STATUTORY INSTRUMENTS

2004 No. 2096

SOCIAL SECURITY

The Social Security (Contributions) (Amendment No. 4) Regulations 2004

Made - - - -	*3rd August 2004*
Laid before Parliament	*5th August 2004*
Coming into force - -	*1st September 2004*

The Treasury, with the concurrence of the Secretary of State, in exercise of the powers conferred upon them by sections 3(2) and (3) and 175(3) of the Social Security Contributions and Benefits Act 1992(**a**), and with the concurrence of the Department for Social Development, in exercise of the powers conferred upon them by sections 3(2) and (3) and 171(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**), and in exercise of the powers conferred upon them by paragraph 8(1)(a), (ca) and (q) of Schedule 1 to each of those Acts(**c**), and the Commissioners of Inland Revenue, in exercise of the powers conferred upon them by paragraphs 3B(11) and 6(1) and (2) of Schedule 1 to each of those Acts(**d**), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 4) Regulations 2004 and shall come into force on 1st September 2004.

(2) These Regulations have effect in relation to—

(**a**) 1992 c. 4 ("the Benefits Act"). Section 3(2) was amended by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) ("the Transfer Act").

(**b**) 1992 c.7 ("the 1992 Northern Ireland Act"). Section 3(2) was amended by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) ("the Transfer Order"). The functions of the Department of Health and Social Services for Northern Ireland under the 1992 Northern Ireland Act were transferred to the Department for Social Development by Article 8(b) of, and Part II of Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481).

(**c**) Paragraph 8 of Schedule 1 to the Benefits Act was amended by paragraph 39 of Schedule 3 to the Transfer Act and section 77(4) of the Child Support, Pensions and Social Security Act 2000 (c. 19: "the 2000 Act"). Paragraph 8 of Schedule 1 to the 1992 Northern Ireland Act was amended by paragraph 38 of Schedule 3 to the Transfer Order and section 81(4) of the 2000 Act.

(**d**) Paragraph 3B of Schedule 1 to the Benefits Act was inserted by section 77(2) of the 2000 Act and amended by section 3 of the National Insurance Contributions and Statutory Payments Act 2004 (c. 3). Paragraph 6(1) was amended by paragraph 77(8) of Schedule 7 to the Social Security Act 1998 (c. 14), paragraph 35(2) of Schedule 3 to the Transfer Act and paragraph 185(a) and (b) of Part 2 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1: "ITEPA 2003"). Paragraph 6(2) was amended by paragraph 77(9) of Schedule 7 and Schedule 8 to the Social Security Act 1998. Paragraph 3B of Schedule 1 to the 1992 Northern Ireland Act was inserted by section 81(2) of the 2000 Act and amended by section 4 of the National Insurance Contributions and Statutory Payments Act 2004. Paragraph 6(1) was amended by paragraph 58(8) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), paragraph 34(2) of Schedule 3 to the Transfer Order and paragraph 204(a) and (b) of Part 2 of Schedule 6 to ITEPA 2003. Paragraph 6(2) was amended by paragraph 58(9) of Schedule 6 and Schedule 7 to the Social Security (Northern Ireland) Order 1998.

(a) agreements entered into after 1st September 2004(**a**) which are in respect of post-commencement employment income, and

(b) elections made after that date.

Amendments to the Social Security (Contributions) Regulations 2001

2. The Social Security (Contributions) Regulations 2001(**b**) are amended as follows.

3. In regulation 1(2) (interpretation) after the definition of "readily convertible asset" insert—

> **"**"relevant employment income" has the meaning given in paragraph 3B(1A) of Schedule 1 to the Act(**c**);**"**.

4. In regulation 69 and the heading preceding it (transfer of liability from secondary contributor to employed earner) for "share option gains" substitute "relevant employment income".

5. In Schedule 2 (calculation of earnings for the purposes of earnings-related contributions) for paragraph 7(**d**) substitute—

> **"7.**—(1) The amount of earnings comprised in any payment by way of the conferment of—
>
> (a) a convertible interest in securities;
>
> (b) a restricted interest in securities; or
>
> (c) an interest in convertible or restricted securities,
>
> falling to be taken into account in computing a person's earnings from employed earner's employment shall be computed in the same manner, and shall be taken into account at the same time, as applies under Chapters 1 to 5 of Part 7 of ITEPA 2003(**e**), for the purpose of computing his employment income.
>
> This is subject to the following qualification.
>
> (2) For the purpose of sub-paragraph (1) no account shall be taken of any relief obtained under sections 428A or 442A of ITEPA 2003(**f**) (relief for secondary Class 1 contributions met by employee).**"**.

6. In paragraph 3 of Part 10 of Schedule 3 (payments discharging liability for secondary Class 1 contributions following election under paragraph 3B of Schedule 1 to the Contributions and Benefits Act) for "share option gains" substitute "relevant employment income".

7. In Part 2 of Schedule 4 (provisions derived from the Income Tax Acts and the Income Tax (Pay As You Earn) Regulations 2003)(**g**)—

(a) in paragraph 6(3) for "share option gains" substitute "relevant employment income";

(b) for paragraph 8 and the heading preceding it substitute—

(**a**) S.I. 2004/1943 (C.85) introduces the commencement date of sections 3 and 4 of the National Insurance Contributions and Statutory Payments Act 2004.

(**b**) S.I. 2001/1004: amended by S.I. 2003/2085 and 2004/770; there are other amending instruments but none are relevant. Regulation 156(3) of the principal Regulations provides a rule of construction, in relation to their application to Northern Ireland, of references to enactments applying only in Great Britain.

(**c**) Paragraph 3B(1A) of Schedule 1 to the Benefits Act was inserted by section 3(3)(b) of the National Insurance Contributions and Statutory Payments Act 2004.

(**d**) Paragraph 7 was substituted by regulation 7(3) of S.I. 2003/2085.

(**e**) Chapters 1 to 5 of Part 7 of ITEPA 2003 have been amended by Schedule 22 to the Finance Act 2003 (c. 14).

(**f**) Sections 428A and 442A of ITEPA 2003 were inserted by paragraphs 1(3) and 2(3) of Schedule 16 to the Finance Act 2004 (c. 12).

(**g**) The heading of Schedule 4 was substituted by regulation 29 of S.I. 2004/770.

"Records where liability transferred from secondary contributor to employed earner: relevant employment income

8. Where an election has been made for the purposes of paragraph 3B(1) of Schedule 1 to the Act (elections about transfer of liability for secondary contributions in respect of relevant employment income), the secondary contributor shall maintain records containing—

(a) a copy of any such election;

(b) a copy of the notice of approval issued by the Inland Revenue under paragraph 3B(1)(b) of that Schedule;

(c) the name and address of the secondary contributor who has entered into the election;

(d) the name of the employed earner; and

(e) the national insurance number allocated to the employed earner.";

(c) in paragraph 21(1)(a) for "a gain" to the end substitute "relevant employment income; and"; and

(d) for the heading preceding paragraph 23(**a**) substitute—

"**Additional return by employer at end of year where liability transferred to employed earner: elections under paragraph 3B(1) of Schedule 1 to the Act.**"; and

(e) in paragraph 23(1)(a) for "a gain" to the end substitute "relevant employment income; and".

8. In Schedule 5 (elections about share option gains)—

(a) in the heading, for "SHARE OPTION GAINS" substitute "SECURITIES OPTIONS, RESTRICTED SECURITIES AND CONVERTIBLE SECURITIES"; and

(b) in paragraph 1(1) for paragraphs (a) and (b) substitute—

"(a) details of the securities options, restricted securities and convertible securities to which it relates, or of the period to which it relates, within which these are intended to be awarded or acquired;

(b) a statement that the election relates to relevant employment income arising from the securities or securities options referred to in sub-paragraph (1)(a) on which the employed earner is liable to pay secondary Class 1 contributions under—

(i) in the case of securities options, section 476 of ITEPA 2003(**b**) and section 4(4)(a) of the Act(**c**);

(ii) in the case of restricted securities, section 426 of ITEPA 2003(**d**) and regulation 22(7)(**e**);

(iii) in the case of convertible securities, section 438 of ITEPA 2003(**f**) and regulation 22(7), and

an explanation of the effect of the relevant provision;".

John Heppell
Jim Murphy

22nd July 2004 — Two of the Lords Commissioners of Her Majesty's Treasury

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(**a**) Paragraph 23 of Schedule 4 was amended by regulation 14(3) of S.I. 2003/2085.
(**b**) Section 476 of ITEPA 2003 was substituted by paragraph 10(1) of Schedule 22 to the Finance Act 2003.
(**c**) Section 4(4) of the Act was substituted by section 50(1) of the Social Security Act 1998. Subsection (4)(a) was substituted by paragraph 172(2) of Part 2 of Schedule 6 to ITEPA 2003 and amended by paragraph 48 of Schedule 22 to the Finance Act 2003.
(**d**) Section 426 of ITEPA 2003 was substituted by paragraph 3(1) of Schedule 22 to the Finance Act 2003.
(**e**) Regulation 22(7) was substituted by regulation 5 of S.I. 2003/3085.
(**f**) Section 438 of ITEPA 2003 was substituted by paragraph 4(1) of Schedule 22 to the Finance Act 2003.

The Secretary of State concurs.
Signed on behalf of the Secretary of State.

P Hollis

3rd August 2004

Parliamentary Under-Secretary of State,
Department for Work and Pensions

The Department for Social Development concurs.
Sealed with the Official Seal of the Department for Social Development on 23rd July 2004.

L.S.

John O'Neill

Senior Officer of the Department for Social Development

Ann Chant

Helen Ghosh

26th July 2004

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004: ("the principal Regulations") to reflect the provisions on National Insurance contributions in relation to securities-based remuneration, introduced by sections 3 and 4 (agreements and joint elections) of the National Insurance Contributions and Statutory Payments Act 2004 (c. 3: "the Act").

Regulation 1 provides for the citation, commencement and effect.

Regulation 2 introduces the changes made to the principal Regulations.

Regulation 3 amends regulation 1(2) of the principal Regulations by inserting a new definition of "relevant employment income".

Regulation 4 amends regulation 69 of the principal Regulations so that a joint election to transfer the liability to pay contributions from the secondary contributor to an employed earner can be made in respect of relevant employment income.

Regulation 5 amends Schedule 2 to the principal Regulations. Section 85 of, and Schedule 16 to, the Finance Act 2004 (c. 12) provides income tax relief where there has been an election or agreement that an employee is to meet the secondary Class 1 contributions. New paragraph 7 ensures that the amount of relevant employment income to be taken into account for the purposes of calculating secondary Class 1 contributions is not reduced by the amount of that relief.

Regulation 6 amends paragraph 3 of Part 10 of Schedule 3 to the principal Regulations. It provides that a payment discharging liability for secondary Class 1 contributions, which has been transferred from the secondary contributor to the employed earner in respect of relevant employment income, shall be disregarded in the calculation of earnings.

Regulation 7 amends Part 2 of Schedule 4 to the principal Regulations so that where there has been an election to transfer the liability to pay contributions on relevant employment income from the secondary contributor to an employed earner, an employer may deduct earnings-related contributions if the election provides for the collection of the amount in respect of which liability

is transferred, an employer shall make an additional return at the end of the year in respect of each employed earner, the secondary contributor shall keep certain records and the employed earner shall be liable to pay interest on the late payment of contributions.

Regulation 8 amends Schedule 5 to the principal Regulations so that elections to transfer the liability to pay contributions on relevant employment income from the secondary contributor to an employed earner, shall contain details of the relevant employment income to which the election relates and a statement that the election relates to relevant employment income on which the employed earner is liable to pay secondary Class 1 contributions.

These Regulations do not impose any new costs on business. A regulatory impact assessment in respect of the effects on business of the Act was placed in the libraries of both Houses of Parliament, and a copy is available on the Inland Revenue website at http://www.inlandrevenue.gov.uk or from the Inland Revenue by contacting 020 7438 7823.

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The Social Security (Contributions) (Amendment No. 4) Regulations 2004

£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.
E1171 8/2004 141171T 19585

ISBN 0-11-049728-7

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