



Statutory Document No. 134/04

THE SOCIAL SECURITY ACT 2000  
THE SOCIAL SECURITY LEGISLATION (APPLICATION) (No. 6)  
ORDER 2004

*Approved by Tynwald*

*18<sup>th</sup> March 2004*

*Coming into operation in accordance with Article 1*

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Social Security Act 2000(a), and of all other enabling powers, the following Order is hereby made:-

**Citation and commencement**

1. (1) This Order may be cited as the Social Security Legislation (Application) (No. 6) Order 2004 and shall, subject to section 2(1) of the Social Security Act 2000, come into force as provided for in paragraphs (2) and (3).

(2) This Article and Articles 2 and 3 shall come into force forthwith.

(3) The applied legislation (as modified) shall come into force as follows -

- (a) each provision of the Social Security (Contributions) (Amendment No. 7) Regulations 2003 shall be deemed to have come into force on the same day as it did so in Great Britain; and
- (b) each provision of the remainder shall come into force on 6<sup>th</sup> April 2004.

**Interpretation**

2. (1) In this Order "the applied legislation" means -

- (a) the Social Security (Contributions) (Amendment No. 4) Regulations 2003(b);
- (b) the Social Security (Categorisation of Earners) (Amendment No. 2) Regulations 2003(c); and
- (c) the Social Security (Contributions) (Amendment No. 7) Regulations 2003(d).

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(a) 2000 c.5; (b) S.I. 2003/1337; (c) S.I. 2003/2420; (d) S.I. 2003/2958.

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(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Social Security Act 2000 or section 1 of the Pension Schemes Act 1995(a) (Acts of Tynwald) shall be construed as a reference to that legislation as it has effect in the Island.

### **Application to the Island of the applied legislation**

3. The applied legislation, as modified and shown in the Schedules to this Order, shall apply to the Island as part of the law of the Island.

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(a) 1995 c.11.

## SCHEDULE 1

This Schedule sets out the text of regulations 1 and 2 of the Social Security (Contributions) (Amendment No. 4) Regulations 2003 (S.I. 2003/1337) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

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### STATUTORY INSTRUMENTS

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2003 No. 1337

### SOCIAL SECURITY

#### The Social Security (Contributions) (Amendment No. 4) Regulations 2003

##### Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 4) Regulations 2003 and shall come into force on *6<sup>th</sup> April 2004*.

(2) In these Regulations -

"the principal Regulations" means the Social Security (Contributions) Regulations 2001(a);

"Schedule 4" means Schedule 4 to the principal Regulations.

##### Amendment of the principal Regulations

2. (1) Amend paragraph 7 of Schedule 4 as follows.

(2) In sub-paragraph (3) for "the same year" substitute "the same year and, where the case falls within paragraph (b), during the following year".

(3) At the end of sub-paragraph (5) add -

"This is subject to the following qualification."

(4) After sub-paragraph (5) insert -

"(5A) Where a payment -

(a) falls within sub-paragraph (4)(e),

(b) comprises a beneficial interest in shares, or

(c) *comprises a beneficial interest in an option to acquire or dispose of shares,*

sub-paragraph (5B) applies.

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(a) S.I. 2001/1004.

(5B) If this sub-paragraph applies -

- (a) sub-paragraph (5)(a) shall have effect as if ", but not in excess of," were omitted; and
- (b) sub-paragraph (8) shall have effect as if at the end there were added "or the following year".

3. *Omitted.*

## SCHEDULE 2

This Schedule sets out the text of the Social Security (Categorisation of Earners) (Amendment No. 2) Regulations 2003 (S.I. 2003/2420) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

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### STATUTORY INSTRUMENTS

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**2003 No. 2420**

### SOCIAL SECURITY

#### **The Social Security (Categorisation of Earners) (Amendment No. 2) Regulations 2003**

##### **Citation and commencement**

1. These Regulations may be cited as the Social Security (Categorisation of Earners) (Amendment No. 2) Regulations 2003 and shall come into force on *6<sup>th</sup> April 2004*.

2. The Social Security (Categorisation of Earners) Regulations 1978(a) are amended as follows.

3. In regulation 1(2) (interpretation) insert at the appropriate places -

""category A, B, C or D waters" has the meaning given in the Merchant Shipping (Categorisation of Waters) Regulations 1992;";

""mariner" has the meaning given in regulation 115 of the Social Security (Contributions) Regulations 2001;".

4. (1) Renumber regulation 5 as paragraph (1) of that regulation.

(2) After paragraph (1) so formed add -

"(2) Paragraph 9 of Schedule 3 applies to mariners notwithstanding anything in regulations 122 and 124(1) of the Social Security (Contributions) Regulations 2001."

5. In paragraph 9 of Schedule 3 (personal service of person employed made available to a host employer) in the entry in Column (A) add at the end -

"Where the employment is as a mariner, this paragraph only applies where the duties of the employment are performed wholly or mainly in category A, B, C or D waters."

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(a) S.I. 1978/1689.

### SCHEDULE 3

This Schedule sets out the text of regulations 1, 2 and 4 of the Social Security (Contributions) (Amendment No. 7) Regulations 2003 (S.I. 2003/2958) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

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#### STATUTORY INSTRUMENTS

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**2003 No. 2958**

#### **SOCIAL SECURITY**

#### **The Social Security (Contributions) (Amendment No. 7) Regulations 2003**

##### **Citation, commencement and effect**

1. (1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. 7) Regulations 2003 and shall *be deemed to have* come into force on 10<sup>th</sup> December 2003.

(2) Regulation 4 has effect in relation to the tax year 2003-04 and subsequent tax years.

##### ***Amendment to the Social Security (Contributions) Regulations 2001***

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

3. *Omitted.*

4. After regulation 94 insert -

**"Exception from Class 4 liability in respect of certain amounts chargeable to income tax as income from self-employed earner's employment**

94A. Where -

- (a) an earner has earnings from employment which is employed earner's employment; and
- (b) an amount representing those earnings is included in the calculation of the profits chargeable to income tax *as income from self-employed earner's employment,*

the earner shall be excepted from liability to pay contributions under section 15 of the Act (Class 4 contributions) on that amount."

5. *Omitted.*

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Made

15/02/2004



Minister for Health and Social Security

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### EXPLANATORY NOTE

(This is not part of the Order)

1. Section 1 of the Social Security Act 2000 (an Act of Tynwald) enables the Department by Order to apply to the Island, as part of the law of the Island and incorporating such exceptions, adaptations and modifications as may be specified by the Order, any legislation to which that Act applies.
2. *Inter alia*, the Act applies to the Social Security Act 1975 and the Social Security Contributions and Benefits Act 1992 (both Acts of the United Kingdom Parliament) and to any statutory instrument made (or having effect as if made) under either of those Acts.
3. This Order applies to the Island the legislation referred to in Article 2(1) of the Order, which makes miscellaneous amendments to social security legislation relating to National Insurance contributions. The provisions of the legislation are summarised in the following paragraphs.
4. **The Social Security (Contributions) (Amendment No. 4) Regulations 2003 (S.I. 2003/1337) (regulations 1 and 2 only)**
  - 4.1 These Regulations amend Schedule 4 to the Social Security (Contributions) Regulations 2001.
  - 4.2 Regulation 1 provides for the citation, commencement and interpretation of the Regulations.
  - 4.3.1 Regulation 2 amends paragraph 7 of Schedule 4. Paragraph 7 prescribes the manner in which an employer may deduct the amount of National Insurance contributions payable by one of their employees or former employees from their remuneration.

- 4.3.2 Under paragraph 7 of Schedule 4, normally where an employer fails to deduct the full amount of employee's contribution payable at the time, then the employer may recover the shortfall by deduction from any remuneration they pay to the employee later in that tax year.
- 4.3.3 A similar rule applies where an employee was remunerated by an intermediary rather than by their employer. However, regulation 2(2) extends by one year the time within which contributions can be recovered in such a case.
- 4.3.4 Regulation 2(3) and (4) then modifies the normal rule that prevents an employer from recovering an underpayment of contributions due from one of his employee by recovering from the employee's weekly or monthly pay any more than the same amount of contributions due respect of that pay, in addition to the normal charge, i.e., the employee pays twice the normal charge of contributions. In such cases, the time within which the underpayment may be recovered is extended by one year, and the limit on the amount which can be recovered during that period does not apply.
- 4.3.5 These modifications only apply in respect of remuneration paid by intermediaries to the employee and payments of earnings in the form of shares or share options in respect of which contributions are payable.

**5. The Social Security (Categorisation of Earners) (Amendment No. 2) Regulations 2003 (S.I. 2003/2420)**

5.1 These Regulations further amend the Social Security (Categorisation of Earnings) Regulations 1978 (as they have effect in the Isle of Man). Those regulations provide, in particular, for how a person's employment category - i.e., that of an employed earner or a self-employed earner - is to be determined in certain cases, and who is to be treated as a person's employer, for National Insurance purposes.

5.2 Paragraph 9 of Schedule 3 to those Regulations provides that where -

- an employee is employed by an employer who is not liable to pay National Insurance contributions in respect them because the employer does not satisfy the residence or presence conditions required for liability (called "the foreign employer"); and
- that employee's services are made available to a person with a place of business in the Isle of Man (called "the host employer"),

then the host employer is responsible for paying Class 1 National Insurance contributions for the employee.

5.3.1 These Regulations provide that paragraph 9 of Schedule 3 only applies to employed mariners if their employment duties are performed wholly or mainly in category A, B, C or D waters. Category A, B, C or D waters are those inland waters in the United Kingdom (rivers, canals, estuaries, lakes, lochs, etc.) which are not regarded as "sea" for the purposes of regulations made under the United Kingdom's Merchant Shipping Act 1985.

5.3.2 Whilst those waters do not include any within the Isle of Man, the application of the regulations to the Isle of Man is prudent so as to prevent any problems which might otherwise arise in enforcing the payment of contributions where an employer in the Isle of Man was employing mariners on board ships in the waters referred to. In such circumstances the employer would be outside the jurisdiction of the United Kingdom, and recovery action for unpaid contributions could not be taken in the Isle of Man against that employer, on behalf of the United Kingdom, unless the regulations were in force in the Isle of Man.

- 5.4 Regulation 1 provides for the citation and commencement of the regulations.
- 5.5 Regulations 2 to 5 amend the Social Security (Categorisation of Earners) Regulations 1978 in accordance with the above.
6. **The Social Security (Contributions) (Amendment No. 7) Regulations 2003 (S.I. 2003/2958) (regulations 1, 2 and 4 only)**
- 6.1 These Regulations amend the Social Security (Contributions) Regulations 2001 (“the Contributions Regulations”).
- 6.2 Regulation 1 provides for the citation, commencement and effect of the Regulations.
- 6.3 Regulation 2 introduces the one amendment to the Contributions Regulations included in the regulations in the form in which they are applied to the Isle of Man.
- 6.4 Regulation 4 inserts regulation 94A into the Contributions Regulations. This exempts the earner from liability to pay Class 4 contributions in respect of certain amounts which are chargeable to income tax as income derived from self-employed earner’s employment.

