STATUTORY INSTRUMENTS

1974 No. 1244

SOCIAL SECURITY

The Social Security (Categorisation of Earners) Regulations 1974

Made - - - -	*23rd July* 1974
Laid before Parliament	*2nd August* 1974
Coming into Operation	*6th April* 1975

The Secretary of State for Social Services in exercise of powers under sections 1(8), and 2(5) of, and paragraph 6(1)(*k*) of Schedule 1 to, the Social Security Act 1973**(a)** and of all other powers enabling her in that behalf hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Categorisation of Earners) Regulations 1974, and shall come into operation on 6th April 1975.

(2) In these regulations, unless the context otherwise requires—

"the Act" means the Social Security Act 1973;

and other expressions have the same meanings as in the Act.

(3) References in these regulations to any enactment or regulations shall, except in so far as the context otherwise requires, be construed as including references to such enactment or regulations as amended or extended by or under any other enactment, order or regulations, and as including references to any enactment or regulations thereby consolidated.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889**(b)** shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Treatment of earners in one category of earners as falling within another category and disregard of employments

2.—(1) For the purposes of the Act an earner in one category of earners shall be treated as falling within another category in accordance with the provisions of paragraph (2) of this regulation.

(a) 1973 c. 38. **(b)** 1889 c. 63.

(2) Subject to the provisions of paragraph (3) of this regulation, every earner shall, in respect of any employment described in any paragraph in column (A) of Part I of Schedule 1 to these regulations, be treated as falling within the category of an employed earner in so far as he is gainfully employed in such employment and is not a person specified in the corresponding paragraph in column (B) of that Part, notwithstanding that the employment is not under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E.

(3) Every employment described in any paragraph in column (A) of Part II of the said Schedule 1 shall, in relation to liability for contributions otherwise arising from employment of that description, be disregarded, except in so far as it is employment of a person specified in the corresponding paragraph in column (B) of that Part.

Employments treated as continuing

3. For the purposes of the Act with respect to the computation, collection and recovery of, and otherwise with respect to, contributions (other than Class 4 contributions which under section 5 of the Act are to be recovered by the Inland Revenue), the employment of a person shall be treated as continuing in the circumstances specified in Schedule 2 to these regulations.

Special provisions with respect to persons declared by High Court to be persons falling within a particular category of earner

4.—(1) Where, under the provisions of the Act relating to references and appeals to the High Court(**a**), the High Court decides any question whether in respect of any employment a person is an earner and, if so, as to the category of earners in which he is to be included, and that decision is inconsistent with some previous determination of a question by the Secretary of State(**a**), then, if the Secretary of State is satisfied that contributions appropriate to another category of earners have been paid by or in respect of any person by reason of that determination or in the reasonable belief that that determination was applicable, she may, if it appears to her that it would be in the interests of the person by or in respect of whom such contributions have been paid, or of any claimant or beneficiary by virtue of that person's contributions, so to do, direct that that person shall be treated as though he had been included in the category of earners corresponding to the contributions paid during the period for which contributions appropriate to that other category were so paid before the date on which the decision of the High Court was given, and, if such a direction is given, that person shall be deemed to have been included in that category accordingly for such period.

(2) In any case where the Secretary of State, on new facts being brought to her notice, has revised a determination of a question previously given by her, the provisions of this regulation shall apply with the necessary modifications in the same manner as they apply where the High Court has given a decision inconsistent with a determination previously given by the Secretary of State.

(3) In the application of this regulation to Scotland, for any reference to the High Court, there shall be substituted a reference to the Court of Session(**b**).

(**a**) *See* section 84 of, and Schedule 21 to, the Social Security Act 1973.
(**b**) *See* section 84(6) of the Social Security Act 1973 and sections 65(8) and 73(5), National Insurance Act 1965, as modified by Schedule 21 to the Social Security Act 1973.

Persons to be treated as secondary contributors

5. For the purposes of section 2 of the Act (Class 1 contributions), in relation to any payment of earnings to or for the benefit of an employed earner in any employment specified in any paragraph in column (A) of Schedule 3 to these regulations, the persons specified in the corresponding paragraph in column (B) of that Schedule shall be treated as the secondary Class 1 contributor in relation to that employed earner.

Barbara Castle,
Secretary of State for Social Services.

23rd July 1974.

SCHEDULE 1 Regulation 2

PART I

Column (A) Employments in respect of which, subject to the provisions of regulation 2 and to the exceptions in column (B) of this Part, earners are treated as falling within the category of employed earner	Column (B) Persons excepted from the operation of column (A)
1. Employment as an office cleaner or in any similar capacity in any premises other than those used as a private dwelling-house.	1. None.
2. Employment (not being employment in respect of which a person is, under the other provisions of these regulations, treated as falling within the category of an employed earner) in which the person employed renders, or is under obligation to render, personal service and is subject to supervision, direction or control, or to the right of supervision, direction or control, as to the manner of the rendering of such service and where the person employed is supplied by or through some third person (including, in the case of a body of persons unincorporate, a body of which the person employed is a member) and— (*a*) where earnings for such service are paid by or through, or on the basis of accounts submitted by, that third person or in accordance with arrangements made with that third person; or	2. Any person in employment specified in paragraph 2 in column (A)— (*a*) where the service of the person employed is rendered in his own home or on other premises not under the control or management of the person to whom the person employed is supplied (except where such other premises are premises at which the person employed is required, by reason of the nature of the service, to render service); or (*b*) who is employed as an actor, singer, musician or other entertainer or as a fashion, photographic or artist's model; or (*c*) in a case where earnings are not paid by or through, or on the basis of accounts submitted by, that third person—

Column (A) Employments in respect of which, subject to the provisions of regulation 2 and to the exceptions in column (B) of this Part, earners are treated as falling within the category of employed earner	Column (B) Persons excepted from the operation of column (A)
(*b*) where payments, other than to the person employed, are made by way of fees, commission or other payments of like nature which relate to the continued employment in that employment of the person employed.	(i) where the person employed has obtained that employment through a third person as part of that third person's activities in which persons seeking employment are introduced to persons requiring their services; and (ii) where as a result of such an introduction the person employed and the person to whom he has been introduced have entered into a contract with each other for the rendering of such service; and (iii) where only the person employed and the person to whom he has been introduced have a direct financial interest in the continued employment in that employment of the person employed.
3. Employment of a person by his or her spouse for the purposes of a trade or business.	3. None.

PART II

Column (A) Employments which, subject to the exceptions in column (B) of this Part, are to be disregarded	Column (B) Employments excepted from the operation of column (A)
4. Employment by the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, grand-daughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the person employed, in so far as the employment— (*a*) is employment in a private dwelling-house in which both the person employed and the employer reside; and (*b*) is not employment for the purposes of any trade or business carried on there by the employer.	4. None.

Column (A) Employments which, subject to the exceptions in column (B) of this Part, are to be disregarded	(Column B) Employments excepted from the operation of column (A)
5. Employment (whether or not under a contract of service) of a person by his or her spouse otherwise than for the purposes of a trade or business.	5. None.
6. Any employment or employments as a self-employed earner where the earner is not ordinarily employed in any such employment or employments.	6. None.

SCHEDULE 2

Regulation 3

CIRCUMSTANCES IN WHICH EMPLOYMENT IS TREATED AS CONTINUING

Where a person is employed as a self-employed earner, that employment shall be treated as continuing unless and until he is no longer ordinarily employed in that employment.

SCHEDULE 3

Regulation 5

EMPLOYMENTS IN RESPECT OF WHICH PERSONS ARE TREATED AS SECONDARY CLASS 1 CONTRIBUTORS

Column (A) Employments	Column (B) Persons treated as secondary Class 1 contributors
1. Employment as an office cleaner or in any similar capacity in any premises other than those used as a private dwelling-house.	1.(*a*) Where the person employed is supplied by, or through the agency of, some third person and receives his remuneration from, or through the agency of, that third person, that third person; (*b*) in any other case, the person with whom the person employed contracted to do the work.

Column (A) Employments	Column (B) Persons treated as secondary Class 1 contributors
2. Employment, whether or not under a contract of service (not being employment specified in paragraph 2 in column (B) of Schedule 1 to these regulations or an employment to which any other paragraph of this Schedule applies) in which the person employed renders, or is under an obligation to render, personal service and is subject to supervision, direction or control, or to the right of supervision, direction or control, as to the manner of the rendering of such service and where the person employed is supplied by or through some third person (including in the case of a body of persons unincorporate, a body of which the person employed is a member) and— (*a*) where earnings for such service are paid by or through or on the basis of accounts submitted by, that third person or in accordance with arrangements made with that third person; or (*b*) where payments, other than to the person employed, are made by way of fees, commission or other payments of like nature which relate to the continued employment in that employment of the person employed.	2.(*a*) In England and Wales where the person employed is supplied by or through the agency of a body of persons unincorporate and the person employed is a member of that body, the other members of that body, and, in any other case, the third person by whom or through whose agency the person employed is supplied; (*b*) in Scotland, the third person by whom or through whose agency the person employed is supplied.
3. Employment (not being employment in respect of which a secondary contributor, in any particular case, is prescribed in paragraph 1(*a*) in column (B) of this Schedule, and not being employment specified in paragraph 2 in column (A) of that Schedule) by a company, being a company within the meaning of the Companies Act 1948(a) and in voluntary liquidation but carrying on business under a liquidator.	3. The person who at the time of the employment holds the office of liquidator.
4. Employment in chambers as a barrister's clerk.	4. The head of chambers.

(a) 1948 c. 38.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, which are made before the day appointed for the coming into force of section 2 of the Social Security Act 1973, by virtue of section 48(2) of and paragraph 16 of Schedule 12 to, the said Act are not required to be referred to the National Insurance Advisory Committee and no such reference has been made.

These Regulations provide for persons in employments of prescribed descriptions to be treated for the purposes of the Social Security Act 1973 as falling within another category of earners. The Regulations also provide for other employments of prescribed descriptions to be disregarded (Regulation 2 and Schedule 1).

Provision is also made for the circumstances in which employment as a self-employed earner is treated as continuing (Regulation 3 and Schedule 2).

Provision is also made for the special categorisation of a person following a decision of the High Court or a revised decision of the Secretary of State so as to enable the original determination concerning that person's category to stand where this would be in the interests of the person concerned (Regulation 4).

The Regulations also provide for prescribed persons to be treated for the purposes of the Social Security Act 1973 as the secondary Class 1 contributor in respect of persons in specified employments (Regulation 5 and Schedule 3).

SI 1974/1244
ISBN 0-11-041244-3

