STATUTORY INSTRUMENTS

1978 No. 423

SOCIAL SECURITY

The Social Security (Contributions) Amendment Regulations 1978

Made - - - -	15*th March* 1978
Laid before Parliament	16*th March* 1978
Coming into Operation	6*th April* 1978

The Secretary of State for Social Services with the concurrence of the Inland Revenue in so far as their concurrence is required, in exercise of the powers conferred upon him by paragraphs 5(1) and 6(1) (*h*) and (*m*) of Schedule 1 to the Social Security Act 1975**(a)** and of all other powers enabling him in that behalf, after considering the report of the National Insurance Advisory Committee on the draft submitted to them in accordance with section 139 of that Act, hereby makes the following regulations.

Citation, interpretation and commencement

1. These regulations which may be cited as the Social Security (Contributions) Amendment Regulations 1978 shall be read as one with the Social Security (Contributions) Regulations 1975**(b)** as amended**(c)** (hereinafter referred to as the "principal regulations") and shall come into operation on 6th April 1978.

Amendment of regulation 1(2) *of the principal regulations*

2. In regulation 1(2) of the principal regulations (interpretation) there shall be inserted the following definitions:—

(*a*) after the definition of contracted-out percentage—

> ' "contracted-out rate" means in relation to Class 1 contributions payable in respect of earnings paid to or for the benefit of an earner in contracted-out employment the percentages for the time being applying in section 27 of the Pensions Act for the calculation of the amount of those contributions;'

(*b*) after the definition of non-contracted-out employment—

> ' "non-contracted-out rate" means in relation to Class 1 contributions payable in respect of earnings paid to or for the benefit of an earner in non-contracted-out employment the percentages for the time being specified in section 4(6) of the Act for the calculation of the amount of those contributions;'.

Insertion of new regulation 28A *in the principal regulations*

3. After regulation 28 of the principal regulations (return of contributions) there shall be inserted the following regulation—

(a) 1975 c. 14. **(b)** S.I. 1975/492.
(c) The relevant amending instrument is S.I. 1977/638.

"*Return of Class* 1 *contributions paid at non-contracted-out rate instead of at the contracted-out rate*

28A.—(1) Subject to the provisions of paragraphs (2) and (3) of this regulation and without prejudice to the provisions of Regulation 26(3) in Part IV of Schedule 2 to these regulations (payment of earnings-related contributions by employer) where a secondary contributor has paid an amount on account of contributions at the non-contracted-out rate in respect of any employed earner's employment which amount he would have been liable to pay but for that employment being or, as the case may be, becoming contracted-out employment, the Secretary of State shall, on application of the secondary contributor, return to him the amount so paid after deducting the amount of Class 1 contributions payable at the contracted-out rate in respect of that employment.

(2) Any amount falling to be returned under the provisions of the last preceding paragraph which has been paid by the secondary contributor on behalf of an earner and recovered from him shall be returned to the earner, or with his consent in writing, to the secondary contributor.

(3) An application under paragraph (1) of this regulation shall be made in such manner as the Secretary of State shall approve and within the period of six years from the end of the year in which the contracting-out certificate in respect of the employment was issued or, if the Secretary of State is satisfied that the secondary contributor had good cause for not making the application within the said period, within such longer period as the Secretary of State may allow."

Amendment of Regulation 13 *in Parts II and III of Schedule* 2 *to the principal regulations*

4. In Regulation 13 in Parts II and III of Schedule 2 to the principal regulations—

(*a*) after paragraph (2A)(*b*)(ii) there shall be added the following heads—

"or

(iii) the underdeduction occurred as a result of the cancellation, variation or surrender of the contracting-out certificate issued in respect of the employment in respect of which the payment of emoluments is made; or

(iv) the underdeduction occurred as a result of the employment in respect of which the payment of emoluments is made not being treated or ceasing to be treated under article 3(1) of the Social Security Pensions Act 1975 (Commencement No. 11) Order 1977**(a)** as contracted-out employment.";

(*b*) for sub-paragraph (*a*) of paragraph (3A) there shall be substituted the following—

"(*a*) the amount which by virtue of the provisions of that paragraph may be deducted from any payment, or from any payments which fall to be aggregated, shall—

(i) in a case to which only sub-paragraph (*b*)(iv) refers, be an amount in addition to but not in excess of one half of the amount deductible therefrom under the other provisions of these Regulations;

(a) S.I. 1977/2038.

(ii) in any other case, be an amount in addition to but not in excess of the amount deductible therefrom under the other provisions of these Regulations; and".

Substitution of Regulation 26(3) *in Part IV of Schedule* 2 *to the principal regulations*

5. For Regulation 26(3) in Part IV of Schedule 2 to the principal regulations there shall be substituted the following—

"(3)(*a*) If the employer has paid to the Collector on account of earnings-related contributions under this Regulation an amount which he was not liable so to pay, the amounts which he is liable so to pay subsequently, in respect of other payments of emoluments made by him during the same year, shall be reduced by the amount so overpaid, so however that if there was a corresponding overdeduction from any payment of emoluments to an employee the provisions of this paragraph shall apply only in so far as the employer has accounted to the Collector therefor;

(*b*) this paragraph applies only where—

(i) the overdeduction occurred by reason of an error made by the employer in good faith; or

(ii) the overdeduction occurred as a result of the employment in respect of which the payment on account of earnings-related contributions is made being or, as the case may be, becoming contracted-out employment."

Amendment of Regulation 37 *in Part V of Schedule* 2 *to the principal regulations*

6. In Regulation 37 in Part V of Schedule 2 to the principal regulations—

(*a*) for paragraph (4A) there shall be substituted the following—

"(4A)(*a*) If the employer on making any payment of emoluments to a seaman does not deduct therefrom the full amount of earnings-related contributions which by virtue of these Regulations he is entitled to deduct, he may, subject to the provisions of the next succeeding paragraph of this Regulation, recover the amount so underdeducted by deduction from any subsequent payment of emoluments to that employee during the same year;

(*b*) this paragraph applies only where—

(i) the underdeduction occurred by reason of an error made by the employer in good faith; or

(ii) the emoluments in respect of which the underdeduction occurred are deemed to be earnings by virtue of regulations made under section 18 of the Social Security (Miscellaneous Provisions) Act 1977**(a)**; or

(iii) the underdeduction occurred as a result of the cancellation, variation or surrender of the contracting-out certificate issued in respect of the employment in respect of which the payment of emoluments is made; or

(iv) the underdeduction occurred as a result of the employment in respect of which the payment of emoluments is made not being treated or ceasing to be treated under article 3(1) of the Social Security Pensions Act 1975 (Commencement No. 11) Order 1977 as contracted-out employment."

(a) 1977 c. 5.

(*b*) for sub-paragraph (*a*) of paragraph (5A) there shall be substituted the following—

"(*a*) the amount which by virtue of the provisions of that paragraph may be deducted from any payment, shall—

(i) in a case to which only sub-paragraph (*b*)(iv) refers, be an amount in addition to but not in excess of one-half of the amount deductible therefrom under the other provisions of these Regulations;

(ii) in any other case, be an amount in addition to but not in excess of the amount deductible therefrom under the other provisions of these Regulations; and".

David Ennals,
Secretary of State for Social Services.

15th March 1978.

The Commissioners of Inland Revenue hereby concur.
By Order of the Commissioners of Inland Revenue.

J. D. Taylor Thompson,
Secretary.

15th March 1978.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations further amend the Social Security (Contributions) Regulations 1975 ("the principal regulations").

They make provision for Class 1 contributions wrongly paid at the non-contracted-out rate in respect of an employment which is contracted-out to be returned after deduction of contributions at the contracted-out rate.

The Regulations extend the provisions of Regulation 13 in Parts II and III of Schedule 2 to the principal regulations which prescribe the circumstances in which an employer may deduct from subsequent earnings the amount of any Class 1 contributions underdeducted to cases in which he has paid Class 1 contributions at the contracted-out rate and the employment ceases to be contracted-out; they also prescribe the amount to be deducted from any payment in such cases. The Regulations make similar provision in Regulation 37 in Part V of Schedule 2 in relation to seamen.

The Regulations also make provision for the amount of earnings-related contributions payable to the Collector of Taxes in respect of subsequent earnings to be reduced where Class 1 contributions have been wrongly paid at the non-contracted-out rate in respect of an employment which is contracted-out.

The Regulations also make provision for deduction of earnings-related contributions from subsequent earnings of a seaman in respect of any awards under the Employment Protection Act 1975 deemed to be earnings for Social Security purposes.

The other amendments are of a minor nature.

The Report of the National Insurance Advisory Committee dated 13th March 1978 on the draft of the Regulations which was referred to them is contained in House of Commons Paper No. 308 (Session 1977–78) published by Her Majesty's Stationery Office.

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