STATUTORY RULES OF NORTHERN IRELAND

1999 No. 117

SOCIAL SECURITY STATUTORY MATERNITY PAY; STATUTORY SICK PAY

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

Made - - - -	*15th March 1999*
Coming into operation	*6th April 1999*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 1(6), 3(2) and (3), 10A(7), 159(3), 167(5) and 171(1) to (3) of, and paragraphs 3(5), 5A, 6 and 8(1)(g), (l), (m), (n) and (q) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and of all other powers enabling it in that behalf, and with the concurrence of the Inland Revenue in so far as their concurrence is required, 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 (Northern Ireland) 1999 and shall come into operation on 6th April 1999.

(2) In these Regulations "the principal Regulations" means the Social Security (Contributions) Regulations (Northern Ireland) 1979(**2**).

Amendment of regulation 18 of the principal Regulations

2. In regulation 18 of the principal Regulations (calculation of earnings)—

(**1**) 1992 c. 7; section 1(6) was amended by paragraph 38(3) of Schedule 6 to, section 10A was inserted by Article 50 of, paragraph 3(5) was added by Article 52(b) of, paragraph 5A was inserted, and paragraphs 6 and 8(1)(l) were amended, by paragraph 58(7) to (9), (11) and (16) of Schedule 6 to, the Social Security (Northern Ireland) Order 1998 (S.I.1998/1506 (N.I. 10)); paragraph 8(1)(g) was amended by paragraph 11 of Schedule 3 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(**2**) S.R. 1979 No. 186; relevant amending regulations are S.R. 1981 No. 30, S.R. 1982 No. 267, S.R. 1984 No. 43, S.R. 1985 No. 59, S.R. 1990 No. 110, S.R. 1991 Nos. 310 and 490, S.R. 1992 Nos. 41, 126 and 280, S.R. 1993 No. 130, S.R. 1995 No. 91, S.R. 1996 Nos. 30, 433 and 566, S.R. 1997 No. 163 and S.R. 1998 Nos. 317, 332 and 416

(a) in paragraph (2)(**3**) "(4)" shall be omitted;

(b) paragraphs (2A), (2B), (4), (5), (5A) and (9A)(**4**) shall be omitted;

(c) in paragraph (7A)(**5**) "(4)," shall be omitted;

(d) in paragraph (9)(**6**) for "(2A), (5A) and (9A)" there shall be substituted "(17) to (19)";

(e) after paragraph (15)(**7**) there shall be added the following paragraphs—

"(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(**8**) or employee of that or any other body corporate where that right or those shares are not readily convertible assets(**9**), 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;

(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(**10**) (provisions supplementary to section 135), 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.

(**3**) Paragraph (2) was added by S.R. 1991 No. 490 and amended by S.R. 1996 No. 566
(**4**) Paragraphs (2A), (2B), (5A) and (9A) were inserted by S.R. 1998 No. 416; paragraphs (4) and (5) were added by S.R. 1991 No. 490
(**5**) Paragraph (7A) was inserted by S.R. 1996 No. 566
(**6**) Paragraph (9) was substituted by S.R. 1998 No. 317 and amended by S.R. 1998 No. 416
(**7**) Paragraph (15) was substituted by S.R. 1998 No. 317
(**8**) Definition of "director" was inserted into S.R. 1979 No. 186 by S.R. 1996 No. 433
(**9**) Definition of "readily convertible asset" was inserted into S.R. 1979 No. 186 by S.R. 1998 No. 317
(**10**) 1988 c. 1

(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,

and 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. In regulation 19 of the principal Regulations (payments to be disregarded)—

(a) in paragraph (1)—

(i) sub-paragraph (ll)(**11**) shall be omitted;

(ii) after sub-paragraph (zc)(**12**) there shall be added the following sub-paragraphs—

"(zd) a payment by way of—

(i) a gain realised by the exercise of a right to acquire shares in a body corporate chargeable to income tax under Schedule E by virtue of section 135(**13**) 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 10 years after it is obtained,

where that right and those shares are not readily convertible assets;

(ze) 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 10 years after it is obtained;

(zf) 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 5 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—

(i) the conferment of that interest would otherwise be chargeable to income tax by virtue of section 135 of the Income and Corporation Taxes Act 1988, and

(**11**) Sub-paragraph (ll) was inserted by S.R. 1998 No. 332

(**12**) Sub-paragraph (zc) was added by S.R. 1998 No. 317

(**13**) Section 135 was amended by section 49(1) of the Finance Act 1998 (c. 36); see also section 4(4)(a) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as substituted by Article 47(1) of the Social Security (Northern Ireland) Order 1998

(ii) the acquisition of that interest would be treated as earnings by virtue of regulation 17AB(**14**) of these Regulations (further provision as to payments to be treated as earnings);

(zg) 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;

(zh) 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 income 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 (provisions supplementary to section 135),

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;

(zi) 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 income 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.";

(b) after paragraph (10)(**15**) there shall be added the following paragraph—

"(11) For the purposes of paragraph (1)(zd), (zh) and (zi) and this paragraph of this regulation—

(**14**) Regulation 17AB was inserted by S.R. 1998 No. 317
(**15**) Paragraph (10) was added by S.R. 1998 No. 317