

1996 No. 195

SOCIAL SECURITY

The Employer's Contributions Reimbursement
Regulations 1996

Made - - - - 1st February 1996
Coming into force - 6th April 1996

Whereas a draft of these Regulations was laid before Parliament in accordance with section 37(2) of the Jobseeker's Act 1995(a) and approved by resolution of each House of Parliament.

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 27, 34(3) and (7), 35(1) and (3) and 36 of the Jobseekers Act 1995(b) and of all other powers enabling him in that behalf, by this instrument which is made before the end of a period of 6 months beginning with the coming into force of the enactments under which it is made(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employer's Contributions Reimbursement Regulations 1996 and shall come into force on 6th April 1996.

(2) In these Regulations—

“benefit week” means a period of 7 days (including Sundays) ending on the week-day corresponding to the particular week-day specified in a written notice last given to a person by the Secretary of State for the purposes of claiming unemployment benefit;

“breaking period” means—

(a) any period of not more than 12 consecutive weeks in respect of which a person is not entitled to a qualifying benefit; or

(b) a period in respect of which a person is summoned to jury service;

“carer” means a person of the description specified in paragraph 4(1) of Schedule 1 to the Income Support Regulations(d);

“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 41(1)(b) of the Pension Schemes Act 1993(e) for the calculation of the amount of those contributions;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 1979(f);

(a) 1995 c. 18.

(b) Section 35(1) is cited because of the meaning ascribed to the word “prescribed”.

(c) See section 173(5)(a) of the Social Security Administration Act 1992 (c. 5).

(d) Paragraph 4(1) of Schedule 1 was substituted by S.I. 1991/1559 and further amended by S.I. 1991/2742.

(e) 1993 c. 48.

(f) S.I. 1979/591; relevant amending instruments are S.I. 1985/1398 and 1991/1632.

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“deductions certificate” means a certificate obtained from the Secretary of State in accordance with regulation 7;

“earnings” is to be construed in accordance with section 3 of the Benefits Act;

“employee” means a person who is—

- (a) an employed earner within the meaning of section 2(1)(a) of the Benefits Act; or
- (b) treated as such under section 116 of the Benefits Act or by regulations made under section 2(2), 117, 119 or 120 of that Act and
- (c) over the age of 16;

“employer” means a person who in relation to an employee is a secondary contributor within the meaning of section 7(1) of the Benefits Act or who is treated as such under section 116 of the Benefits Act or by regulations made under section 7(2), 117, 119 or 120 of the Benefits Act;

“the Income Support Regulations” means the Income Support (General) Regulations 1987(a);

“income tax period” has the meaning specified in Regulation 2(1) of Schedule 1 to the Contributions Regulations(b);

“the Jobseekers Act” means the Jobseekers Act 1995;

“lone parent” has the meaning specified in regulation 2(1) of the Income Support Regulations;

“mariner” has the meaning specified in regulation 86 of the Contributions Regulations;

“non-contracted-out rate” has the meaning specified in regulation 1(2) of the Contributions Regulations(c);

“pensionable age” has the meaning given under the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(d);

“qualifying benefit” means—

- (a) unemployment benefit;
- (b) in the case of a person—
 - (i) who is treated as available for employment under regulation 9 of the Income Support Regulations(e); or
 - (ii) to whom paragraph 1, 4 or 11 of Schedule 1 to the Income Support Regulations applies,
 income support;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State for Education and Employment, Scottish Enterprise or Highlands and Islands Enterprise; and
- (b) to a person for his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the Secretary of State for Education and Employment, Scottish Enterprise or Highlands and Islands Enterprise,

(a) S.I. 1987/1967; relevant amending instruments are S.I. 1991/236, 387, 1559 and 2742, 1992/468 and 1995/482.

(b) The definition “income tax period” was inserted into Regulation 2(1) of Schedule 1 by S.I. 1991/1632.

(c) The definition “non-contracted-out rate” was amended by S.I. 1985/1398 and 1989/1677.

(d) 1995 c. 26.

(e) Regulation 9 was amended by S.I. 1991/236, 387 and 1995/482.

but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973(a), or is training as a teacher;

“tax week” has the meaning specified in section 122(1) of the Benefits Act;

“the Unemployment Regulations” means Social Security (Unemployment, sickness and Invalidity Benefits) Regulations 1983(a, or is training to be Teacher;

“voyage period” has the meaning specified in regulations 86 of the Contributions Regulations;

“week” means a period of 7 consecutive days;

“year” except in regulation 5(4) means a period of 365 days or where that period includes 29th February, 366 days.

(3) In these Regulations, unless to context otherwise requires, any reference—

- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
- (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number;
- (c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

(4) For the purposes of regulations 8 and 9 “the Secretary of State” shall include a reference to the Commissioners of Inland Revenue acting on his behalf.

Circumstances in which a person is treated as entitled to a jobseeker’s allowance for a continuous period of 2 years immediately before his employment.

2.—(1) Where this regulation applies, a person who would not otherwise satisfy the relevant condition shall be treated as satisfying that condition.

(2) This regulation applies where a person would have satisfied the relevant condition had the reference to “to years” been a reference to a period of two years within the meaning regulation 1(2).

(3) This regulation applies where a person is entitled to a jobseeker’s allowance for periods (in this regulation referred to as jobseeker’s allowance period) separated by breaking periods; and the jobseeker’s allowance periods excluding the intervening breaking periods form in aggregated a period of not less than two years.

(4) This regulation applies where—

- (a) a person has any one or more jobseeker’s allowance periods; and
- (b) he is also entitled to a qualifying benefit for one or more other periods (the additional periods) throughout which he is a person of a specified description; and
- (c) the jobseeker’s allowance periods plus the additional periods, form a continuous period of not less than two years.

(5) This regulation applies where, but for a breaking period occurring immediately after a jobseeker’s allowance period, or an additional period a person would have satisfied the relevant condition.

(6) For the purposes of paragraph (4)(b) in determining whether a person has been entitled to a qualifying benefit for any period for any benefit week on any day of which that person was entitled to unemployment benefit shall be treated as a period throughout which that person was entitled to a qualifying benefit.

(a) 1973 c. 50; section 2 was substituted by section 25(1) of the Employment Act 1998 (c. 19).

(b) S.I. 1983/1598; relevant amending instrument is S.I. 1989/2122.

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(7) For the purposes of paragraph (4)(b) a person is a person of a specified description if he is—

- (a) undergoing a course of training for which a training allowance is payable;
- (b) available or treated as available for employment under regulation 9 of the Income Support Regulations or under regulations made under section 25A(1)(a) of the Benefits Act(a);
- (c) a carer; or
- (d) a lone parent.

(8) For the purposes of paragraph (4)(c) in determining whether there has been a continuous period of not less than two years where a person has jobseeker's allowance periods or additional periods separated by breaking periods, the jobseeker's allowance periods and the additional periods shall be aggregated together and treated as a single period and the intervening breaking periods shall be excluded in the computation of that single period.

(9) In this regulation "the relevant condition" means the condition in subsection (1) of section 27 of the Jobseekers Act.

Circumstances in which a person is to be treated as unemployed for a continuous period of 2 years immediately before his employment

3.—(1) Where this regulation applies, a person who would not otherwise satisfy the relevant condition shall be treated as satisfying that condition.

(2) This regulation applies where a person would have satisfied the relevant condition had the reference to "two years" been a reference to a period of two years within the meaning of regulation 1(2).

(3) This regulation applies where, but for a breaking period occurring immediately after the period of unemployment, a person would have satisfied the relevant condition.

(4) This regulation applies where a person has periods of unemployment separated by breaking periods and those periods of unemployment excluding the intervening breaking periods form in aggregate a period of not less than two years.

(5) This regulation applies where a person would have satisfied the relevant condition but for his engagement in employment which is not treated as remunerative work for the purposes of regulation 5(1) of the Income Support Regulations(b).

(6) This regulation applies where—

- (a) a person would have satisfied the relevant condition but for his engagement in employment for any day; and
- (b) that day would not be excluded as a day of unemployment in relation to him by the application of regulation 7(1)(o) of the Unemployment Regulations(c).

(7) In this regulation "the relevant condition" means the condition in subsection (2)(a) of section 27 of the Jobseekers Act.

Prescribed description of a person for the purposes of section 27(2)(c) of the Jobseekers Act

4.—(1) For the purposes of section 27(2)(c) of the Jobseekers Act a person falls within a prescribed description of person if—

(a) Section 25A was inserted by paragraph 5 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18).

(b) Regulation 5(1) was amended by S.I. 1991/1559 subject to savings in S.I. 1992/468.

(c) Regulation 7(1)(o) was added by S.I. 1989/2122.

- (a) he is in receipt of a qualifying benefit for a continuous period of not less than two years; and
- (b) continuously for the whole of that period he satisfied any one or more of the following conditions—
 - (i) he is undergoing a course of training for which a training allowance is payable;
 - (ii) he is available or treated as available for employment under regulation 9 of the Income Support Regulations or under regulations made under section 25A(1)(a) of the Benefits Act;
 - (iii) he is a carer;
 - (iv) he is a lone parent.

(2) For the purposes of paragraph (1)(a) in determining whether a person has been entitled to a qualifying benefit for any period, any benefit week on any day of which that person was entitled to unemployment benefit shall be treated as a period throughout which he was entitled to a qualifying benefit.

(3) For the purposes of paragraph (1) in determining whether there has been a continuous period of not less than two years, where a person has periods throughout which he is a qualifying person separated by breaking periods the periods throughout which the person is a qualifying person shall be aggregated together and treated as a single period and the intervening breaking periods shall be excluded in the computation of that single period.

(4) In this regulation “qualifying person” means a person who is entitled to a qualifying benefit and is of a description specified in paragraph (1).

Deductions from employer's contributions payments

5.—(1) An employer—

- (a) who employs a person who is a qualifying employee in relation to him for a continuous period of at least 13 weeks, ►commencing on or before 31st March 1999◄ and
- (b) who has obtained a deductions certificate, in accordance with regulation 7; and
- (c) who is liable to pay Class 1 contributions in respect of earnings paid to or for the benefit of that qualifying employee in the relevant period.

Words inserted in reg.5(1)(a) by reg. 2 of S.I 1999/286 as from 8.3.99.

shall be entitled to deduct an amount determined in accordance with this regulation from his contributions payments.

(2) The amount which an employer is entitled to deduct shall be where the Class 1 contributions specified in paragraph (1)(c) are payable—

- (a) at the contracted-out rate, an amount equal to the amount of secondary Class 1 contributions which would be payable by that employer in respect of the earnings paid in the relevant period were those contributions payable at the non-contracted-out rate;
- (b) at any other rate, an amount equal to the amount of secondary Class 1 contributions which would be payable by that employer in respect of the earnings paid in the relevant period.

(3) For the purposes of determining an amount which an employer is entitled to deduct under paragraph (2) no account shall be taken of any earnings paid to or for the benefit of the qualifying employee after the relevant period.

(4) In this regulation “the relevant period” means the period commencing with the first day of that qualifying employee's employment with that employer and ending—

- (a) on the last day of such employment;
- (b) on the day the qualifying employee reaches pensionable age; or
- (c) in the following year on the day preceding the day corresponding to that first day of employment,

whichever shall first occur.

Deductions from employer's contributions payments where a mariner's earnings are paid for a voyage period

Words inserted in reg. 6(1)(a) by reg. 2 of S.I. 1999/286 as from 8.3.99.

6.—(1) An employer—

- (a) who employs a person who is a qualifying employee in relation to him as a mariner for a continuous period of at least 13 weeks, ►commencing on or before 31st March 1999◄ and
- (b) who has obtained a deductions certificate in accordance with regulation 7; and
- (c) who is liable to pay Class 1 contributions in accordance with regulation 90 of the Contributions Regulations^(a) in respect of earnings paid to or for the benefit of that mariner for a voyage period commencing in the relevant period but ending after it,

shall be entitled to deduct an amount determined in accordance with this regulation from his contributions payments.

(2) The amount which an employer is entitled to deduct shall be where the Class 1 contributions specified in paragraph (1)(c) are payable—

- (a) at the contracted-out rate, an amount equal to the amount of secondary Class 1 contributions which would be payable by that employer in respect of the earnings earned in the part of the voyage period falling within the relevant period were those contributions assessed at the non-contracted-out rate;
- (b) at any other rate, an amount equal to the amount of secondary Class 1 contributions which would be payable by that employer in respect of the earnings earned in the part of the voyage period falling within the relevant period.

(3) For the purposes of determining an amount which an employer is entitled to deduct under paragraph (2) no account shall be taken of any earnings earned or treated as earned under regulation 90 of the Contributions Regulations in that part of the voyage period falling after the end of the relevant period.

(4) In this regulation "the relevant period" has the same meaning as in regulation 5(4).

Deductions certificate

7.—(1) An application for a deductions certificate must be in writing and shall contain the particulars specified in paragraph (2).

(2) For the purposes of paragraph (1) the particulars required are—

- the name and address of the person employing the qualifying employee;
- the name and national insurance number of the qualifying employee;
- the date the qualifying employee's employment with that person commenced.

(3) An application for a deductions certificate must be made to the Secretary of State before the end of the period commencing with the first day of the qualifying employee's employment with the employer and ending on the expiry of 52 weeks after that date.

(4) The Secretary of State on receipt of an application from a person employing a qualifying employee shall issue a deductions certificate and shall certify on the deductions certificate that the person to whom it is issued is the employer entitled to make deductions in accordance with these Regulations.

(5) Where an application is made after the period specified in paragraph (3) it may be accepted by the Secretary of State if the person applying for it proves that there was good cause for his failure to make the application within the period specified.

^(a) Regulation 90 was substituted by regulation 2 of S.I. 1982/206 and further amended by S.I. 1988/674 and 1989/1677.

(6) A deductions certificate remains at all times the property of the Secretary of State.

(7) A person who has been issued with a deductions certificate shall be responsible for its custody.

(8) A person to whom a deductions certificate has been issued shall, within 28 days of receiving a request from the Secretary of State to do so, return the certificate to the Secretary of State unless he has reasonable cause for not so doing.

(9) Where a deductions certificate has been lost or destroyed the Secretary of State may, at his discretion, issue a duplicate.

Deductions from contributions payments

8. An employer who is entitled to deduct an amount determined in accordance with regulation 5 or 6 may do so by making one or more deductions from his contributions payments except where and insofar as—

- (a) those contributions payments are made more than six years after the end of the year in which he first became entitled to make the deduction;
- (b) that amount has been repaid to him by the Secretary of State;
- (c) he has made a request in writing under regulation 9 that an amount be paid to him and he has not received notification by the Secretary of State that the request is refused.

Payments to employers by the Secretary of State

9.—(1) If the amount an employer is or would otherwise be entitled to deduct under regulation 8 exceeds the amount of his contributions payments in respect of earnings paid in an income tax period the Secretary of State shall, if the employer requests him to do so in writing, pay the employer an amount equal to such excess.

(2) If an employer is not liable to pay any contributions payments in an income tax period but would otherwise be entitled to deduct an amount under regulation 8 and the Secretary of State is satisfied that this is the case the Secretary of State shall, if the employer requests him to do so in writing, pay the employer such amount.

Qualifying employees with more than one employment

10. Where an employee is a qualifying employee in relation to more than one employer at the same time, the right to make deductions shall be confined to the employer—

- (a) with whom the qualifying employee's employment began first; and
- (b) certified on the deductions certificate as the employer entitled to make the deductions.

Treatment of 2 or more employers as one

11.—(1) Where this regulation applies, the employers concerned are to be treated as one for the purposes of determining the amount which may be deducted in accordance with regulation 5 or 6.

(2) This regulation applies where—

- (a) an employer is entitled to make deductions in accordance with these Regulations in relation to a qualifying employee; and
- (b) earnings paid to or for the benefit of that employee are for the purposes of determining the amount of Class 1 contributions payable aggregated by virtue of regulation 12(1)(a) of the Contributions Regulations(a).

(a) Regulation 12(1)(a) was amended by S.I. 1985/1398.

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Offences

12.—(1) A person who contravenes or fails to comply with the requirements of regulation 7(8) is guilty of an offence.

(2) Subsection (7) of section 34 of the Jobseekers Act shall apply in relation to the original offence; and “the original offence” has the meaning given to it in that subsection.

[Regulation 13 revoked by regulation 157 of S.I. 2001/1004 as from 6.4.01.]

Signed by authority of the Secretary of State for Social Security.

1st February 1996.

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for employers to make deductions from their Social Security contributions payments in prescribed circumstances where they employ a qualifying employee.

Regulation 1 contains definitions.

Regulation 2 sets out the circumstances in which a person, who would not otherwise satisfy the condition in section 27(1) of the Jobseekers Act 1995 that immediately before beginning his employment with that employer he be entitled to a jobseeker's allowance for a continuous period of not less than two years, will be treated as satisfying such condition.

Regulation 3 sets out the circumstances in which a person, who would not otherwise satisfy the condition in section 27(2)(a) of the Jobseekers Act 1995 that immediately before beginning his employment with that employer he be unemployed for a continuous period of not less than two years, will be treated as satisfying such condition.

Regulation 4 sets out the prescribed description of a person for the purposes of section 27(2)(c) of the Jobseekers Act 1995.

Regulation 5 provides that an employer must employ a person who is a qualifying employee for a continuous period of at least 13 weeks and have obtained a deductions certificate in order to make deductions in accordance with these Regulations and sets out how the amount which an employer is entitled to deduct is to be calculated.

Regulation 6 provides for the making of deductions in the case of certain mariners.

Regulation 7 provides for an application to be made to the Secretary of State for a deductions certificate before making any deduction and sets out requirements for the form of such an application and the period within which it shall be made to the Secretary of State.

Regulation 8 provides that where an employer is entitled to deduct amounts determined in accordance with regulation 5 or 6 that such deductions may be made by one or more deductions from the employer's contributions payments except in specified circumstances.

Regulation 9 provides that where an employer is unable to deduct in whole or part an amount because it exceeds the amount of his contributions payments paid in an income tax period the Secretary of State or the Commissioners of Inland Revenue acting on his behalf shall on request in writing by the employer pay the employer such sum.

Regulation 10 restricts the right to make deductions where an employee is a qualifying employee in relation to more than one employer at the same time.

Regulation 11 provides for employers to be treated as one where the earnings are aggregated by virtue of regulation 12(1)(a) of the Social Security (Contributions) Regulations 1979.

Regulation 12 makes it an offence to fail to comply with the requirement of regulation 7(8).

Regulation 13 amends certain provisions in Schedule 1 to the Social Security (Contributions) Regulations 1979 by referring to these Regulations.

These Regulations are made pursuant to sections 27, 34(3) and (7), 35(1) and (3) and 36 of the Jobseekers Act 1995 and are made before the end of a period of 6 months beginning with the date those provisions came into force. Accordingly they are exempted by section 173(5)(a) of the Social Security Administration Act 1992 from reference to the Social Security Advisory Committee and have not been so referred.

An assessment of the costs to business of applying regulations 5, 6, 7, 8, 9 and 13 has been placed in the Libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Deregulation Unit, 9th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

