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STATUTORY INSTRUMENTS

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**1998 No. 1506**

**The Social Security (Northern Ireland) Order 1998**

**PART III**

**CONTRIBUTIONS**

*Amendments of the Contributions and Benefits Act*

**Apportionment of payments, etc. made for more than one earner**

**45.** After subsection (2) of section 3 of the Contributions and Benefits Act (“earnings” and “earner”) there shall be inserted the following subsection—

“(2A) Regulations made for the purposes of subsection (2) above may provide that, where a payment is made or a benefit provided to or for the benefit of two or more earners, a proportion (determined in such manner as may be prescribed) of the amount or value of the payment or benefit shall be attributed to each earner.”.

**Payments on account of directors' contributions**

**46.** After subsection (3) of section 3 of the Contributions and Benefits Act there shall be added the following subsections—

“(4) Subsection (5) below applies to regulations made for the purposes of subsection (2) above which make special provision with respect to the earnings periods of directors and former directors of companies.

(5) Regulations to which this subsection applies may make provision—

- (a) for enabling companies, and directors and former directors of companies, to pay on account of any earnings-related contributions that may become payable by them such amounts as would be payable by way of such contributions if the special provision had not been made; and
- (b) for requiring any payments made in accordance with the regulations to be treated, for prescribed purposes, as if they were the contributions on account of which they were made.”.

**Payments treated as remuneration and earnings**

**47.—**(1) For subsection (4) of section 4 of the Contributions and Benefits Act (payments treated as remuneration and earnings) there shall be substituted the following subsection—

“(4) For the purposes of section 3 above there shall be treated as remuneration derived from an employed earner’s employment—

- (a) any gain on which the earner is chargeable to tax by virtue of section 135 (gains by directors and employees from share options) of the Income and Corporation Taxes Act 1988 (“the 1988 Act”);

(b) any sum paid (or treated as paid) to or for the benefit of the earner which is chargeable to tax by virtue of section 313 of the 1988 Act (taxation of consideration for certain restrictive undertakings).”.

(2) After subsection (5) of that section there shall be added the following subsection—

“(6) For the purposes of section 3 above regulations may make provision for treating as remuneration derived from an earner’s employment any amount on which the earner is, by virtue of any provision of sections 140A to 140H of the 1988 Act, chargeable to income tax under Schedule E in respect of an acquisition of shares or an interest in shares.”.

(3) Paragraph (1), so far as relating to a sum which is chargeable to tax by virtue of section 313 of the Income and Corporation Taxes Act 1988, shall have effect in relation to any undertaking given on or after 10th July 1997.

(4) Regulations under subsection (6) of section 4 of the Contributions and Benefits Act (as added by paragraph (2))—

(a) shall not be made before the passing of the Finance Act 1998; but

(b) may make provision having effect in relation to acquisitions on or after 6th April 1998.

### **Class 1 contributions**

**48.**—(1) For subsection (1) of section 5 of the Contributions and Benefits Act (earnings limits for Class 1 contributions) there shall be substituted the following subsection—

“(1) For the purposes of this Act there shall for every tax year be—

(a) a lower earnings limit (for primary Class 1 contributions);

(b) an upper earnings limit (for primary Class 1 contributions); and

(c) an earnings threshold (for secondary Class 1 contributions),

and those limits and that threshold shall be the amounts specified for that year by regulations which, in the case of those limits, shall be made in accordance with subsections (2) and (3) below.”.

(2) For subsection (1) of section 6 of that Act (liability for Class 1 contributions) there shall be substituted the following subsection—

“(1) Where in any tax week earnings are paid to or for the benefit of an earner over the age of 16 in respect of any one employment of his which is employed earner’s employment—

(a) a primary Class 1 contribution shall be payable in accordance with this section and section 8 below if the amount paid exceeds the current lower earnings limit (or the prescribed equivalent in the case of earners paid otherwise than weekly); and

(b) a secondary Class 1 contribution shall be payable in accordance with this section and section 9 below if the amount paid exceeds the current earnings threshold (or the prescribed equivalent in the case of earners paid otherwise than weekly).”.

(3) For subsections (1) and (2) of section 8 of that Act (calculation of primary Class 1 contributions) there shall be substituted the following subsections—

“(1) Where a primary Class 1 contribution is payable, the amount of that contribution shall be the primary percentage of so much of the earner’s earnings paid in the tax week, in respect of the employment in question, as—

(a) exceeds the current lower earnings limit (or the prescribed equivalent); and

(b) does not exceed the current upper earnings limit (or the prescribed equivalent),

but this subsection is subject to regulations under section 6(5) above and sections 116 to 119 below and to section 37 of the Pensions Act (reduced rates of Class 1 contributions for earnings in contracted-out employment).

(2) For the purposes of this Act the primary percentage shall be 10 per cent., but the percentage is subject to alteration under section 129 of the Administration Act.”

(4) For section 9 of that Act there shall be substituted the following section—

**“9 Calculation of secondary Class 1 contributions.**

(1) Where a secondary Class 1 contribution is payable, the amount of that contribution shall be the secondary percentage of so much of the earnings paid in the tax week, in respect of the employment in question, as exceeds the current earnings threshold (or the prescribed equivalent).

(2) For the purposes of subsection (1) above, the secondary percentage shall be 12.2 per cent., but the percentage is subject to alteration under section 129 of the Administration Act.

(3) Subsection (1) above is subject to regulations under section 6(5) above and sections 116 to 119 below and to section 37 of the Pensions Act.”

**Class 1A contributions**

**49.** In subsection (2) of section 10 of the Contributions and Benefits Act (Class 1A contributions), for paragraph (b) there shall be substituted the following paragraph—

“(b) if paragraph (a) above does not apply, the person who, if the benefit in respect of which the Class 1A contribution is payable were earnings in respect of which Class 1 contributions would be payable, would be liable to pay the secondary Class 1 contribution.”

**Class 1B contributions**

**50.** After section 10 of the Contributions and Benefits Act there shall be inserted the following section—

*“Class 1B contributions*

**Class 1B contributions.**

**10A.—**(1) Where for any tax year a person is accountable to the Inland Revenue in respect of income tax on emoluments of his employees in accordance with a PAYE settlement agreement, a Class 1B contribution shall be payable by him for that tax year in accordance with this section.

(2) The Class 1B contribution referred to in subsection (1) above is payable in respect of—

- (a) the amount of any of the emoluments included in the PAYE settlement agreement which are chargeable emoluments; and
- (b) the total amount of income tax in respect of which the person is accountable for the tax year in accordance with the PAYE settlement agreement.

(3) The amount of the Class 1B contribution referred to in subsection (1) above shall be the Class 1B percentage of the aggregate of the amounts mentioned in paragraphs (a) and (b) of subsection (2) above.

(4) Emoluments are chargeable emoluments for the purposes of subsection (2) above if, apart from section 6(2A) or 10(8A) above, the person accountable in accordance with the PAYE settlement agreement would be liable or entitled to pay secondary Class 1 contributions or Class 1A contributions in respect of them.

(5) Where—

- (a) the PAYE settlement agreement was entered into after the beginning of the tax year; and
- (b) Class 1 contributions were due in respect of any emoluments before it was entered into,

those emoluments shall not be taken to be included in the PAYE settlement agreement.

(6) For the purposes of subsection (3) above the Class 1B percentage shall be 12.2 per cent., but the percentage is subject to alteration under section 129 of the Administration Act.

(7) Regulations may provide for persons to be excepted in prescribed circumstances from liability to pay Class 1B contributions.”.

### **Contributions paid in error**

**51.** After section 19 of the Contributions and Benefits Act there shall be inserted the following section—

#### **“Class 1, 1A or 1B contributions paid in error.**

**19A.**—(1) This section applies where—

- (a) payments by way of Class 1, Class 1A or Class 1B contributions are made in respect of earnings paid to or for the benefit of an earner (or in respect of a benefit made available to an earner) in 1998-99 or a subsequent tax year (“year 1”);
- (b) the payments are made in error, in that the employment from which the earnings are derived (or by reason of which the benefit is made available) is not employed earner’s employment; and
- (c) the person making the payments has not been notified of the error by the Department before the end of the tax year following year 1 (“year 2”).

(2) After the end of year 2 the earner shall, except in such circumstances as may be prescribed, be treated for all purposes relating to—

- (a) contributions and contributory benefits; and
- (b) statutory sick pay and statutory maternity pay,

as if the earnings were derived from (or the benefit were made available by reason of) employed earner’s employment.”.

### **Recovery of primary Class 1 contributions by secondary contributors**

**52.** In paragraph 3 of Schedule 1 to the Contributions and Benefits Act (supplementary provisions as to contributions)—

- (a) in sub-paragraph (3), for the words from “and notwithstanding” to “any enactment” there shall be substituted the words “and, subject to sub-paragraph (4) below but notwithstanding any other provision in any enactment”;
- (b) after that sub-paragraph there shall be added the following sub-paragraphs—

“(4) Sub-paragraph (5) below applies in a case where—

- (a) a person (“the employee”) ceases in a particular tax year (“the cessation year”) to be employed by a particular employer (“the employer”); and
- (b) the employee receives from the employer in the cessation year, after the cessation of the employment, earnings in a form other than money (“non-monetary earnings”).

(5) If and to the extent that regulations so provide, the employer may recover from the employee in such manner as may be prescribed any primary Class 1 contributions paid or to be paid by him on the employee’s behalf in respect of—

- (a) the non-monetary earnings mentioned in sub-paragraph (4) above; or
- (b) any non-monetary earnings received by the employee from the employer in the cessation year before the cessation of the employment,

which he was unable to recover by deduction from the employee’s earnings.”.

### **Contributions returns**

**53.**—(1) In sub-paragraph (3) of paragraph 7 of Schedule 1 to the Contributions and Benefits Act—

- (a) for the words “is liable to” there shall be substituted the words “has been required to pay”; and
- (b) for the words “be liable to” there shall be substituted the words “be required to pay”.

(2) After that paragraph there shall be inserted the following paragraph—

“**7A.**—(1) This paragraph applies where paragraph 7 above applies; and in this paragraph “contributions return” has the same meaning as in that paragraph.

(2) Without prejudice to paragraph 7(2) above or to the powers of the Inland Revenue to penalise omissions or errors in returns, regulations may provide for the Department to impose penalties in respect of a person who, in making a contributions return, fraudulently or negligently—

- (a) fails to provide any information or computation that he is required to provide; or
- (b) provides any such information or computation that is incorrect.

(3) Regulations under sub-paragraph (2) above shall—

- (a) prescribe the rates of penalty, or provide for how they are to be ascertained;
- (b) provide for the penalty to be imposed by the Department within 6 years after the date on which the penalty is incurred;
- (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
- (d) prescribe the means by which the penalty is to be enforced; and
- (e) provide for enabling the Department, in its discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.”.

### **Collection of contributions by the Department**

**54.** After paragraph 7A of Schedule 1 to the Contributions and Benefits Act there shall be inserted the following paragraph—

*“Collection of contributions by the Department*

**7B.**—(1) Regulations may provide that, in such cases or circumstances as may be prescribed—

- (a) contributions payable under Part I of this Act shall be paid to the Department (and not to the Inland Revenue); and
- (b) the Department shall be responsible for the collection of such contributions, and generally for the relevant administration.

(2) Regulations under this paragraph may, in particular—

- (a) provide for returns to be made to the Department by such date as may be prescribed;
- (b) prescribe the form in which returns are to be made, or provide for returns to be made in such form as the Department may approve;
- (c) prescribe the manner in which contributions are to be paid, or provide for contributions to be paid in such manner as the Department may approve;
- (d) prescribe the due date for the payment of contributions;
- (e) subject to sub-paragraph (4) below, provide for interest to be charged by the Department on contributions that are not paid by the due date, and for enabling such interest to be remitted or repaid;
- (f) provide for interest to be paid on contributions that fall to be repaid;
- (g) provide for determining the date from which interest to be charged or paid pursuant to regulations under paragraph (e) or (f) above is to be calculated;
- (h) provide for penalties to be imposed in respect of a person who—
  - (i) fails to submit, within the time allowed, a return required to be made in accordance with regulations under paragraph (a) above;
  - (ii) in making such a return, fraudulently or negligently fails to provide any information or computation that he is required to provide;
  - (iii) in making such a return, fraudulently or negligently provides any incorrect information or computation; or
  - (iv) fails to pay Class 2 contributions by the due date;
- (i) provide for a penalty imposed pursuant to regulations under paragraph (h) above to carry interest from the date on which it becomes payable until payment.

(3) Where—

- (a) a decision relating to contributions falls to be made under Article 9, 10, 11, 13 or 15 of the Social Security (Northern Ireland) Order 1998 or section 22 of the Administration Act; and
- (b) the decision will affect a person’s liability for, or the amount of, any interest due in respect of those contributions,

regulations under sub-paragraph (2)(e) above shall not require any such interest to be paid until the decision has been made.

(4) Regulations under sub-paragraph (2)(e) above may provide that, in such cases or circumstances as may be prescribed, interest under those regulations may be charged by the Inland Revenue (instead of the Department) as if the regulations were made by virtue of paragraph 6 above.

(5) Regulations under sub-paragraph (2)(h) above shall—

- (a) prescribe the rates of penalty, or provide for how they are to be ascertained;
  - (b) subject to sub-paragraph (6) below, provide for the penalty to be imposed by the Department—
    - (i) within 6 years after the date on which the penalty is incurred; or
    - (ii) where the amount of the penalty is to be ascertained by reference to the amount of any contributions payable, at any later time within 3 years after the final determination of the amount of those contributions;
  - (c) provide for determining the date on which, for the purposes of paragraph (b) above, the penalty is incurred;
  - (d) prescribe the means by which the penalty is to be enforced; and
  - (e) provide for enabling the Department, in its discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.
- (6) Regulations under sub-paragraph (2)(h)(ii) or (iii) above may provide that, in such cases or circumstances as may be prescribed, penalties under those regulations may be imposed by the Inland Revenue (instead of the Department) as if the return in question were a contributions return within the meaning of paragraph 7 above.
- (7) Section 12 above shall not apply in relation to Class 2 contributions in respect of which the Department charges interest or imposes a penalty pursuant to regulations under paragraph (e) or (h) of sub-paragraph (2) above.
- (8) Interest or penalties may be charged by virtue of regulations under this paragraph in respect of a period before the coming into operation of Article 54 of the Social Security (Northern Ireland) Order 1998 but only to the extent that interest or penalties would have been chargeable if the contributions in question had been recoverable, in respect of that period, by virtue of regulations under paragraph 6 above.
- (9) Any reference to contributions in sub-paragraph (1) above shall be construed as including a reference to any interest or penalty payable, in respect of contributions, by virtue of regulations under paragraph (e) or (h) of sub-paragraph (2) above.
- (10) The rate of interest applicable for any purpose of this paragraph shall be—
  - (a) the rate from time to time prescribed under section 178 of the Finance Act 1989 for the purpose of any enactment (whether or not extending to Northern Ireland) if prescribed by regulations made by virtue of this paragraph; or
  - (b) such other rate as may be prescribed by such regulations.”.

### **Interest and penalties chargeable concurrently with Inland Revenue**

**55.** After paragraph 7B of Schedule 1 to the Contributions and Benefits Act there shall be inserted the following paragraph—

*“Interest and penalties chargeable concurrently with Inland Revenue*

**7C.—(1)** Any interest or penalty chargeable by the Inland Revenue by virtue of regulations under paragraph 6 or 7 above may also be charged by the Department.

(2) To the extent that any interest or penalty is recovered by the Department by virtue of sub-paragraph (1) above, or by virtue of regulations under paragraph 7B above, it shall not be recoverable by the Inland Revenue by virtue of regulations under paragraph 6 or 7 above, and vice versa.

(3) To the extent that any penalty is recovered by the Department by virtue of regulations under paragraph 7A above, it shall not be recoverable by the Inland Revenue by virtue of regulations under paragraph 7 above, and vice versa.”.