STATUTORY RULES OF NORTHERN IRELAND

1998 No. 317

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. 3) Regulations (Northern Ireland) 1998

Made - - - - 10th September 1998
Coming into operation in accordance with regulation 1(1)

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 3(2), (3) and (5), 4(6) and 171(1) to (3) of, and paragraph 5(*a*) of Schedule 1 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and Article 47(4) of the Social Security (Northern Ireland) Order 1998(**2**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 3) Regulations (Northern Ireland) 1998 and shall come into operation for the purposes of—

(a) regulations 1, 2(*a*), 4, 5, 6, 9, 10 and 11 on 1st October 1998;

(b) regulations 2(*b*), 3, 7 and 8 on 6th April 1999.

(2) In these Regulations "the principal Regulations" means the Social Security (Contributions) Regulations (Northern Ireland) 1979(**3**).

(3) The Interpretation Act 1978(**4**) shall apply to these Regulations as it applies to an Act of the United Kingdom Parliament.

Amendment of regulation 1 of the principal Regulations

2. In regulation 1 of the principal Regulations (citation, commencement and interpretation)—

(**1**) 1992 c. 7; section 3(5) was added by Article 46 of, section 4(6) was added by Article 47(2) of, and paragraph 5 of Schedule 1 was substituted by paragraph 58(6) of Schedule 6 to, the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(**2**) S.I. 1998/1506 (N.I. 10)

(**3**) S.R. 1979 No. 186; relevant amending provisions are Article 3(3)(*a*) of the Social Security Adjudications (Northern Ireland) Order 1983 (S.I. 1983/1524 (N.I. 17)), S.R. 1981 No. 30, S.R. 1983 Nos. 8 and 64, S.R. 1984 No. 43, S.R. 1985 No. 59, S.R. 1987 Nos. 143 and 468, S.R. 1988 No. 204, S.R. 1990 Nos. 110 and 350, S.R. 1991 Nos. 106, 310 and 490, S.R. 1992 Nos. 41, 126 and 280, S.R. 1993 No. 463, S.R. 1994 Nos. 94 and 328, S.R. 1995 Nos. 91 and 146, S.R. 1996 Nos. 30, 108, 188, 430, 433 and 566 and S.R. 1998 No. 103

(**4**) 1978 c. 30

(a) in paragraph (2)—

(i) after the definition of "COMPS employment"(**5**) there shall be inserted the following definition—

""conditional interest in shares" means an interest which is conditional for the purposes of sections 140A and 140B of the Income and Corporation Taxes Act 1988(**6**);";

(ii) after the definition of "contributory benefit"(**7**) there shall be inserted the following definition—

""convertible shares" means shares which are convertible within the meaning of section 140D of the Income and Corporation Taxes Act 1988;";

(iii) after the definition of "radio officer" there shall be inserted the following definition —

""readily convertible asset" has the meaning assigned to it in section 203F(2)(**8**) of the Income and Corporation Taxes Act 1988;";

(iv) the definition of "trading arrangements"(**9**) shall be omitted;

(b) after paragraph (2) there shall be added the following paragraph—

"(3) For the purposes of regulations 32(**10**), 35(**11**) and 46(**12**) of these Regulations, references to "contributions", "Class 1 contributions" and "earnings-related contributions" shall, unless the context otherwise requires, include any amount paid on account of earnings-related contributions in accordance with the provisions of regulation 6A(6)(**13**) of these Regulations.".

Amendment of regulation 6A of the principal Regulations

3. In regulation 6A of the principal Regulations (earnings period for directors) after paragraph (5) there shall be added the following paragraph—

"(6) Without prejudice to the foregoing provisions of this regulation, a director(**14**) and any company(**15**) employing him may 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 foregoing provisions of this regulation did not apply.".

Insertion of regulation 17AB into the principal Regulations

4. After regulation 17A(**16**) of the principal Regulations (payments to directors to be treated as earnings) there shall be inserted the following regulation—

(**5**) Definition of "COMPS employment" was inserted by S.R. 1996 No. 433
(**6**) 1988 c. 1; sections 140A to 140H were inserted by sections 50 to 53 of the Finance Act 1998 (c. 36)
(**7**) Definition of "contributory benefit" was inserted by S.R. 1996 No. 430
(**8**) Section 203F was inserted by section 127 of the Finance Act 1994 (c. 9) and amended by section 65 of the Finance Act 1998
(**9**) Definition of "trading arrangements" was inserted by S.R. 1996 No. 566
(**10**) Regulation 32 was amended by S.R. 1984 No. 43, S.R. 1987 No. 468, S.R. 1988 No. 204, S.R. 1992 No. 41 and S.R. 1996 Nos. 188 and 433
(**11**) Regulation 35 was amended by Article 3(3)(*a*) of the Social Security Adjudications (Northern Ireland) Order 1983, S.R. 1984 No. 43, S.R. 1988 No. 204 and S.R. 1996 No. 433
(**12**) Regulation 46 was amended by S.R. 1992 No. 41
(**13**) Regulation 6A was inserted by S.R. 1983 No. 8
(**14**) Definition of "director" was inserted into S.R. 1979 No. 186 by S.R. 1996 No. 433
(**15**) Definition of "company" was substituted in S.R. 1979 No. 186 by S.R. 1991 No. 106
(**16**) Regulation 17A was inserted by S.R. 1983 No. 8

"**Further provision as to payments to be treated as earnings**

17AB. For the purposes of section 3 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("earnings" and "earner") there shall be treated as remuneration derived from an employed earner's employment any amount on which an employed earner is, by virtue of any provision of sections 140A to 140H of the Income and Corporation Taxes Act 1988 (conditional acquisition of shares and convertible shares), chargeable to income tax under Schedule E in respect of the acquisition, on or after 9th April 1998, of shares or an interest in shares.".

Amendment of regulation 18 of the principal Regulations

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

(a) in paragraph (6)(**17**) sub-paragraph (*b*) and the word "or" immediately preceding that sub-paragraph shall be omitted;

(b) for paragraph (8)(**18**) there shall be substituted the following paragraph—

"(8) The amount of earnings which is comprised in any payment by way of the conferment of a beneficial interest in—

(a) any asset falling within paragraph 9ZA or 9ZB of Schedule 1A(**19**) to these Regulations which is not a readily convertible asset;

(b) any voucher falling within paragraph 9B of that Schedule which is not capable of being exchanged for a readily convertible asset,

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 on the basis of the cost of the asset in question; and for the purposes of this paragraph "the cost of the asset" in relation to any voucher includes the cost of any asset for which that voucher is capable of being exchanged.";

(c) for paragraph (9)(**20**) there shall be substituted the following paragraphs—

"(9) The amount of earnings which is comprised in—

(a) any payment by way of the conferment of a beneficial interest in—

(i) any asset falling within Schedule 1A to these Regulations which is a readily convertible asset;

(ii) any voucher falling within paragraph 9B of that Schedule (any voucher capable of being exchanged for an asset falling within paragraphs 1 to 9ZB of that Schedule) where the asset for which it is capable of being exchanged is a readily convertible asset;

(b) any payment by way of any asset or voucher falling within Schedule 1B(**21**) to these Regulations,

where that payment falls to be taken into account in the computation of a person's earnings shall, for the purposes of earnings-related contributions, be calculated by reference to the amount determined in accordance with paragraph (10) of this regulation for the purposes of section 203F(1) of the Income and Corporation Taxes Act 1988 (PAYE: readily convertible assets).

(**17**) Paragraph (6) was substituted by S.R. 1993 No. 463
(**18**) Paragraph (8) was added by S.R. 1994 No. 328 and amended by S.R. 1996 No. 566
(**19**) Schedule 1A was inserted by S.R. 1991 No. 490 and amended by S.R. 1993 No. 463, S.R. 1994 No. 328, S.R. 1995 No. 146 and S.R. 1996 No. 566
(**20**) Paragraph (9) was substituted by S.R. 1996 No. 566
(**21**) Schedule 1B is inserted by regulation 10 of these Regulations

(10) The amount referred to in paragraph (9) of this regulation is—

(a) in the case of any asset falling within paragraph (9)(*a*)(i) of this regulation or paragraph 1 of Schedule 1B to these Regulations, the best estimate that can reasonably be made of the amount of income likely to be chargeable to income tax under Schedule E in respect of the provision of the asset;

(b) in the case of an asset falling within paragraph 2 of the said Schedule 1B, the best estimate that can reasonably be made of the amount of income likely to be chargeable to income tax under Schedule E in respect of the enhancement of its value;

(c) in the case of any voucher falling within paragraph (9)(*a*)(ii) of this regulation or paragraph 3 of the said Schedule 1B, the best estimate that can reasonably be made of the amount of income likely to be chargeable to income tax under Schedule E in respect of the provision of any asset for which the voucher is capable of being exchanged.

(11) The amount of earnings which is comprised in any payment by way of the conferment of a conditional interest in shares 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 market value of that person's interest immediately after that interest ceases to be only conditional or, as the case may be, at the time of the sale or other disposal of that interest; and

(b) the amount or value of the consideration given by that person for that interest together with any amounts which have previously been included in that person's earnings for the purposes of his assessment of earnings-related contributions in respect of his acquisition of that interest.

(12) For the purposes of paragraph (11) of this regulation—

(a) "market value" has the meaning assigned to it in section 140A(6) of the Income and Corporation Taxes Act 1988 (conditional acquisition of shares);

(b) the "amount or value of the consideration given" shall be determined in accordance with section 140B of that Act (consideration for shares conditionally acquired) as if it were being determined for the purposes of section 140A of that Act.

(13) The amount of earnings which is comprised in any payment by way of the conferment of a beneficial interest in convertible shares 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 gain from their conversion.

(14) For the purposes of paragraph (13) of this regulation, the "gain from their conversion" is the difference between—

(a) the market value at the time of the conversion of the shares into which the convertible shares are converted; and

(b) the sum of—

(i) the amount or value of any consideration given for the convertible shares;

(ii) any amount or value of any consideration given for the conversion in question;

(iii) the amounts which have previously been included in that person's earnings for the purposes of his assessment of earnings-related contributions in respect of his acquisition of the interest in the convertible shares;

(iv) if the convertible shares were acquired through a series of conversions each of which gives rise to a liability for earnings-related contributions, any amount of the gain from each conversion, so far as not falling within head (iii) of this sub-paragraph.

(15) For the purposes of paragraph (14) of this regulation—

(a) "market value" has the meaning assigned to it in section 140F(3) of the Income and Corporation Taxes Act 1988 (supplemental provision with respect to convertible shares);

(b) the "amount or value of any consideration given" shall be determined in accordance with section 140E of that Act (consideration for convertible shares);

(c) the reference to a conversion which gives rise to a liability for earnings-related contributions is a reference to any conversion which gives rise to a gain which was treated as earnings by virtue of regulation 17AB of these Regulations or would have given rise to a gain but for the fact that the market value at the time of conversion of the shares into which the convertible shares are converted did not exceed the sum referred to in sub-paragraph (*b*) of paragraph (14) of this regulation.".

Amendment of regulation 19 of the principal Regulations

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

(a) in paragraph (1)—

(i) for sub-paragraph (*k*)(**22**) there shall be substituted the following sub-paragraph—

"(k) a payment by way of shares where such shares are not readily convertible assets and form part of the ordinary share capital of—

(i) the secondary contributor, or

(ii) a company which has control of the secondary contributor, or

(iii) a company which either is, or has control of, a body corporate which is a member of a consortium owning either that secondary contributor or a body corporate having control of that secondary contributor;";

(ii) for sub-paragraph (*l*)(**23**) there shall be substituted the following sub-paragraph—

"(l) a payment by way of a right to acquire shares where neither that right nor those shares are readily convertible assets;";

(iii) after sub-paragraph (*y*)(**24**) there shall be added the following sub-paragraphs—

"(z) a payment by way of—

(i) the conferment of a conditional interest in shares in respect of which, by virtue of section 140A(3) of the Income and Corporation Taxes Act 1988 (conditional acquisition of shares), no income

(**22**) Sub-paragraph (*k*) was substituted by S.R. 1996 No. 566
(**23**) Sub-paragraph (*l*) was substituted by S.R. 1996 No. 566
(**24**) Sub-paragraph (*y*) was added by S.R. 1998 No. 103