

**Changes to legislation:** Social Security Contributions and Benefits Act 1992, Cross Heading: Special penalties in the case of certain returns is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 1

#### SUPPLEMENTARY PROVISIONS RELATING TO CONTRIBUTIONS OF CLASSES 1, 1A, [F11B,] 2 [F1, 3 AND 3A]

##### Textual Amendments

- F1** Word in Sch. 1 heading inserted (6.4.1999) by Social Security Act 1998 (c. 14), s. 87(2), Sch. 7 para. 77(1); S.I. 1998/2209, art. 2(c), Sch. Pt. 3
- F1** Words in Sch. 1 heading substituted (12.10.2015) by Pensions Act 2014 (c. 19), s. 56(1), Sch. 15 para. 12; S.I. 2015/1475, art. 3(b)

#### *Special penalties in the case of certain returns*

- 7 (1) This paragraph applies where regulations under [F1sub-paragraph (1) of paragraph 6] above make provision requiring any return which is to be made in accordance with a specified provision of regulations under [F1that sub-paragraph] (the “contributions return”) to be made—
- at the same time as any specified return required to be made in accordance with a provision of [F2PAYE regulations or regulations made under][F3section 70(1)(a) or 71 (sub-contractors) of the Finance Act 2004] to which section 98A of the Taxes Management Act 1970 applies (the “tax return”); or
  - if the circumstances are such that the return mentioned in paragraph (a) above does not fall to be made, at a time defined by reference to the time for making that return, had it fallen to be made;
- and, in a case falling within paragraph (b) above, any reference in the following provisions of this paragraph to the tax return shall be construed as a reference to the return there mentioned.
- (2) Where this paragraph applies, regulations under [F4paragraph 6(1)] above may provide that section 98A of the <sup>M1</sup>Taxes Management Act 1970 (penalties for late, fraudulent or negligent returns) shall apply in relation to any specified provision of regulations in accordance with which the contributions return is required to be made; and where they so provide then, subject to the following provisions of this paragraph—
- that section shall apply in relation to the contributions return as it applies in relation to the tax return; and
  - sections 100 to 100D and 102 to [F5105] of that Act shall apply in relation to a penalty under section 98A of that Act to which a person is liable by virtue of this sub-paragraph as they apply in relation to any other penalty under that section.

---

**Changes to legislation:** *Social Security Contributions and Benefits Act 1992, Cross Heading: Special penalties in the case of certain returns is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (3) Where a person [<sup>F6</sup>has been required to pay] a penalty under paragraph (a) of subsection (2) of section 98A of that Act (first twelve months' default) in consequence of a failure in respect of a tax return, he shall not also [<sup>F7</sup>be required to pay] a penalty under that paragraph in respect of any failure in respect of the associated contributions return.
- (4) In any case where—
- (a) a person is liable to a penalty under subsection (2)(b) or (4) of that section (tax-related penalties) in respect of both a tax return and its associated contributions return, and
  - (b) an officer of the Inland Revenue authorised for the purposes of section 100 of that Act has determined that a penalty is to be imposed under that provision in respect of both returns,
- the penalty so imposed shall be a single penalty of an amount not exceeding the limit determined under sub-paragraph (5) below.
- (5) The limit mentioned in sub-paragraph (4) above is an amount equal to the sum of—
- (a) the maximum penalty that would have been applicable under subsection (2) (b) or (4) of section 98A of that Act (as the case may be) for a penalty in relation to the tax return only; and
  - (b) the maximum penalty that would have been so applicable in relation to the associated contributions return only.
- (6) So much of any single penalty imposed by virtue of sub-paragraph (4) above as is recovered by the Inland Revenue shall, after the deduction of any administrative costs of the Inland Revenue attributable to its recovery, [<sup>F8</sup>for the purposes of making any payment into the National Insurance Fund be apportioned between income tax and contributions] in the ratio T:C, where—
- T is the maximum penalty that could have been imposed under the provision in question in relation to the tax return only; and
- C is the maximum penalty that could have been so imposed in relation to the associated contributions return only.
- <sup>F9</sup>(7) .....
- (8) [<sup>F10</sup>Sub-paragraph (6)] above shall have effect notwithstanding any provision which treats a penalty under section 98A of that Act as if it were tax charged in an assessment and due and payable.
- (9) In the application of section 98A of that Act by virtue of this paragraph, any reference to a year of assessment shall be construed, in relation to a contributions return, as a reference to the tax year corresponding to that year of assessment.
- (10) In the application of section 100D of that Act (court proceedings for penalties in cases of fraud) by virtue of this paragraph—
- (a) subsection (2) shall have effect with the omission of the words “ or Northern Ireland ” and paragraph (c); and
  - (b) subsection (3) shall have effect with the omission of the words from “ and any such proceedings instituted in Northern Ireland ” onwards.
- (11) In the application of section 103 of that Act (time limit for recovery) by virtue of this paragraph—

**Changes to legislation:** Social Security Contributions and Benefits Act 1992, Cross Heading: Special penalties in the case of certain returns is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) any reference in subsection (1) to tax shall be taken to include a reference to Class 1<sup>F11</sup>, Class 1A and Class 1B] contributions;
- (b) any penalty by virtue of sub-paragraph (4) above shall be regarded as a penalty in respect of the tax return in question; and
- (c) where, by virtue of subsection (2) (death), subsection (1)(b) does not apply in relation to a penalty under section 98A(2)(b) or (4) of that Act in respect of a tax return, it shall also not apply in relation to a penalty so imposed in respect of the associated contributions return.

[<sup>F12</sup>(12) A penalty under section 98A of that Act as it applies by virtue of this paragraph shall not be imposed where—

- (a) a decision relating to contributions falls to be made under or by virtue of section 8, 10 or 11 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999, and has not yet been made; and
- (b) the decision will affect a person’s liability for the penalty, or the amount of it.]

(13) For the purposes of this paragraph—

- (a) “contributions return” and “tax return” shall be construed in accordance with sub-paragraph (1) above; and
- (b) a contributions return and a tax return are “associated” if the contributions return is required to be made—
  - (i) at the same time as the tax return, or
  - (ii) where sub-paragraph (1)(b) above applies, at a time defined by reference to the time for making the tax return.

### Textual Amendments

- F1** Words in Sch. 1 para. 7(1) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\)](#), [Sch. 1 para. 18\(2\)](#); [S.I. 1999/527, art. 2\(b\)](#), [Sch. 2 \(with arts. 3-6\)](#)
- F2** Words in Sch. 1 para. 7(1)(a) substituted (6.4.2003 with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723](#), [Sch. 6 para. 185\(d\)](#) (with [Sch. 7](#))
- F3** Words in Sch. 1 para. 7(1)(a) substituted (with effect in relation to payments made on or after 6.4.2007 under contracts relating to construction operations) by [Finance Act 2004 \(c. 12\), s. 77\(1\)](#), [Sch. 12 para. 13\(2\)](#) (with [s. 77\(2\)-\(8\)](#)); [S.I. 2006/3240](#)
- F4** Words in Sch. 1 para. 7(2) substituted (25.2.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(2\)\(a\)](#), [Sch. 1 para. 18\(3\)](#); [S.I. 1999/527, art. 2\(b\)](#), [Sch. 2 \(with arts. 3-6\)](#)
- F5** Word in Sch. 1 para. 7(2)(b) substituted (28.7.2000) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\), ss. 76\(2\)](#), 86
- F6** Words in Sch. 1 para. 7(3) substituted (6.4.1999) by [Social Security Act 1998 \(c. 14\), ss. 56\(1\)\(a\)](#), 87(2); [S.I. 1999/526, art. 2\(3\)\(4\)\(a\)](#)
- F7** Words in Sch. 1 para. 7(3) substituted (6.4.1999) by [Social Security Act 1998 \(c. 14\), ss. 56\(1\)\(b\)](#), 87(2); [S.I. 1999/526, art. 2\(3\)\(4\)\(a\)](#)
- F8** Words in Sch. 1 para. 7(6) substituted (1.4.1999) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\)](#), [Sch. 3 para. 36\(2\)](#); [S.I. 1999/527, art. 2\(b\)](#), [Sch. 2 \(with arts. 3-6\)](#)
- F9** Sch. 1 para. 7(7) repealed (1.4.1999) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\)](#), [Sch. 3 para. 36\(3\)](#), [Sch. 10 Pt. I](#); [S.I. 1999/527, art. 2\(b\)](#), [Sch. 2 \(with arts. 3-6\)](#)
- F10** Words in Sch. 1 para. 7(8) substituted (1.4.1999) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\)](#), [Sch. 3 para. 36\(4\)](#); [S.I. 1999/527, art. 2\(b\)](#), [Sch. 2 \(with arts. 3-6\)](#)

*Changes to legislation: Social Security Contributions and Benefits Act 1992, Cross Heading: Special penalties in the case of certain returns is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- F11** Words in Sch. 1 para. 7(11)(a) substituted (6.4.1999) by [Social Security Act 1998 \(c. 14\), s. 87\(2\), Sch. 7 para. 77\(12\)](#); S.I. 1998/2209, art. 2(c), Sch. Pt. 3
- F12** Sch. 1 para. 7(12) substituted (4.3.1999 for specified purposes, 6.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\), Sch. 7 para. 10](#); S.I. 1999/527, art. 2(a), Sch. 1 (with arts. 3-6)

#### Modifications etc. (not altering text)

- C1** Sch. 1 para. 7 modified (1.4.2008 for specified purposes, 1.7.2008 for specified purposes, 1.1.2009 for specified purposes, 1.4.2009 in so far as not already in force) by [Finance Act 2007 \(c. 11\), s. 97\(2\), Sch. 24 para. 30](#); S.I. 2008/568, art. 2(a)(b)(c)(d)(e)(f) (with art. 3)

#### Marginal Citations

- M1** 1970 c. 9.

<sup>F13</sup>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 [<sup>F14</sup>other] powers of the Inland Revenue to penalise omissions or errors in returns, regulations [<sup>F15</sup>made by the Treasury] may provide for the [<sup>F16</sup>Inland Revenue] 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 [<sup>F17</sup>Inland Revenue] within six 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 [<sup>F18</sup>Inland Revenue, in their] discretion, to mitigate or to remit the penalty, or to stay or to compound any proceedings for it.]

#### Textual Amendments

- F13** Sch. 1 para. 7A inserted (4.3.1999 for specified purposes, 6.4.1999 in so far as not already in force) by [Social Security Act 1998 \(c. 14\), ss. 56\(2\), 87\(2\)](#); S.I. 1999/526, art. 2(1)(2)(b)
- F14** Word in Sch. 1 para. 7A(2) inserted (4.3.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\), Sch. 9 para. 6\(2\)\(a\)](#); S.I. 1999/527, art. 2(a)(b), Schs. 1, 2 (with arts. 3-6)
- F15** Words in Sch. 1 para. 7A(2) inserted (1.4.1999) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\), Sch. 3 para. 37](#); S.I. 1999/527, art. 2(b), Sch. 2 (with arts. 3-6)
- F16** Words in Sch. 1 para. 7A(2) substituted (4.3.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\), Sch. 9 para. 6\(2\)\(b\)](#); S.I. 1999/527, art. 2(a)(b), Schs. 1, 2 (with arts. 3-6)
- F17** Words in Sch. 1 para. 7A(3)(b) substituted (4.3.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\), Sch. 9 para. 6\(3\)\(a\)](#); S.I. 1999/527, art. 2(a)(b), Schs. 1, 2 (with arts. 3-6)

---

**Changes to legislation:** Social Security Contributions and Benefits Act 1992, Cross Heading: Special penalties in the case of certain returns is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

---

**F18** Words in Sch. 1 para. 7A(3)(e) substituted (4.3.1999 for specified purposes, 1.4.1999 in so far as not already in force) by [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\), s. 28\(3\), Sch. 9 para. 6\(3\)\(b\)](#); S.I. 1999/527, art. 2(a)(b), Schs. 1, 2 (with arts. 3-6)

**Changes to legislation:**

Social Security Contributions and Benefits Act 1992, Cross Heading: Special penalties in the case of certain returns is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

View outstanding changes

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied (with modifications) by [S.I. 2010/875 reg. 16Sch. 2](#) (This amendment not applied to legislation.gov.uk. S.I. 2010/875 revoked (27.8.2010) before coming into force by S.I. 2010/1906, regs. 1(2), 2)
- Act restricted by [S.I. 1995/471 art. 32\(4\)](#)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- Pt. 8ZA inserted by [2009 c. 24 s. 16\(1\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-21 repealed (1.4.2013) by 2012 c. 5, s. 73; S.I. 2012/3090, art. 2(1)(b))
- Pt. 12ZE inserted by [2023 c. 20 Sch. para. 5](#)
- s. 4(1)(a)(viii) and word inserted by [2023 c. 20 Sch. para. 11\(b\)](#)
- s. 4C(5)(i)(j) repealed by [2007 c. 22 Sch. 4 para. 42\(3\)\(c\)Sch. 7 Pt. 7](#)
- s. 11A(1)(eb) inserted by [2021 c. 26 Sch. 27 para. 12](#) (This amendment not applied to legislation.gov.uk. The existing section 11A of Act repealed by paragraph 4(1) of the Schedule to the National Insurance Contributions (Reduction in Rates) Act 2023 (c. 57))
- s. 30B(4)(aa) inserted by [2012 c. 5 Sch. 9 para. 4](#)
- s. 35(1)(e) and word inserted by [2012 c. 5 s. 63\(2\)\(a\)](#)
- s. 35(3)(za) inserted by [2012 c. 5 s. 63\(2\)\(b\)](#)
- s. 45(2A)(a) words substituted by [2011 c. 19 Sch. 3 para. 2\(3\)\(b\)](#)
- s. 45(2A)(b) substituted by [2011 c. 19 Sch. 3 para. 2\(3\)\(c\)](#)
- s. 46(5)(6) inserted by [2008 c. 30 Sch. 4 para. 6\(3\)](#) (This amendment not applied to legislation.gov.uk. Sch. 4 para. 6(3) repealed (1.10.2014) without ever being in force by 2014 c. 19, Sch. 12 para. 96(c); S.I. 2014/2377, art. 2(1)(a)(ii)(3)(c))
- s. 46(5)(a) words substituted by [2011 c. 19 Sch. 3 para. 3](#)
- s. 47(4A) inserted by [2008 c. 30 s. 102\(6\)](#) (This amendment not applied to legislation.gov.uk. S. 102 repealed (1.10.2014) without ever being in force by 2014 c. 19, Sch. 12 para. 96(a); S.I. 2014/2377, art. 2(1)(a)(ii)(3)(c))
- s. 124(1)(ea) inserted by [2012 c. 5 s. 59\(2\)\(a\)](#)
- s. 124(1)(ga) inserted by [2009 c. 24 s. 5\(1\)\(a\)](#)
- s. 124(1C) inserted by [2012 c. 5 s. 59\(2\)\(b\)](#)
- s. 124(6A)(6B) inserted by [2009 c. 24 s. 5\(1\)\(b\)](#)
- s. 124A inserted by [2012 c. 5 s. 59\(3\)](#)
- s. 130C(2)(za) inserted by [2016 asp 19 Sch. 4 para. 5](#)
- s. 138(2A) inserted by [2009 c. 24 s. 17](#) (This amendment not applied to legislation.gov.uk. Ss. 16-21 repealed (1.4.2013) by 2012 c. 5, s. 73; S.I. 2012/3090, art. 2(1)(b))
- s. 138(2B) inserted by [2009 c. 24 s. 19\(2\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-21 repealed (1.4.2013) by 2012 c. 5, s. 73; S.I. 2012/3090, art. 2(1)(b))
- s. 140(4)(ca) inserted by [2009 c. 24 s. 19\(6\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-21 repealed (1.4.2013) by 2012 c. 5, s. 73; S.I. 2012/3090, art. 2(1)(b))
- s. 140(4A) inserted by [2009 c. 24 s. 19\(7\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-21 repealed (1.4.2013) by 2012 c. 5, s. 73; S.I. 2012/3090, art. 2(1)(b))
- s. 164(2)(aa) inserted by [2012 c. 5 s. 63\(3\)\(a\)](#)
- s. 164(9)(da) inserted by [2012 c. 5 s. 63\(3\)\(b\)](#)

- s. 171ZA(2)(ba) inserted by 2012 c. 5 s. 63(4)(a)
- s. 171ZA(3A) inserted by 2012 c. 5 s. 63(4)(b)
- s. 171ZB(2)(ba) inserted by 2012 c. 5 s. 63(5)(a)
- s. 171ZB(3A) inserted by 2012 c. 5 s. 63(5)(b)
- s. 171ZE(2A) inserted by 2014 c. 6 s. 123(3)(b)
- s. 171ZE(2B) inserted by 2014 c. 6 s. 123(3)(c)
- s. 171ZL(2)(ba) inserted by 2012 c. 5 s. 63(8)(a)
- s. 171ZL(8)(za) inserted by 2012 c. 5 s. 63(8)(c)
- s. 171ZEA(2)(ba) inserted by 2012 c. 5 s. 63(6)(a)
- s. 171ZEA(3)(za) inserted by 2012 c. 5 s. 63(6)(b)
- s. 171ZEB(2)(ba) inserted by 2012 c. 5 s. 63(7)(a)
- s. 171ZEB(3)(za) inserted by 2012 c. 5 s. 63(7)(b)
- s. 173A inserted by 2012 c. 5 s. 63(9)
- s. 176(3A) inserted by 2011 c. 19 Sch. 3 para. 5(2)
- Sch. 4 Pt. 1 para. 2A applied by S.I. 1995/310 reg. 18(1)(a)
- Sch. 4 Pt. 1 para. 6 power to amend conferred by 1992 c. 5 s. 154(2)(a)
- Sch. 4 Pt. 1 para. 2 repealed by 2007 c. 5 Sch. 8
- Sch. 4 Pt. 1 para. 2A repealed by 2007 c. 5 Sch. 8
- Sch. 4 Pt. 5 para. 7 power to amend conferred by 1992 c. 5 s. 154(2)(d)(e)
- Sch. 4 Pt. 5 para. 12 power to amend conferred by 1992 c. 5 s. 154(2)(d)(e)
- Sch. 4 Pt. 3 para. 1 power to amend conferred by 1992 c. 5 s. 150(3)(a)151
- Sch. 4 Pt. 3 para. 2 power to amend conferred by 1992 c. 5 s. 150(3)(a)151
- Sch. 4 Pt. 3 para. 4 power to amend conferred by 1992 c. 5 s. 150(3)(a)151
- Sch. 4 Pt. 3 para. 5 power to amend conferred by 1992 c. 5 s. 150(3)(a)151
- Sch. 4 Pt. 3 para. 6 power to amend conferred by 1992 c. 5 s. 150(3)(a)151
- Sch. 4 Pt. 4 para. 2 applied by S.I. 1995/310 reg. 15(7)
- Sch. 4 Pt. 4 para. 1A repealed by 2007 c. 5 Sch. 8
- Sch. 4 Pt. 4 para. 2 repealed by 2007 c. 5 Sch. 8
- Sch. 4B para. 1(1)(a)para. 1(1)(b)(2) words inserted by 2011 c. 19 Sch. 3 para. 6(2)(b)
- Sch. 4C inserted by 2008 c. 30 s. 102(5)Sch. 3 (This amendment not applied to legislation.gov.uk. S. 102, Sch. 3 repealed (1.10.2014) without ever being in force by 2014 c. 19, Sch. 12 para. 96(a)(b); S.I. 2014/2377, art. 2(1)(a)(ii)(3)(c))
- Sch. 4C para. 7(2)(c) inserted by 2011 c. 19 Sch. 3 para. 7(7)(b)
- Sch. 4C para. 7(3) inserted by 2011 c. 19 Sch. 3 para. 7(8)
- Sch. 4C para. 3 omitted by 2011 c. 19 Sch. 3 para. 7(3)
- Sch. 4C para. 7(2)(b) words inserted by 2011 c. 19 Sch. 3 para. 7(7)(a)
- Sch. 4C para. 1 words substituted by 2011 c. 19 Sch. 3 para. 7(2)
- Sch. 4C para. 2 words substituted by 2011 c. 19 Sch. 3 para. 7(2)
- Sch. 4C para. 5(b) words substituted by 2011 c. 19 Sch. 3 para. 7(4)
- Sch. 4C para. 6 words substituted by 2011 c. 19 Sch. 3 para. 7(5)
- Sch. 4C para. 7(1) words substituted by 2011 c. 19 Sch. 3 para. 7(4)
- Sch. 4C para. 7(1) words substituted by 2011 c. 19 Sch. 3 para. 7(6)
- Sch. 11 para. 2(i) inserted by 2012 c. 5 s. 63(10)(a)
- Sch. 11 para. 9 inserted by 2012 c. 5 s. 63(10)(b)