;

(iii) a Class 1B contribution, the 19th October next following the year in respect of which it was due.”.

(7) For Regulation 28B (payment of interest on repaid earnings-related contributions or Class 1A contributions)(53), substitute—

**“Payment of interest on repaid earnings-related contributions, Class 1A contributions or Class 1B contributions**

**28B.**—(1) Where an earnings-related contribution or a Class 1A contribution paid by an employer in respect of the year ended 5th April 1993 or any subsequent year not later than the year ended 5th April 1999 is repaid to him and that repayment is made after the relevant date, any such repaid contribution shall carry interest at the rate applicable under paragraph 6(3) of

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(51) Regulation 28A was inserted by regulation 2 of S.I. 1993/821.

(52) Regulation 28D was inserted by regulation 2 of S.I. 1993/821.

(53) Regulation 28B was inserted by regulation 2 of S.I. 1993/821.

Schedule 1 to the Social Security Contributions and Benefits Act 1992 from the relevant date until the order for the repayment is issued.

(2) For the purposes of paragraph (1) of this Regulation “the relevant date” is—

- (a) in the case of an earnings-related contribution or a Class 1A contribution overpaid more than 12 months after the end of the year in respect of which the payment was made, the last day of the year in which it was paid;
- (b) in any other case, the last day of the year after the year in respect of which the contribution in question was paid.

(3) Where an earnings-related contribution, a Class 1A contribution or a Class 1B contribution paid by an employer in respect of the year ended 5th April 2000 or any subsequent year is repaid to him and that repayment is made after the relevant date, any such repaid contribution shall carry interest at the rate applicable under paragraph 6(3) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 from the relevant date until the order for the repayment is issued.

(4) For the purposes of paragraph (3) of this Regulation “the relevant date” is—

- (a) in the case of—
  - (i) an earnings-related contribution, the 14th day after the end of the year in respect of which that contribution was paid,
  - (ii) a Class 1A contribution, the 14th day after the end of the year in which that contribution was due to be paid, or
  - (iii) a Class 1B contribution, the 19th October next following the year in respect of which that contribution was paid, or;
- (b) the date on which the earnings-related contribution, Class 1A contribution or Class 1B contribution was paid if that date is later than the date referred to in subparagraph (a) of this paragraph.”.

(8) For Regulation 28C (repayment of interest)(54), substitute—

**“Repayment of interest**

**28C.** Where a secondary contributor or a person liable to pay a Class 1A contribution or a Class 1B contribution has paid interest on an earnings-related contribution, a Class 1A contribution or a Class 1B contribution, that interest shall be repaid to him where—

- (a) the interest paid is found not to have been due to be paid, although the contribution in respect of which it was paid was due to be paid;
- (b) the earnings-related contribution, Class 1A contribution or Class 1B contribution in respect of which interest was paid is returned or repaid to him in accordance with the provisions of regulation 32 or 33A of the Main Regulations.”.

(9) In Regulation 28D (remission of interest)—

- (a) in paragraph (2)(a) for “or a Class 1A contribution”, substitute “, a Class 1A contribution or a Class 1B contribution”;
- (b) after paragraph (2)(b), add—
  - “(c) an appeal against a determination as to the amount of income tax in respect of which the person liable to pay a Class 1B contribution is accountable in accordance with a PAYE settlement agreement has been brought but not finally determined.”;

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(54) Regulation 28C was inserted by regulation 2 of [S.I. 1993/821](#).

(c) after paragraph (3)(c)(ii), add—

“(iii) paragraph (2)(c) of this Regulation, “the first relevant date” means the date on which the appeal against the determination as to the amount of income tax payable to the Collector is submitted to the Board of Inland Revenue and “the second relevant date” means the date 14 days after that appeal is finally disposed of.”.

(10) In Regulation 30(6) (which provides for the preparation of a certificate of unpaid contributions by the Collector at the end of the year)(55), omit “paragraphs (1) and (2) of”.

(11) In Regulation 32 (inspection of employer’s records)—

(a) in paragraphs (1)(aa)(56) and (2)(aa)(57) after “Class 1A contributions” in each place where they appear, insert “or Class 1B contributions”;

(b) in paragraph (2)(b)(58) for “or Class 1A contributions, or both”, substitute “, Class 1A contributions or Class 1B contributions, or a combination”;

(c) in paragraph (4), omit “paragraphs (1) and (2) of”;

(d) in paragraph (5)(59) after “Class 1A contribution”, insert “or Class 1B contribution”;

(e) after paragraph (5), add—

“(6) For the purposes of this Regulation “employer” means, in relation to a Class 1B contribution, the person liable to pay such a contribution in accordance with section 10A of the Social Security Contributions and Benefits Act 1992.”.

### **Amendment of the Statutory Maternity Pay (General) Regulations 1986**

**12.** For regulation 20(2) of the Statutory Maternity Pay (General) Regulations 1986 (meaning of “earnings”)(60), substitute—

“(2) For the purposes of section 171(4) of the Contributions and Benefits Act, the expression “earnings” refers to gross earnings and includes any remuneration or profit derived from a woman’s employment except any payment or amount which is—

(a) excluded from the computation of a person’s earnings under regulation 19 or 19B(61) of the Social Security (Contributions) Regulations 1979 (payments to be disregarded and payments to directors to be disregarded respectively);

(b) a chargeable emolument under section 10A of the Social Security Contributions and Benefits Act 1992, except where, in consequence of such a chargeable emolument being excluded from earnings, a woman would not be entitled to statutory maternity pay.”.

### **Amendment of the Statutory Sick Pay (General) Regulations 1982**

**13.** For regulation 17(2) of the Statutory Sick Pay (General) Regulations 1982 (meaning of “earnings”)(62), substitute—

“(2) For the purposes of section 163(2) of the Contributions and Benefits Act, the expression “earnings” refers to gross earnings and includes any remuneration or profit derived from a person’s employment except any payment or amount which is—

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(55) Paragraph (6) was substituted by regulation 19(6) of S.I. 1992/97 and amended by regulation 13(4) of S.I. 1992/1440.

(56) Paragraph (1)(aa) was inserted by regulation 20(2) of S.I. 1992/97.

(57) Paragraph (2)(aa) was inserted by regulation 20(4) of S.I. 1992/97.

(58) Paragraph (2)(b) was amended by regulation 20(5) of S.I. 1992/97.

(59) Paragraph (5) was added by regulation 8(b) of S.I. 1981/82 and amended by regulation 18 of S.I. 1984/77, regulation 20(6) of S.I. 1992/97 and regulation 7(4)(d) of S.I. 1996/2407.

(60) S.I. 1986/1960; paragraph (2) was substituted by regulation 13(3) of S.I. 1992/2595.

(61) To which there are amendments not relevant to this Instrument.

(62) S.I. 1982/894; paragraph (2) was substituted by regulation 15(3) of S.I. 1992/2595.

- (a) excluded from the computation of a person's earnings under regulation 19 or 19B of the Social Security (Contributions) Regulations 1979;
- (b) a chargeable emolument under section 10A of the Social Security Contributions and Benefits Act 1992, except where, in consequence of such a chargeable emolument being excluded from earnings, a person would not be entitled to statutory sick pay."

Signed by authority of the Secretary of State for Social Security.

5th March 1999

*Stephen C. Timms*  
Minister of State,  
Department of Social Security

The Commissioners of Inland Revenue hereby concur.

5th March 1999

*S. C. T. Matheson*  
*Tim Flesher*  
Two of the Commissioners of Inland Revenue

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The regulations contained in this instrument are made by virtue of, or consequential upon, amendments made to the Social Security Contributions and Benefits Act 1992 (c. 4) and the Social Security Administration Act 1992 (c. 5) by the Social Security Act 1998 (c. 14) and the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). This instrument is made before the end of the period of 6 months beginning with the coming into force of sections 50(1) (in part), 53 and 55 of, and paragraph 77(7) of Schedule 7 to, the Social Security Act 1998 on 8th September 1998 and the coming into force of paragraph 31 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 on 25th February 1999. The Regulations are therefore exempt, by virtue of section 173(5)(b) of the Social Security Administration Act 1992 from reference to the Social Security Advisory Committee and have not been so referred.

These Regulations make further amendments to the Social Security (Contributions) Regulations 1979 (S.I. 1979/591) (“the principal Regulations”) to make provision in respect of Class 1B contributions payable by employers in respect of emoluments included in PAYE settlement agreements, gains from the exercise, release or assignment of a right to acquire shares in a body corporate and interest on refunded contributions. These Regulations also make consequential amendments to the Statutory Maternity Pay (General) Regulations 1986 (S.I. 1986/1960) and the Statutory Sick Pay (General) Regulations 1982 (S.I. 1982/894) in respect of Class 1B contributions.

Regulation 2 amends regulation 18 of the principal Regulations (calculation of earnings) by omitting paragraphs (2A), (2B), (4), (5), (5A) and (9A) and by making a consequential amendments to paragraphs (2), (7A) and (9) thereof. Regulation 2 further amends regulation 18 by adding new paragraphs (16) to (20) to provide for the calculation of earnings in respect of any payment by way of a gain arising from the exercise, assignment or release of a right to acquire shares in a body corporate and for matters incidental thereto.

Regulation 3 amends regulation 19 of the principal Regulations (payments to be disregarded). Regulation 3(2) omits sub-paragraph (mm) of, and adds six new sub-paragraphs (zh)-(zm) to, regulation 19(1). New sub-paragraph (zh) relates to a payment by way of a gain realised by the exercise of a right to acquire shares where that right and those shares are not readily convertible assets. New sub-paragraph (zi) relates to a payment by way of the grant of a right on or after 6th April 1999 to acquire shares which is not capable of being exercised more than 10 years after it is obtained. New sub-paragraph (zj) relates to a payment by way of the conferment of a beneficial interest in conditional shares pursuant to the exercise of a right to acquire shares granted on or after 6th April 1999. New sub-paragraph (zk) relates to a payment by way of the acquisition of conditional and convertible shares pursuant to a right to acquire shares granted before 9th April 1998. New sub-paragraph (zl) relates to a payment by way of a gain realised on the assignment or release of a right to acquire shares where a subsequent right to acquire shares forms all or part of the consideration for that assignment or release. New sub-paragraph (zm) relates to a payment by way of a gain realised on the exercise, assignment or release of a right to acquire shares granted before 6th April 1999 unless that right was received in consideration for the assignment or release of another right and was of a substantially greater total market value than that of the right it replaced. Regulation 3(3) makes incidental provision for the purposes of new sub-paragraphs (zh), (zl) and (zm).

Regulation 4 inserts two new regulations (22I and 22J) into the principal Regulations which provide for the calculation of, and exception from liability for, Class 1B contributions.

Regulation 7 amends regulation 44 of the principal Regulations so that applications for the allocation of national insurance numbers may be made either to the Secretary of State or to the Inland Revenue.

Regulation 11 of these Regulations amends Schedule 1 to the principal Regulations, which contains provisions of the Income Tax (Employments) Regulations 1973 as applied to the collection of earnings-related contributions and Class 1A contributions.

Regulation 11 of these Regulations also extends those provisions to Class 1B contributions for the purposes of the payment and recovery of those contributions and the inspection of employer's records and to provide for the recovery of contributions following a payment to an employee, or an ex-employee, consisting wholly or partially of non-monetary earnings in cases where there are no, or insufficient, monetary earnings from which such contributions could be deducted at the time of that payment.

Regulation 12 of these Regulations substitutes a new regulation 20(2) (meaning of "earnings") into the Statutory Maternity Pay (General) Regulations 1986 to provide for emoluments included in a PAYE settlement agreement to be excluded from the calculation of earnings for the purposes of statutory maternity pay unless such exclusion results in the woman failing to qualify for the benefit.

Regulation 13 of these Regulations substitutes a new regulation 17(2) (meaning of "earnings") into the Statutory Sick Pay (General) Regulations 1982 to provide for emoluments included in a PAYE settlement agreement to be excluded from the calculation of earnings for the purposes of statutory sick pay unless such exclusion results in a person failing to qualify for the benefit.

Regulations 5 and 6 and 8 to 10 make consequential amendments to regulations 31, 32, 46, 119 and 120 of the principal Regulations.

The costs to business of these amendments were covered in the Regulatory Impact Assessment for the Social Security Act 1998 in accordance with, and in consequence of which, these Regulations are made. That Assessment concluded that significant administrative costs would not be imposed on business and that the provisions of regulation 11(3) is beneficial to employers. A copy of that Regulatory Impact Assessment has been placed in the libraries of both Houses of Parliament and can be obtained from the Department of Social Security, Better Regulation Unit, 3rd Floor, The Adelphi, 1—11 John Adam Street, London WC2N 6HT.