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STATUTORY INSTRUMENTS

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**1999 No. 567**

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

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

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(1) Paragraph (2) was added by regulation 2(3) of [S.I. 1991/2505](#) and regulation 3(a) of [S.I. 1996/3031](#).  
(2) 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](#).  
(3) Paragraph (7A) was inserted by regulation 3(b) of [S.I. 1996/3031](#).  
(4) Paragraph (9) was substituted by regulation 5(4) of [S.I. 1998/2211](#) and amended by regulation 2(c) of [S.I. 1998/2894](#).  
(5) Paragraph (15) was substituted by regulation 5(4) of [S.I. 1998/2211](#).  
(6) The definition of “readily convertible asset” was inserted by regulation 2(1)(a) of [S.I. 1998/2211](#).

- (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 Income and Corporation Taxes Act 1988 (provisions supplementary to section 135)(7), 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.”.