



# National Insurance Contributions and Statutory Payments Act 2004

## 2004 CHAPTER 3

### *Payment of Class 1 contributions*

#### **1 Payment of Class 1 contributions: Great Britain**

- (1) Paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (method of paying Class 1 contributions) is amended as follows.
- (2) In sub-paragraph (3) (deduction of contributions from earnings) for “sub-paragraph (4)” substitute “ sub-paragraphs (3A) to (5) ”.
- (3) After that sub-paragraph insert—
  - “(3A) Sub-paragraph (3B) applies where a person (“the employee”) who is employed by a particular employer (“the employer”) receives earnings in a form other than money (“non-monetary earnings”) from the employer in a tax year.
  - (3B) If and to the extent that regulations so provide, the employer may recover from the employee, in the prescribed manner, any primary Class 1 contributions paid or to be paid by him on the employee’s behalf in respect of those earnings.”
- (4) In sub-paragraph (4) (contributions in respect of ex-employees), in paragraph (b) for “earnings” to the end substitute “ or in the next tax year non-monetary earnings. ”
- (5) In sub-paragraph (5) (recovery of contributions in a case where sub-paragraph (4) applies) omit from “or” at the end of paragraph (a) to the end.

#### **2 Payment of Class 1 contributions: Northern Ireland**

- (1) Paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (method of paying Class 1 contributions) is amended as follows.

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- (2) In sub-paragraph (3) (deduction of contributions from earnings) for “sub-paragraph (4)” substitute “ sub-paragraphs (3A) to (5) ”.
- (3) After that sub-paragraph insert—
- “(3A) Sub-paragraph (3B) applies where a person (“the employee”) who is employed by a particular employer (“the employer”) receives earnings in a form other than money (“non-monetary earnings”) from the employer in a tax year.
- (3B) If and to the extent that regulations so provide, the employer may recover from the employee, in the prescribed manner, any primary Class 1 contributions paid or to be paid by him on the employee’s behalf in respect of those earnings.”
- (4) In sub-paragraph (4) (contributions in respect of ex-employees), in paragraph (b) for “earnings” to the end substitute “ or in the next tax year non-monetary earnings. ”
- (5) In sub-paragraph (5) (recovery of contributions in a case where sub-paragraph (4) applies) omit from “or” at the end of paragraph (a) to the end.

### 3 Agreements and joint elections: Great Britain

- (1) Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (supplementary provisions relating to Class 1 contributions) is amended as follows.
- (2) In paragraph 3A (restrictions on recovery of employer’s contributions)—
- (a) in sub-paragraph (2) for “a gain” to the end substitute “ relevant employment income of that earner. ”, and
- (b) after that sub-paragraph insert—
- “(2A) But an agreement in respect of relevant employment income is to be disregarded for the purposes of sub-paragraph (2) to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).
- (2B) For the purposes of sub-paragraphs (2) and (2A) “relevant employment income”, in relation to the earner, means—
- (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),
- (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
- (c) a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) above.”
- (3) In paragraph 3B (transfer of liability to be borne by the earner)—
- (a) in sub-paragraph (1), in paragraph (a)—
- (i) for “share option gains by the earner” substitute “ relevant employment income of the earner ”, and
- (ii) for “such gains” substitute “ such income ”,

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- (b) after that sub-paragraph insert—
  - “(1A) In this paragraph “relevant employment income”, in relation to the earner, means—
    - (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),
    - (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
    - (c) a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) above,and references to contributions on relevant employment income are references to any secondary Class 1 contributions payable in respect of that income.”,
  - (c) in sub-paragraph (2)(b) for “share option gains by the earner, or the part of them” substitute “ relevant employment income of the earner, or the part of it ”,
  - (d) in sub-paragraph (3) for “sub-paragraph (7)(b)” substitute “ sub-paragraphs (7)(b) and (7B) ”,
  - (e) in sub-paragraph (7)(b) for “on share option” to the end substitute “on relevant employment income if—
    - (i) that income is within sub-paragraph (1A)(a) or (b) and the securities, or interest in securities, to which it relates were or was acquired after the withdrawal date, or
    - (ii) that income is within sub-paragraph (1A)(c) and the right to acquire securities to which it relates was acquired after that date.”,
  - (f) after sub-paragraph (7) insert—
    - “(7A) In sub-paragraph (7)(b) “the withdrawal date” means—
      - (a) the date on which notice of the withdrawal of the approval is given, or
      - (b) such later date as the Inland Revenue may specify in that notice.
    - (7B) An election is void for the purposes of sub-paragraph (1) to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).”,
  - (g) for sub-paragraph (10) substitute—
    - “(10) Subject to sub-paragraph (12) below, an election under sub-paragraph (1) above shall not apply to any contributions in respect of income which, before the election was made, counted as employment income for a tax year by virtue of Part 7 of ITEPA 2003.”, and
  - (h) omit sub-paragraph (13).
- (4) The amendments made by this section have effect in relation to—

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- (a) agreements entered into after the date of commencement of this section which are in respect of post-commencement employment income, and
  - (b) elections made after that date.
- (5) For the purposes of subsection (4), “post-commencement employment income” means income which is relevant employment income within paragraph 3A(2B) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) which, after the date of commencement of this section, counts as employment income for a tax year by virtue of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

#### **4 Agreements and joint elections: Northern Ireland**

(1) Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (supplementary provisions relating to Class 1 contributions) is amended as follows.

- (2) In paragraph 3A (restrictions on recovery of employer’s contributions)—
- (a) in sub-paragraph (2) for “a gain” to the end substitute “ relevant employment income of that earner. ”, and
  - (b) after that sub-paragraph insert—

“(2A) But an agreement in respect of relevant employment income is to be disregarded for the purposes of sub-paragraph (2) to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).

(2B) For the purposes of sub-paragraphs (2) and (2A) “relevant employment income”, in relation to the earner, means—

- (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),
- (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
- (c) a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) above.”

(3) In paragraph 3B (transfer of liability to be borne by the earner)—

- (a) in sub-paragraph (1), in paragraph (a)—
  - (i) for “share option gains by the earner” substitute “ relevant employment income of the earner ”, and
  - (ii) for “such gains” substitute “ such income ”,
- (b) after that sub-paragraph insert—

“(1A) In this paragraph “relevant employment income”, in relation to the earner, means—

- (a) an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),

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- (b) an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
    - (c) a gain that is treated as remuneration derived from the earner's employment by virtue of section 4(4)(a) above, and references to contributions on relevant employment income are references to any secondary Class 1 contributions payable in respect of that income.”,
  - (c) in sub-paragraph (2)(b) for “share option gains by the earner, or the part of them” substitute “ relevant employment income of the earner, or the part of it ”,
  - (d) in sub-paragraph (3) for “sub-paragraph (7)(b)” substitute “ sub-paragraphs (7)(b) and (7B) ”,
  - (e) in sub-paragraph (7)(b) for “on share option” to the end substitute “on relevant employment income if—
    - (i) that income is within sub-paragraph (1A)(a) or (b) and the securities, or interest in securities, to which it relates were or was acquired after the withdrawal date, or
    - (ii) that income is within sub-paragraph (1A)(c) and the right to acquire securities to which it relates was acquired after that date.”,
  - (f) after sub-paragraph (7) insert—
    - “(7A) In sub-paragraph (7)(b) “the withdrawal date” means—
      - (a) the date on which notice of the withdrawal of the approval is given, or
      - (b) such later date as the Inland Revenue may specify in that notice.
    - (7B) An election is void for the purposes of sub-paragraph (1) to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).”,
  - (g) for sub-paragraph (10) substitute—
    - “(10) Subject to sub-paragraph (12) below, an election under sub-paragraph (1) above shall not apply to any contributions in respect of income which, before the election was made, counted as employment income for a tax year by virtue of Part 7 of ITEPA 2003.”, and
  - (h) omit sub-paragraph (13).
- (4) The amendments made by this section have effect in relation to—
  - (a) agreements entered into after the date of commencement of this section which are in respect of post-commencement employment income, and
  - (b) elections made after that date.
- (5) For the purposes of subsection (4), “post-commencement employment income” means income which is relevant employment income within paragraph 3A(2B) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) which, after the date of commencement of this section, counts as employment income

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for a tax year by virtue of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

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