



National Insurance and Self-employed Entertainers

Consultation document

Publication date: 15 May 2013

Closing date for comments: 6 August 2013

Subject of this consultation:	This consultation seeks views on simplifying the future National Insurance Contributions (NICs) for self-employed entertainers. The intention is that any proposed change would come into force not earlier than 6 April 2014.
Scope of this consultation:	<p>This document sets out the issues HMRC is seeking to address together with the available options that would, if implemented, resolve these issues to various extents. We are inviting views on these options.</p> <p>HMRC has taken into consideration the fact that a decision by the Court of Appeal is still awaited in the case of <i>ITV Services v HMRC</i> (“the ITV case”) which concerns one of the issues detailed in this document, relating to the interpretation of some specific contracts entered into by ITV and certain entertainers. This consultation relates to potential prospective changes to the Regulations only, and does not reflect any change in HMRC’s interpretation and application of the Regulations to date or an attempt to influence the outcome of this appeal.</p>
Who should read this:	Entertainers, that is those people “ <i>employed as an actor, a singer or a musician, or in any similar performing capacity</i> ” ¹ ; those engaging entertainers; those making any form of “additional use” payments to entertainers; the representative bodies for any of these groups, and any other interested parties.
Duration:	15 May 2013 to 6 August 2013
Lead official:	<p>All enquiries regarding the content or scope of the consultation or further information about the consultation should be addressed to:</p> <p>Mrs Gill Standen HM Revenue & Customs Employment Status Team Room 1E/10, 100 Parliament Street London SW1A 2BQ</p> <p>Telephone: 0207 147 3640 Fax: 0207 147 2640 Email: gillian.standen@hmrc.gsi.gov.uk</p>
How to respond or enquire about this consultation:	Responses can be made to Gill Standen at the above postal or email address.

¹ Regulation 1(2) The Social Security (Categorisation of Earners) Regulations 1978

Additional ways to be involved:

In order to engage interested parties as widely as possible with the consultation, we would be happy to meet with representative bodies. Please use the contact details above if you wish to arrange such a meeting.

After the consultation:

A summary of the responses to this consultation will be published later this year. Responses to this consultation will inform HMRC's decision on its future policy in respect of this issue

Getting to this stage:

The Social Security (Categorisation of Earners) Regulations 1978 have applied to self-employed entertainers since 1998. The Regulations deem the earnings of self-employed entertainers to be those of an employed earner under certain circumstances and therefore subject to Class 1 NICs.

The purpose of the Regulations is to afford earnings-related contributory benefit protection to entertainers who generally have sporadic and disparate work patterns with extended periods of unemployment.

From 1998, the Regulations applied to any entertainer paid *wholly or mainly* by way of salary. Following amendments in 2003, the Regulations apply to any entertainer whose remuneration includes *any* element by way of salary. The statutory definition of "salary" is explained in paragraph 3.3 in chapter 3 of this document.

Previous engagement:

In the past 12 months HMRC has held informal discussions with stakeholders from across the entertainment industry representing up to 80,000 entertainers and 23,000 engagers. These discussions have enabled HMRC to develop a good understanding of specific sub-sets of entertainers and engagers in the industry and how they are currently affected by the Regulations. These groups, and the impacts on them, are detailed in Chapter 4 of this document.

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Why HMRC is consulting

1.1 We are seeking views on simplifying the future National Insurance treatment of self-employed entertainers. We are doing this because we have listened extensively to both entertainers and engagers from all sectors in the UK entertainment industry and have seen clear evidence of the negative impacts that the Regulations are currently having on them.

1.2 We will consider all responses to this consultation. If, after consideration of all the views expressed, we conclude that the most appropriate course of action is a change to current legislation, then an additional public consultation will take place on the specific technical elements of any change needed.

Who does this consultation apply to?

1.3 This consultation is on Social Security legislation which recognises only two types of earners – employed or self employed. The scope of this consultation is the future application of National Insurance to entertainers who are engaged under a contract *for services* (i.e. self-employment). The changes we are consulting on in this document will apply to these entertainers only. In this document when we refer to “entertainers” it is to these entertainers that we are referring. Equally when we refer to “musicians”, we are referring only to those musicians that are self-employed and engaged under a contract *for services*.

Who does this consultation *not* apply to?

1.4 This consultation does not apply to individuals employed as actors, singers, musicians or similar performers under a contract *of service* (i.e. they are employed) by an employer; for which they receive a regular set salary, and for which tax and NICs are deducted at source under the regular Pay As You Earn (PAYE) system. These employed individuals are not affected by any of the proposals in this document.

What we are seeking to achieve

1.5 We are looking for a simple and transparent solution that will give entertainers on lower income, access to a benefits package which is financially comparable to contributions-based Jobseeker’s Allowance (JSA) when they are out of work; but which also places the minimum of regulatory burden on them and those who engage them. The chosen solution ideally must also be able to accommodate future changes to the manner in which entertainers are engaged without requiring future legislative amendments.

What we have done so far

1.6 In the past 12 months we have met informally with a wide range of stakeholders representing the interests of both entertainers and engagers. These meetings have helped us to understand how commercial developments within the industry since the Regulations were last updated in 2003 have changed the way in which most entertainers are engaged. We have listened to their explanations of the disjoint between the provisions of the Regulations and the wording of modern entertainment contracts. They have told us of the significant difficulties this creates in deciding

whether or not to engage entertainers and operate NICs as and when they are engaged. Their input has provided us with valuable insight into the commercial realities of the modern entertainment industry. We are holding this consultation as the next stage in this process of engagement.

1.7 The stakeholders we have met represent entertainers and engagers at all levels of the industry, across: music; theatre; cinema; television; and corporate video communications. The wide cross-section of views they have provided has allowed us to identify both common and distinct problems in applying the Regulations to entertainers. These problems are discussed in more detail in Chapter 3.

What we will do with the responses to this consultation

1.8 The responses we receive to this consultation will help to decide if our preferred option as detailed in Chapter 9 is the right option for our future policy or if we should consider another of the available options in Chapters 7 and 8. More detail on how information contained in the responses to this consultation will be used is given in Chapter 12.

2. Introduction

Background

2.1 The Social Security (Categorisation of Earners) Regulations 1978 (“the Regulations”) were introduced in 1978² and, amongst other things, deem certain groups of self-employed individuals to be employed earners for National Insurance purposes. The principal policy reason for deeming certain individuals to be employed earners is in order to protect their earnings-related contributory benefit entitlement, specifically, contributions-based JSA.

2.2 The Regulations achieve this by deeming that the earnings of a self-employed worker, should, under certain circumstances, be treated as employed earnings for the purpose of paying Class 1 NICs on those earnings. They also determine which person or party is liable to account for and pay the Class 1 NICs to HMRC as the secondary contributor.

2.3 Entertainers were introduced into the Regulations in 1998 as the then Government’s response to the concerns raised by their representative bodies. These concerns highlighted the need for entertainers working in a profession widely acknowledged as precarious to have continued access to earnings-related contributory benefits. This was raised in the context of the then Inland Revenue’s acceptance in 1993 that most entertainers were, for tax purposes, correctly chargeable to tax on a self-employed basis.

2.4 The rationale argued at that time for adding entertainers to the Regulations, was that the sector (particularly acting) historically has irregular work patterns with often lengthy periods without work. Prior to 1993 entertainers were generally considered by the Inland Revenue and the then Department for Social Security to be employed/employed earners, so affording access to earnings-related contributory benefits by virtue of the employed earner status.

2.5 It has been suggested by some stakeholders that since the 1993 case of *McCowen & West*³, some in the entertainment industry consider that entertainers are, as a generality, engaged under employment terms but are “deemed” to be self-employed for the purposes of paying tax. To clarify, employment status is determined by the terms under which an individual is engaged and the reality of the relationship between them and the engager, applying criteria set out in judgements handed down by the Courts over many years.

2.6 Following *McCowen and West*, HMRC’s view is that, as a generality, entertainers are engaged under self-employment terms and that their employment status, for both tax and National Insurance, applying case law criteria, is self-employment (although this will depend on the facts). The Social Security (Categorisation of Earners) Regulations 1978 then deem such self-employed entertainers to be employed earners for the purposes of National Insurance, in certain circumstances.

² Preceded by the Social Security (Categorisation of Earners) Regulations 1975 SI 1975/528

³ *McCowen and West (Appellants) v Inland Revenue (Respondent)*, 1993, Appeal to Special Commissioners for Income Tax

How the Regulations currently apply to entertainers

2.7 Currently, a person is an ‘entertainer’ within the ambit of the Regulations if they are “*employed as an actor, a singer or a musician, or in any similar performing capacity*”.⁴ The secondary contributor is “*the producer of the entertainment in respect of which payments of salary are made*”⁵.

2.8 Whether the Regulations apply depends on the precise terms under which the entertainer is engaged and paid. The Regulations apply if the entertainer is paid any amount by way of ‘salary’ (see paragraph 3.3 in Chapter 3 of this document).

2.9 Where an entertainer is paid directly, the obligation to deduct PAYE/NICs (where they are engaged under employment terms) or NICs only (where they are engaged under self-employment terms), rests with the employer/producer. Where an entertainer is engaged and paid through a Personal Service Company (PSC), the obligation to account for PAYE and/or NICs rests with the PSC.

2.10 In more recent years, the way in which the Regulations are intended to operate has become divorced from the manner in which entertainers are engaged and paid for their work. This gap between the strict application of the legislation and the reality of how entertainers are engaged and paid causes fundamental, and in some cases insurmountable, problems in terms of the practical operation of Class 1 NICs where the Regulations apply; and in recovering sufficient Class 1 NICs in order for entertainers to maintain an ongoing qualification for contributory benefits as and when these are needed. The Regulations in some cases fail to meet their original policy intention to protect the access of most entertainers to contributions-based JSA; they nevertheless place an increasing administrative burden on their industry engagers in determining whether or not the Regulations should be applied and by whom. A combination of issues is creating uncertainty for both entertainers and their engagers:

2.11 One example of where the manner in which entertainers are paid is causing difficulties is that of “additional use payments” (e.g. royalties). Additional use payments are often paid to entertainers via a complex network of commercial relationships surrounding the sale of broadcast rights, commonly involving third party commercial organisations across the globe. Additional use payments are often made as and when the original performance work of the entertainer is re-broadcast beyond any broadcast rights arrangements that may have been purchased as part of their original contract for services. Such payments generally arise and are made to the entertainer months, or even years after the original engagement has concluded; and commonly by parties other than the original producer/engager who is liable to operate the NICs on these payments.

2.12 An example of where the manner in which entertainers are engaged is causing difficulties is that of musicians. Whereas HMRC had previously considered the Regulations were not engaged for the majority of musicians by virtue of their contractual terms, the Upper Tribunal decision in the ITV case in February 2012 means that generally musicians may be engaged in such a way that the Regulations apply to them. In addition to issues of impracticality for the musicians (who may

⁴ Regulation 1(2) The Social Security (Categorisation of Earners) Regulations 1978

⁵ Paragraph 10 in Column B of Schedule 3 to the Social Security (Categorisation of Earners) Regulations 1978

undertake several engagements in one day) this has resulted in administrative and financial burden on their engagers for the need to apply Class 1 NICs.

2.13 The financial impact of the Regulations on both entertainers and the entertainment industry engaging them is a factor that needs to be considered alongside their administrative impact. There is a higher cost for both engagers and individuals to paying Class 1 NICs and some out of work entertainers will still find themselves with insufficient Class 1 NICs credited to qualify for contributions-based JSA.

2.14 There is evidence that the liability to pay 13.8% employers' Class 1 NICs is influencing commercial decision-making, including reduced numbers of entertainers engaged and necessitating production cuts in order to stay within budget and remain competitive in the global marketplace. Whilst this may also be true of certain other UK employers the distinction in the case of entertainers is that most entertainers are not employees, but are characteristically self-employed, being engaged under a contract *for services*.

3. The Issues

3.1 We have listened over a number of months to both entertainers and their engagers and we have concluded that there are currently three distinct problems for both parties when trying to make the Regulations work as intended.

Defining the term “Salary”

3.2 From 1998 it was the intention that the Regulations were engaged for all entertainers, other than a few individuals who were not wholly and mainly paid by way of salary. However, after the Regulations came into effect it became apparent increasingly that in fact the majority of entertainers were not paid wholly or mainly by way of salary. Consequently, for many entertainers (and crucially lower paid entertainers, whose contributory benefit entitlement the Regulations are intended to protect) the Regulations did not apply.

3.3 A 2003 amendment to the Regulations attempted to resolve this problem by replacing the “*wholly or mainly by way of salary*” test with a statutory definition of the term “salary”. “Salary” means payments:

- (a) *made for services rendered;*
- (b) *paid under a contract for services;*
- (c) *where there is more than one payment, payable at a specific period or interval;*
and
- (d) *computed by reference to the amount of time for which work has been performed.*⁶

3.4 Since 2003, the Regulations apply to entertainers whose contracted remuneration includes any element by way of ‘salary’ - as defined above. The 2003 amendment was accepted as excluding, and in practice still does exclude, a small group of entertainers where no element of their remuneration is by way of salary.

3.5 Whether an entertainer’s payments are “*computed by reference to time*”, as stipulated in part (d) of the above definition, depends on the exact wording of their contract. Although HMRC’s interpretation of this term has been upheld by the Upper Tribunal, it has been questioned by engagers within the entertainment industry who do not necessarily agree with it. Based on their different interpretation, some engagers appear not to have operated the Regulations for entertainers they have engaged. This has resulted in some confusion in certain parts of the entertainment sector.

3.6 Industry engagers have told HMRC that the term “*computed by reference to time*” is too broad a concept. It has been argued that the way the entertainers are engaged (for example, no entertainer can commit to providing their services for an unspecified period) means that one interpretation of this term would result in almost every entertainer being engaged in a manner which results in the Regulations applying.

⁶ Paragraph 5A in Column B of Schedule 1 to The Social Security (Categorisation of Earners) Regulations 1978

Defining when the Regulations are engaged for an entertainer

3.7 Linked closely to the problem of defining “salary”, is the matter of when the Regulations strictly apply.

3.8 As explained in paragraph 3.4, the Regulations currently apply where an entertainer’s remuneration contains any element of salary. HMRC has always accepted that, in theory at least, there exist a very small number of entertainers who are in receipt of performance fees with no element of “salary” to whom the Regulations do not apply.

3.9 However, as the entertainment industry has developed since the Regulations were last updated in 2003, so the wording of entertainment contracts has necessarily also changed. This has created a disjoint between the provisions of the Regulations and the wording of most modern entertainers’ contracts. This in turn has led to a certain amount of subjectivity when trying to determine whether a payment to an entertainer is “*computed by reference to time*”. We believe that in reality virtually all payments to entertainers now fall within the statutory definition of “salary” and within the Regulations.

3.10 It has been suggested that one way to resolve this disjoint would be for engagers to change the wording of entertainment contracts to effectively exclude those entertainers who in reality are not paid by way of salary. Our discussions with stakeholders suggest that this view is too simplistic. Contracts cannot simply be re-worded by engagers due to the fact that almost every contract used in the industry must contain elements incorporated from standard model contracts agreed between the industry and entertainers under the terms of a standing national bargaining agreement.

3.11 Regulations which apply across the whole of the entertainment industry irrespective of such factors as the underlying relationship between the entertainer and engager or the impracticality of application, whilst protecting the earnings-related contributory benefit position of entertainers, are at the same time reported by representatives of both engagers and entertainers to be causing clear practical and financial burdens. These are translating into wider adverse commercial consequences across the industry, which are discussed in more detail in the next chapter of this document.

Defining who is the liable secondary contributor

3.12 Currently where an entertainer’s contractual remuneration means that the Regulations apply any additional use payments (e.g. royalties subsequently deriving from the original production) will also be subject to Class 1 NICs.

3.13 Additional use payments, where applicable, can generate indefinitely after the entertainer’s initial engagement has ended. As explained in paragraph 2.11, such payments are not always paid to the entertainer by the producer of the entertainment (who is legally liable to operate the NICs as the secondary contributor). In many cases the common commercial practice is that the producer of the entertainment is a Special Purpose Vehicle (SPV) company set up specifically for one project which will become legally defunct by the time these payments are due. Commonly the original producer of an entertainment will have no knowledge or record of additional use payments

made. These payments are usually managed through a third party broadcast distributor and paid directly to the entertainers concerned (or their agent), sometimes from outside the UK or European Economic Area (EEA).

3.14 Defining who is the secondary contributor and legally responsible for operating secondary Class 1 NICs on additional use payments is an issue causing growing concern to both entertainers and engagers. In some instances, it is directly influencing the decision of some producers not to make additional use payments to the detriment of the entertainers concerned. Where additional use payments are paid, the entertainer is unlikely to be aware if Class 1 NICs have been operated on these payments and so is unable to keep track of which contributions have been paid and whether these have been correctly credited to their National Insurance record.

3.15 A number of media companies, for commercial reasons choose to operate Class 1 NICs voluntarily on additional use payments they make to entertainers. These companies operate as “agents” on behalf of the liable secondary contributor - usually an independent producer whom they have commissioned to make the entertainment. This is permissible under social security legislation but these arrangements still mean that the liability for any unpaid Class 1 NICs remains with the producer of the entertainment, even if their involvement in making the entertainment or making payments in relation to it has concluded.

3.16 Entertainers’ representatives have expressed the view that additional use payments made to entertainers should not be subject to Class 1 NICs in any case because these are not remuneration for services but are intended as financial recompense to the entertainer for the continued use of their performance (which is their intellectual property).

3.17 They further argue that subsequent additional use payments are not guaranteed to the entertainer and, if paid, are usually low in value. For these reasons additional use payments are not derived from the original engagement of an entertainer and hence the Regulations do not apply to these. However, HMRC’s view is that under Section 3 of Social Security Contributions and Benefits Act 1992 such payments are derived from the original employment of the entertainer, and are therefore within the ambit of the Regulations.

3.18 Where an entertainer receives an additional use payment that engages the Regulations from a producer operating wholly outside the UK or EEA, then only employees’ Class 1 NICs are due. However, where the producer is still trading within the UK, HMRC can pursue them for both the employees’ and employers’ Class 1 NICs due. If employees’ Class 1 NICs only are due, HMRC can require the individual entertainer to account for these, but to do so requires HMRC to register each self-employed UK entertainer in their own primary Class 1 NICs only scheme. This places an administrative burden on UK entertainers to operate their own employees’ Class 1 NICs and an administrative burden on HMRC in having to administer these schemes.

3.19 Where a producer legally ceases to trade at the end of a production (as in the case of an SPV production company), there is no liability in law for employers’ Class 1 NICs, or a liability to operate employees’ Class 1 NICs. HMRC is obliged under social security legislation in this situation to treat the entertainer as having paid the employees’ Class 1 NICs by crediting their National Insurance record with the relevant contributions for the period in question. This places a burden on the National

Insurance Fund of crediting NICs which have not been paid, with a risk of further loss if the entertainer subsequently receives contributions-based JSA on the basis of these credits for which no actual payment has been made or can be legally recovered by HMRC. Whilst this position would also apply to certain workers in other industries where SPV companies are used, the very common use of SPV companies in film and television production heightens this risk of burden on the National Insurance Fund in respect of entertainers.

3.20 All of these circumstances create obstacles for entertainers in knowing exactly which of their earnings are subject to Class 1 NICs and in keeping track of whether these have been correctly accounted for and paid to HMRC. There is also a burden on them to operate their own primary Class 1 NICs where the producer is trading outside the UK or EEA. For those UK based producers still trading, it places an open-ended administrative burden of keeping the entertainer on their payroll indefinitely in case additional use payments should arise. It additionally puts an administrative burden on HMRC in trying to recover the NICs involved. The reality we believe, from talking to industry representatives, is that many producers and entertainers are not aware of their strict NICs liability in these circumstances and in some cases the NICs are not capable of being recovered, at a loss to the National Insurance Fund.

4. The Industry Stakeholders' views

Who we have spoken to

4.1 In the past 12 months we have held informal fact-finding discussions with stakeholders representing over 80,000 UK entertainers and 23,000 engagers. These stakeholders broadly fall into four specific sub-sets:

- Producers/Broadcasters of Film, Television, Radio, Music, Theatre and Training/Corporate Videos
- Musicians (including Singers)
- Actors and those in similar performing capacities
- Specialist legal and financial advisors to the entertainment industry

As a result of these discussions some of these stakeholders have voluntarily substantiated their arguments by providing HMRC with documentary evidence to support their concerns.

What these stakeholders have told us

4.2 Both entertainers and their industry engagers agree that the Regulations as they currently apply to entertainers do not work as intended in all cases, are burdensome, and do not always achieve their policy intention of providing earnings-related contributory benefit protection. Opinions were divided on the reasons for this and on how HMRC policy could be re-designed to alleviate this burden for the future.

Producers/Broadcasters

4.3 Producers/Broadcasters and their representatives have told us that:

- Producers and Broadcasters understand that most entertainers need access to benefit protection in case of unemployment. It is right they should have access to this. This should not, however, be at the cost of a regulatory burden which risks the commercial wellbeing of the Industry employing them;
- Entertainers and engagers need NICs legislation that is simple to understand and operate, transparent, does not overly burden any one party, and which provides certainty for both parties of the correct NICs position;
- The simplest way to achieve this would be for entertainers to be treated as self-employed by HMRC for both tax and NICs purposes;
- The Regulations are difficult to operate because certain entertainers previously believed by the entertainment industry not to be paid by reference to time (and to whom therefore the Regulations did not apply) are considered by HMRC to be paid by reference to time - only by virtue of the fact their contracts contain a purely logistical reference to the time period in which they will undertake their work;
- Given the way the entertainment industry is funded, an ongoing and indefinite liability to pay 13.8% Class 1 employers' NICs is not financially sustainable, particularly for many smaller independent production companies;

- The ongoing cost in particular of having to pay HMRC Class 1 NICs for entertainers will leave some smaller independent producers commercially uncompetitive (and hence at risk of insolvency if work is then lost);
- Given that production budgets have already been fixed in advance for certain productions yet to commence filming, producers must now find the additional cost of Class 1 NICs for key performers by cutting back on minor, lower paid cast members – hence creating further unemployment or loss of new engagement opportunities for entertainers;
- Some foreign Film and Television producers are already rejecting the UK as a production location where they would incur a cost of having to operate Class 1 NICs for performers they engage;
- Some UK producers and productions are moving offshore and it is believed this trend will grow to avoid liability to operate Class 1 NICs for entertainers they engage;
- Current UK tax incentives such as the Film Tax Credit are being largely eroded by the cost of operating Class 1 NICs for self-employed entertainers;
- The financial and practical burden on producers of operating Class 1 NICs is contrary to the existing commitment of the Government to support the economic growth of UK Film and Television production; and
- In respect of additional use payments, it is not reasonable that producers are required to operate and pay Class 1 NICs on additional use payments that they do not know have been made to an entertainer; and
- UK and EEA based third party buyers may be discouraged from buying broadcast rights because they would be financially disadvantaged compared to their non UK/EEA counterparts by the requirement to operate Class 1 NICs.

Musicians (including Singers)

4.4 Musicians and their representatives have told us that:

- Many musicians do not want earnings related contributory benefit protection;
- Musicians commonly have simultaneous income sources in any given week and many provide substitutes (whom they then pay) when unable to perform in person. This type of work pattern does not lend itself to the operation of Class 1 NICs;
- The application of the Regulations to musicians has changed as a result of the Upper Tribunal decision in the ITV case;
- Musicians are not in any way “salaried” for their work, and should not be deemed as such by HMRC’s interpretation of the Regulations;
- Unlike other entertainers, musicians do not generally have long periods of unemployment;
- Neither can they easily access benefits, because the “on call” nature of their work means they cannot comply with the JSA rules requiring them to be available and actively seeking employment;
- The Regulations are having a significant negative financial impact on UK music. Funding for the musical arts is fragile and most UK Orchestras and Music Institutions are dependent on an ever-reducing amount of public arts funding, plus any private sponsorship or charitable donations they can obtain;
- An ongoing and indefinite liability to pay 13.8% Class 1 employers’ NICs is not financially sustainable for these organisations who are already financially struggling;

- The ongoing cost of paying Class 1 employers' NICs is placing many UK Orchestras and Music institutions at imminent risk of insolvency. Those remaining solvent are unable to compete commercially with overseas orchestras, due to the need to factor in the cost of employers' Class 1 NICs for their musicians;
- Many individuals who engage musicians will not have a formal contract with the musician and are unlikely to operate Class 1 NICs for them. Under the strict application of the Regulations, it could be argued by some that for example, a bride hiring a wedding musician, or a licensee hiring a band to play in their bar, are actually producing this entertainment and hence are liable to operate Class 1 NICs;
- The multiple engagements undertaken by most musicians each tax year will generate both self-employed income subject to Class 2 and 4 NICs and deemed employed earnings under the Regulations subject to Class 1 NICs. Reconciling the NICs position across what musicians see as the same type of work (but which the Regulations differentiate) adds an unnecessary level of complexity; and
- Many musicians are engaged through a third party "fixer" designated by a music producer to find musicians for their production, rather than the music producer themselves. Where the "fixer" is paying the musician, the current statutory definition of the secondary contributor in the Regulations, being "the producer of the entertainment," does not reflect the party who is in reality paying/engaging the musician. This places an unfair financial burden on the music producer to pay and account for Class 1 NICs in respect of a musician that they have neither engaged nor paid.

Actors (and those in similar performing capacities)

4.5 Actors, those in similar performing capacities, and their representatives have told us that:

- Entertainment remains a highly precarious and unstable profession in terms of having regular employment; entertainers' need of benefit protection therefore remains as important as ever;
- The majority of entertainers are generally low paid. The average annual income of an entertainer engaged as an actor or in any similar performance capacity is around £12,000 per annum. Many earn less;
- The total annual performing work for an average entertainer is between 12 and 14 weeks (non-consecutively);
- Almost all entertainers have at some point, to supplement their earnings as an entertainer with outside employment. Earnings from supplementary employment may or may not have Class 1 NICs paid;
- Entertainers need to be Class 1 NICs earners in order for whatever entertainment earnings they do have to count towards an entitlement to earnings-related contributory benefit. This means they can gain access to this benefit during periods of unemployment;
- The Regulations currently work well for entertainers because they treat almost all of their earnings as subject to Class 1 NICs. This is critically important because the sporadic and inconsistent pattern within which entertainers work and are paid makes it almost impossible for them to otherwise consistently

maintain sufficient credits of Class 1 NICs to meet the minimum qualifying criterion to receive contributions-based JSA when unemployed;

- Without ongoing contributory benefit protection it will be difficult for newly trained entertainers to begin working in the industry. Entertainment as a profession could become the preserve of only those with independent financial means;
- In terms of tax, entertainers still need to have self-employed status in order to claim back against tax, the legitimate expenses they incur as part of their profession;
- Entertainers do not consider additional use payments (e.g. royalties) to be part of their initial performance fee. Whilst a broadcaster may make a payment in advance to a producer in respect of rights to post-production transmission which the latter then pays to the entertainer with their performance fee, this payment is intended to reimburse the entertainer in advance for additional exploitation of their work (which is their intellectual property). Subsequent additional use payments are not guaranteed to the entertainer and if paid, are usually low in value;
- For the same reason, periodic payments to entertainers made by third parties under the terms of a collective licensing arrangement (which allows for the general exploitation of their work overseas or on-line) are not derived from the original performance engagement and should not be deemed as employment earnings subject to Class 1 NICs; and
- Applying Class 1 NICs to such micro payments would create an administrative burden upon the party paying them in trying to identify a liable secondary contributor who must then account for the Class 1 NICs.

Specialist legal and financial advisors

4.6 Specialist legal and financial advisors and their representatives have told us that:

- The UK needs simple transparent NICs rules for entertainers;
- These rules must be easy to operate and should provide certainty for all parties involved in terms of compliance with NICs legislation;
- The current NICs Regulations don't reflect how producers engage & pay entertainers;
- Tax Advisors/Accountants are unable to give their clients any certainty that they are compliant with NICs legislation;
- There would be no significant negative impact on the contribution made to the UK economy by the entertainment industry if entertainers were outside Class 1 NICs;
- On the contrary, removing the financial burden of Class 1 employers' NICs from producers will allow this money to be re-invested back into further productions, which in turn will create further employment opportunities for entertainers and more income for the UK economy;
- Leaving the financial burden of Class 1 employers' NICs with producers will critically damage the UK Economy as some foreign producers who may incur a Class 1 NICs liability are already being deterred from bringing their productions to film in the UK;
- Many producers were not aware of the existence of the Regulations prior to 2011. It was only the First Tier Tribunal's decision in 2011 in the ITV case

(which gave the Regulations a higher public prominence) that brought them to their attention;

- UK Film and TV producers have already started to move their productions offshore to avoid any liability to operate Class 1 NICs; and
- Foreign producers coming to the UK to film with foreign actors are, in certain circumstances, forced under the Regulations to operate Class 1 NICs for these actors - even though the actors are non-UK nationals and frequently cannot transfer the benefit of these Class 1 NICs to their social security records in their home nations.

5. The HMRC view

5.1 We recognise the very significant contribution that entertainers and the entertainment industry make to the UK economy. We also acknowledge that the UK is rightly seen as a world leader in various aspects of the entertainment industry. These include: performance arts; special effects; music production; technical production; and corporate video production, among others.

5.2 We sympathise with the challenge for entertainers of obtaining enough professional work to sustain both themselves and their dependants. We also appreciate the critical value to entertainers of having access to benefits during times when work is hard to come by. We are keen that as far as possible entertainers on a low income should be able to have access to a package of benefits when out of work, which is financially comparable to contributions-based JSA.

5.3 It must also be recognised however that whilst the Regulations seek to afford benefit protection to entertainers who are crucial to the current and future success of the industry, they are in practice causing very real practical and financial burdens on the industry and potentially putting in jeopardy the livelihood of at least some of those entertainers whom the Regulations are intended to protect.

5.4 In an increasingly globalised industry, we appreciate the risk that if the UK is uncompetitive work may be lost overseas and overseas investment may not materialise. We are grateful to those engagers who have provided us with specific examples of where this risk has already begun to materialise and where entertainers have lost work as a result.

5.5 In order to help mitigate this risk, and as part of the Government's ongoing commitment to nurture the continued growth of the industry, HMRC has implemented the introduction of tax incentives for the production of UK films, and more recently for production of high-end television drama, animation, and video games.

5.6 Some engagers have suggested that in recent years HMRC has significantly changed its interpretation of how and when the Regulations apply to entertainers. We do not accept this view.

5.7 HMRC has always taken the view that those individuals employed as actors, singers, musicians, or in any similar performing capacity are entertainers within the ambit of the Regulations. The Regulations are engaged for an entertainer where the contractual terms of their engagement includes any element of 'salary' as this term is statutorily defined. HMRC continues to apply the Regulations as articulated in case law.

5.8 Our informal discussions with industry representatives have enabled us to understand the extent to which the industry has changed and grown since the Regulations were last updated in 2003. We now accept that the commercial reality of how entertainers are engaged and remunerated today in 2013 is different from the engagement practices of the industry back in 2003. What is more, the way the industry is continuing to evolve, for example, digitalisation (and more specifically the proliferation of additional use payments arising as a result of web based broadcasting), leads us to conclude that the disjoint between how the Regulations

were intended to work and how the industry operates, will continue to grow unless action is taken.

5.9 Equally, we have learned of the unstable nature of entertainers' work and the clear need for them to have ongoing access to state welfare support in times of unemployment. This is particularly important for newly qualified performing arts graduates entering the industry who have yet to establish their professional reputations and profile with engagers, but is also true of most low to medium paid "jobbing" entertainers.

5.10 We believe that the current dual status of entertainers for tax and NICs was established at a time when the UK benefits system was very different and there was a clear policy rationale for protecting entertainers' entitlements to earnings-related contributory benefits due to the ongoing and sporadic pattern of their work engagements. As time has passed however, and with the introduction of Universal Credit and the forthcoming Single Tier state pension, we believe a new approach is called for whereby entertainers can receive financial support when intermittently out of work without the current burdens placed on them and their engagers by the Regulations which seem to be out of step with their industry.

5.11 In terms of how the Regulations currently apply, we have been asked whether HMRC can in effect draw a line under the past, including past liabilities, and resolve matters prospectively. We have made clear that whilst we understand the difficulties being experienced by the industry, the Regulations must currently be applied in accordance with HMRC's Revenue and Customs Brief 19/12 which reflects current case law.

5.12 Overall, we have concluded that to be fair to both entertainers and engagers the time is now right to review the future NICs treatment of entertainers and if it is appropriate, to amend legislation to address and alleviate prospectively as many of the regulatory burdens created by the Regulations as possible.

5.13 The following chapters present the ways in which we believe the NICs treatment of entertainers could be changed in future, and we are asking for your views on these.

6. Future approach

6.1 We are seeking to identify a future option which addresses as many of the issues and concerns detailed in Chapters 3 and 4 of this document, as possible. As a matter of general principle, the chosen option must deliver:

- Access to unemployment benefits, broadly equivalent to the current standard rate of earnings-related contributory benefit, for all entertainers;
- NICs legislation (in respect of entertainers) which works simply, transparently and effectively; thus alleviating the current regulatory burdens on the industry;
- NICs treatment of entertainers which does not undermine the commercial well-being of the entertainment industry;
- The continued integrity of the NICs system;
- Protection for the National Insurance Fund
- A long-term solution that is able to accommodate future commercial changes in the industry

6.2 In discussions with the industry, representatives of both entertainers and engagers have made a number of suggestions as to how HMRC should be treating entertainers for NICs purposes. We have given careful consideration to all these suggestions and we believe that there are three possible approaches:

- Do nothing - entertainers retain dual status for Tax and NICs.
- Simplifying legislation within the Class 1 NICs regime
- Moving entertainers' earnings into the Class 2 and 4 NICs regimes

The particular characteristics and information on the current rates of Class 1, Class 2 and Class 4 NICs are listed in Annex A of this document.

6.3 For the reasons explained in Chapter 3, we do not consider it is tenable to do nothing. We believe that the current regulatory burden on entertainers which in some cases results in non-operation and recovery of their Class 1 NICs (at prejudice to their National Insurance record) is unacceptable. However, we also accept that the regulatory burden on engagers of applying the Regulations to the disparate payments and income streams received by entertainers (and to pay 13.8% employers' NICs on these where applicable), is not economically sustainable in the longer term.

Question 1: Do you agree that current NICs treatment of entertainers under the Social Security (Categorisation of Earners) Regulations 1978 needs to be changed?

6.4 The following chapters detail the possible options for changing legislation. HMRC's preferred option and the rationale for this is presented in Chapter 9 of this document.

7. Simplifying legislation within the Class 1 regime

7.1 There are two options within the Class 1 regime for amending legislation which we believe would simplify the NICs treatment of entertainers' earnings:

- Option 1: Provide for separate secondary contributors for NICs due on Initial Performance Payments (IPPs) and NICs due on Additional Use Payments (AUPs); or
- Option 2: Provide that IPPs are subject to Class 1 NICs, but AUPs are subject to Class 4 NICs

Option 1 - Provide for separate secondary contributors for NICs due on IPPs and NICs due on AUPs

7.2 Under the current Regulations the liable secondary contributor in respect of entertainers is the producer of the entertainment from which the entertainer's earnings derive.

7.3 In this option, the producer of entertainment would be responsible for deducting employees' Class 1 NICs and also paying employers' Class 1 NICs on the IPPs that they make to entertainers as remuneration for their performance work.

7.4 Where an entertainer has been subject to Class 1 NICs on their IPP and subsequently receives AUPs - such as royalties which purchase the right to further exploit their original performance - this will attract an additional Class 1 NICs liability.

7.5 The party making the AUP will be liable to deduct the employees' Class 1 NICs and to pay the employers' Class 1 NICs. This liability will apply irrespective of whether the party making the AUP is the original producer of the entertainment, a central distribution company, a third party customer purchasing the rights to exploit the performance, or any other party.

7.6 In order to implement this option it would be necessary to amend the Social Security (Categorisation of Earners) Regulations 1978, to provide that the liable secondary NICs contributor in respect of IPPs made to entertainers shall be the producer of the entertainment, whilst for AUPs made to entertainers it shall be the party (or parties) making the payment to the entertainer. Depending on the legislative design, this may also require primary legislation.

The benefits of this option

7.7 The benefit of Option 1 is that it clearly separates out the liability for Class 1 NICs when an entertainment is in-production, and the liability for Class 1 NICs on any subsequent AUPs for entertainers that are deriving from that entertainment.

7.8 It provides clarity for entertainers (especially those whose performing income is predominantly made up of AUPs) as to who is responsible for operating the Class 1 NICs due for them. By articulating in law who is liable to do this, we believe

entertainers will have the certainty of knowing that they are paying the correct employees' Class 1 NICs on their earnings and that the related employers' Class 1 NICs have also been operated and paid to HMRC.

7.9 This option prevents the trail of liability for NICs being lost in the complex web of commercial relationships by which broadcast rights are generally sold and re-sold across the globe. In many cases it will also place the liability to operate NICs with the party who is most directly profiting from the exploitation of the entertainer's performance at the time the AUP is made.

7.10 For industry engagers, it addresses the common complaint of producers that under the current Regulations they remain liable to operate and pay Class 1 NICs on AUPs paid to entertainers indefinitely after the original production has been completed. This removes the burdens of permanent financial uncertainty and the knowledge that at any point they may be pursued for unpaid Class 1 NICs on AUPs paid to entertainers in respect of a production made years previously, and with which they no longer have any commercial connection.

7.11 It also addresses the issue of Special Purpose Vehicle companies (SPVs). At present, many producers set up SPVs for the single purpose and duration of making an entertainment, before legally ceasing to trade. As discussed in paragraph 3.19, where a producer is legally defunct when AUPs arise for an entertainer, there is no liability for employers' Class 1 NICs and employees' Class 1 NICs can be treated as paid by HMRC under existing social security legislation.

7.12 By clarifying who is liable to operate Class 1 NICs and on which payment they must operate these, producers will know where their liability begins and ends, and will be relieved of a potentially open-ended financial obligation. Similarly, payers of AUPs will know at the outset the scope of their obligations in terms of being liable to account for and pay Class 1 NICs.

7.13 Entertainers will have the assurance of a legal framework that requires any party making AUPs to them to operate Class 1 NICs on these where Class 1 NICs were originally paid on their IPP. HMRC will more readily be able to recover these NICs from the correct liable contributor and credit them to the entertainer's individual National Insurance records; so maintaining their eligibility for contributions-based JSA as and when this may be needed.

The weaknesses of this option

7.14 There are a number of key weaknesses to this option. Where the secondary contributor has no place of business within the UK/EEA there would be no employers' Class 1 contributions due. Employees' Class 1 NICs would still be due, however, and HMRC would hold the individual entertainer liable for these.

7.15 The negative consequence of this situation would be fourfold:

- (i) The entertainer would need to operate a direct-pay "Primary NICs only" scheme for themselves. HMRC would need to recover these NICs and ensure the individual's NICs record was correctly credited. This would be administratively cumbersome and burdensome. This situation also applies in other professions, but in these the individuals concerned are employees

under a contract of service rather than self-employed under a contract for services (but having deemed employment earnings for NICs purposes); The regulatory burden on entertainers is greater however due to the multiple sources of additional use payments they may receive which are commonly paid by different parties from outside the UK/EEA.

- (ii) The National Insurance Fund would not receive secondary contributions but would still pay out contributory benefits;
- (iii) The party making the payments would also be legally responsible for operating statutory payments that may be due to the entertainer (e.g. Statutory Sick Pay, Statutory Maternity Pay etc). In reality the party making these payments, in the case of additional use payments, may be unconnected to the entertainer and will have no means of knowing when or how to operate these; and,
- (iv) UK and EEA-based third party buyers may be discouraged from buying broadcast rights because they would be financially disadvantaged compared to their non UK/EEA counterparts by the requirement to operate Class 1 NICs.

7.16 Whilst UK/EEA third party buyers would be discouraged from buying broadcast rights to UK productions, conversely, third party buyers with no place of business inside the UK/EEA would not be liable for employers' Class 1 NICs. The risk to this is that legitimate UK distributors will choose to move operations outside the UK/EEA in order to avoid NICs. This would leave HMRC to recover the employees' Class 1 NICs only directly from the entertainer concerned, creating a regulatory burden on the entertainer.

7.17 Given that the UK is an industry world leader, with its film and TV productions generating revenue from across the globe, we believe that any change in the party liable to operate Class 1 NICs on additional use payments which would negatively affect UK/EEA third party buyers and possibly be perceived as benefiting global third party buyers, would not be desirable.

7.18 This option also presents considerable practical and administrative challenges. National Insurance, unlike tax, has regard to earnings periods and earnings limits and aggregates earnings from different sources for the purpose of National Insurance in only very specific circumstances. A statutory framework would need to be devised to enable National Insurance to be applied to disparate earnings from potentially multiple payers in any given year so that the contributions paid were sufficient to provide access to earnings-related contributory benefit.

7.19 A further concern is that splitting the liability for Class 1 NICs between two or more parties might create an environment where producers are able to reduce their liability to pay Class 1 NICs by engaging entertainers on terms and conditions that are back-end weighted, with the greater proportion of the remuneration coming from AUPs rather than the IPPs.

7.20 Currently this risk is mitigated to a large extent by the standard model contracts used by the industry and approved by entertainers' representative bodies, which

prevent such back-end weighting of entertainers' remuneration. Where the producer is making both the IPP and the AUPs, there is also little risk of back-ending payments.

7.21 However, where it is known that a third party is likely to make the AUPs especially if that party is outside the UK/EEA, there is a risk that some engagers in the industry might attempt to exploit the contractual terms of an entertainer to their financial advantage by reducing the amount of the IPP and increasing the agreed rate for AUPs – thus reducing their personal liability and making it potentially more difficult for HMRC to recover the NICs due on the AUPs. We believe that an option such as this which gives a potential advantage to one party resulting in possible prejudice to the other party is not acceptable.

7.22 It is also likely that under this option a consequential legislative amendment would be necessary to allow for aggregation of earnings of an entertainer coming from the same source.

Option 2 - Provide that IPPs are subject to Class 1 NICs, but AUPs are subject to Class 4 NICs

7.23 This option involves changing secondary legislation in the Social Security (Categorisation of Earners) Regulations 1978 to exclude any earnings of an entertainer that are generated as AUPs. This is because AUPs are generally paid by a party other than the secondary contributor (who themselves may be legally defunct). The entertainer would continue to declare these earnings from entertainment on the self-employment pages of their Self-Assessment return as now, but they would differentiate between IPP income subject to Class 1 NICs and AUP income which would be subject to Class 4 NICs (subject to the statutory thresholds).

The benefits of this option

7.24 The main benefit of Option 2 is that it again differentiates between the two distinct streams of entertainment income - IPPs and AUPs - that an individual entertainer may receive and where there is a liability to operate Class 1 NICs on this.

7.25 Amending legislation to exclude AUPs will limit the financial liability of a producer to operate Class 1 NICs only on those IPPs made to an entertainer. This provides certainty for both producers and entertainers on the NICs position during and after production.

7.26 Making AUPs subject to Class 4 will help to regularise and bring consistency to the NICs treatment of AUPs across the UK entertainment industry. It should also alleviate the burden on certain third parties which (for commercial reasons), currently pay AUPs to television entertainers and operate any Class 1 NICs due on these as agents on behalf of the liable secondary contributor (i.e. the producer of the entertainment). This sub-option allows for AUPs to be paid to an entertainer periodically without deduction of tax or NICs. The AUPs are then simply declared by the entertainer as self-employed income on their annual Self-Assessment return.

7.27 There is little additional administrative burden with this option as many entertainers are already declaring their income from AUPs as part of Self-Assessment. Regulation 94a of the Social Security Contributions Regulations 2001 will protect the

entertainer from paying both Class 1 NICs and Class 4 NICs on the same income from AUPs

7.28 Entertainers' representatives in discussion with HMRC have indicated that this sub-option would also be welcomed by entertainers, who do not believe that AUPs should be subject to Class 1 NICs in any case.

The weaknesses of this option

7.29 We believe that this option puts at risk benefit protection in at least some cases. This is because those entertainers who currently pay Class 1 NICs on their AUPs (for example some TV entertainers whose Class 1 NICs on AUPs are operated by the Broadcaster), which then count towards their qualifying criteria for contributory benefit, will no longer have these Class 1 NICs credits. For some entertainers it may be that they are unable to reach their qualification criterion for contributions-based JSA without these credits.

7.30 This option also places a greater administrative burden on those entertainers, who currently complete only the short-form annual Self Assessment return. Under this sub-option they will need to complete the long-form version in order to accurately record those earnings from IPPs on which Class 1 NICs have been paid and those earnings from AUPs on which a Class 4 NICs liability will need to be calculated.

7.31 A further weakness of this option is the lower earnings thresholds that apply to Class 1 and Class 4 NICs. Currently, the strict application of the Regulations means that almost all entertainers' earnings are subject to Class 1 NICs which are credited to the individuals' NICs records. By placing part of an entertainer's earnings, derived from the same engagement, in one NICs regime and the rest in another, an entertainer is effectively subject to separate thresholds. It is possible that by splitting income in this manner the National Insurance payable to the National Insurance Fund would be reduced.

7.32 Whilst the key purpose of the current NICs treatment of entertainers is benefit protection as opposed to revenue generation, a solution which reduces the amount of National Insurance payable, will adversely affect the National Insurance Fund.

7.33 Neither Option 1 nor Option 2 provides transparent legislation. They do not address either the issue of those entertainers whose earnings have been drawn into engaging the Regulations as discussed in Chapter 3. Nor do they address the matters of when the Regulations are engaged; or the sheer impracticality of applying Class 1 to multiple income streams from the same engagement.

Question 2: Do you agree that self-employed entertainers should be removed from the Class 1 NICs regime? Please give reasons for your answer.

8. Moving entertainers' earnings into Class 2 and 4 NICs

8.1 There are two possible options in order to move the NICs treatment of entertainers' earnings into the Class 2 and 4 self-employed NICs regime:

- Option 3: Repealing the Regulations in respect of entertainers, **and** amending Social Security legislation to introduce a new higher rate special Class 2 NICs for entertainers only to be paid in addition to Class 4 NICs; or
- Option 4: Repealing the Regulations in respect of entertainers in order that entertainers pay Class 2 and Class 4 NICs like other self-employed individuals. This is HMRC's preferred option as explained in Chapter 9 of this document.

Option 3 – Repealing the current Regulations and introducing a new higher rate special Class 2 NICs for entertainers only

8.2 This option would allow entertainers to be treated as self-employed for both tax and NICs but to have access to contributions-based JSA via the payment of a higher rate of Class 2 NICs rather than the standard Class 2 rate.

The benefits of this option

8.3 There are three immediate benefits from this option. The first is that the tax and NICs positions for entertainers would be the same and would reflect the characteristics of their self-employment as established by case law

8.4 The second benefit of this option is the alleviation of a significant practical and financial burden on the UK entertainment industry. Repealing the Regulations would remove: (1) the need for businesses within the entertainment industry needing to decide whether the Regulations apply in a particular set of circumstances and if so on whom the obligation to account for Class 1 NICs falls; (2) the need for producers (and their agents in some cases) to operate NICs only payrolls for self-employed individuals; and (3) the financial cost of the employers' Class 1 NICs. This cost saving, engagers have indicated, could then be used to help fund new UK productions and engage additional performers to bolster cast numbers on existing productions

8.5 This option would alleviate almost all of the financial and administrative burdens of the entertainment industry of operating Class 1 NICs. The higher rate of Class 2 would also mitigate partially or substantially the loss of Class 1 NICs to the National Insurance Fund.

8.6 In addition, paying a higher Class 2 NICs rate would allow entertainers' access to contributory JSA. This will avoid the need for them to claim the forthcoming Universal Credit (UC) as discussed in paragraph 8.31 onwards.

8.7 We believe that for most entertainers, and particularly those in the medium to lower end pay range, paying a Special Class 2 NIC (together with standard Class 4 NICs on their self-employed income at the end of the financial year) will still leave

them paying less than the current 12% employees' Class 1 NICs deducted at source by their engager on their self-employed earnings.

The weaknesses of this option

8.8 Although detailed costings would need to be undertaken in order to ascertain precisely the amount entertainers would need to pay, previous analysis of this option has suggested that the special Class 2 NICs rate will need to be substantially higher than the standard weekly Class 2 NICs rate. Under this sub-option self-employed entertainers could therefore expect to pay considerably more in Class 2 NICs than at present. We would also anticipate a (un-quantified) reduction in receipts to the National Insurance Fund.

8.9 By introducing a new type of Class 2 NICs for a relatively small group of individuals this option also runs contrary to the drive to simplify tax and NICs wherever possible.

8.10 Where special types of Class 2 NICs have previously been introduced for such groups as share fishermen and voluntary development workers, there has been a clear policy rationale for doing so which recognises the unique characteristics of their professions. In the case of share fisherman, this is the ongoing danger to the worker's life of undertaking this profession, and in the case of volunteer development workers it is the value and benefit of their unpaid work to the under-developed nations in which they are located.

8.11 We do not believe that there is a similar clear policy rationale for extending a unique Class 2 NICs treatment to entertainers.

8.12 To provide for a separate Class 2 NICs treatment for the exclusive use and benefit of entertainers, without the foundation of a strong policy rationale (such as exists in the case of share fishermen and volunteer development workers) could lead to claims that HMRC is giving preferential treatment to workers in certain self-employed professions, whilst excluding workers in other self-employed professions who arguably may have an equal claim to a separate Class 2 NICs treatment.

8.13 In common with Options 1 and 2 discussed in Chapter 7 of this document, this option also fails to address the issue of those entertainers whose earnings have been drawn into engaging the Regulations by the Upper Tribunal decision in the ITV Service case.

8.14 Applying a higher rate of Class 2 NICs would be seen as unfair, particularly to those entertainers who did not believe Class 1 NICs applied to their payments until very recently.

8.15 Whilst legislatively possible, to bring this option into effect would require changes to the primary social security legislation for which HMRC is responsible. Moreover, the Department for Work and Pensions (DWP) has confirmed it would require amendment to the Jobseekers Act 1995 for which it has responsibility. Consequential amendments would also be required to secondary legislation by both departments to accommodate these amendments to primary legislation.

8.16 In practical terms there would be a delay before this option could take effect whilst a suitable legislative vehicle for making these changes is identified and passed through all the various Parliamentary stages required to make primary legislation.

Option 4 - Repealing the Regulations in respect of entertainers

8.17 This option would return entertainers to the standard Class 2 and 4 NICs regimes as self-employed earners. It would remove the dual status afforded to entertainers since 1998.

8.18 Were the Regulations to be repealed, entertainers would, from the point of the repeal, be treated in the same way for tax and NICs as almost every other self-employed UK taxpayer.

8.19 The only legislative change this option would require would be the repeal of the Regulations in respect of entertainers. The legislation governing the operation of tax and NICs for the self-employed are already in place and would apply to entertainers in the same way as any other self-employed individual.

The benefits of this sub-option

8.20 In common with Option 3, this option would alleviate almost all of the financial and administrative burdens of the entertainment industry of operating Class 1 NICs as well as aligning the tax and NICs position for entertainers going forwards, reflecting the characteristics of their self-employment as established by case law.

8.21 This option also shares the same triple benefits for businesses within the industry, as explained in paragraph 8.4, of not having to decide if the Regulations apply to their entertainers, or having to operate NICs only payrolls where they do; or of having to find the cost of 13.8% Class 1 employers' NICs, the saving of which can be used to fund further productions, or additional entertainers to increase cast numbers on existing productions.

8.22 Practical and financial burdens would also be reduced for entertainers and engagers. Under the current Regulations and using the 2013/14 National Insurance rates, an entertainer with deemed employment earnings of for example, £300 for one week's work can expect to pay £18.12 in employees' Class 1 NICs with the producer of the entertainment engaging them paying another £20.98 in employers' Class 1 NICs, thus:

Liability under Class 1 NICs	Amount (£ per week)
Entertainer's earnings	£300
2013/14 Primary Class 1 Threshold	£149
Amount on which Class 1 NICs due	£151
Entertainer's Class 1 liability @ 12%	£18.12
Producer's Class 1 liability @ 13.8%	£20.84

Were the Regulations to be repealed, then in the same scenario the entertainer would pay the standard Class 2 NICs rate plus Class 4 NICs of 9% on taxable profits in excess of £7755 (and less than £41,450) thus:

Liability under Class 2 and 4 NICs	Amount (£ per week)
Entertainer's taxable profits	£300
Amount on which Class 4 NICs due: (52 weeks x £300) – (Class 4 lower profits limit £7755) / 52 weeks	£150.87
Entertainer's Class 2 liability	£2.70
Entertainers Class 4 liability @ 9%	£13.58
Producer's NICs liability	Nil

8.23 In this theoretical example the entertainer would pay £1.84 less per week under Class 2 and 4 NICs than under Class 1 and their engager would pay nothing rather than £20.84 under Class 1. If this earnings pattern continued for 52 weeks then the annual saving would be £95.68 and the entertainer's Income tax and National Insurance positions would be aligned. Additionally under Class 2 and 4, their engager would have no liability to account for or pay NICs.

8.24 Even allowing for the cost of paying standard Class 2 and Class 4 NICs on their total annual self-employed income, we believe that in total entertainers will pay less in NICs under this option and their engagers will pay nothing at all.

8.25 For producers, this means the knowledge that that they are compliant with tax and NICs legislation in respect of the entertainers they engage. For entertainers it means the certainty of being self-employed for both tax and NICs, and for those on a low income and with modest savings, continued eligibility for at least the same level of support in means tested benefits as from contributions-based JSA.

8.26 Under this option, entertainers who are out of work and do not have sufficient Class 1 NICs credited in the previous two tax years will be able to claim Universal Credit. Universal Credit will be a payment which includes support for both an individual and their household, providing support for dependents and housing costs. Contributions-based JSA by contrast is paid only to an individual. Therefore most entertainers would be likely to need to claim Universal Credit, even if they were also entitled to contributions-based JSA, and would gain no overall advantage from their JSA entitlement. The entertainers most likely to suffer a financial loss as a consequence of losing their contributions-based JSA entitlement would be those in more secure financial situations, such as those with high savings or working partners/spouses. This is because Universal Credit is a means-tested benefit.

8.27 In terms of Regulatory burden, this option alleviates the three main practical issues with the current applications of the Regulations (as detailed in Chapter 3) and almost all of the current concerns about them that have been raised by both entertainers and engagers (as detailed in Chapter 4).

The weaknesses of this option

8.28 The main weakness of this option is the loss of Class 1 NICs to the National Insurance Fund. Whilst almost all entertainers' earnings strictly engage the Regulations and are subject to Class 1 NICs, this liability is not being wholly realised for the reasons set out in Chapter 3. The reality is that in many cases Class 1 NICs cannot be operated on a practical level by the engager. This is because the complex

nature of modern entertainment contracts and the highly commercial relationships that support the production of UK entertainment make the identification of the correct liable secondary contributor impossible. So whilst technically due by virtue of the wording of the Regulations, it is increasingly difficult to operate or recover these NICs.

8.29 Based on Self-Assessment (SA) data from 2010-11, there are circa 80,000 self-employed entertainers. We estimate that if all of the income of this group that is within the ambit of the Regulations was subject to both Class 1 employers' and employees' NIC rates (as it should be under the Regulations) and all of these NICs were recovered, the total NIC receipts from eligible taxable profits would be £83 million although this could fall to around £75 million as we think many additional use payments which should be subject to Class 1 NICs currently do not have this operated (for the reasons discussed in Chapter 3).

8.30 If all of the income above was subject to Class 2 and 4 NIC rates we estimate the total NIC receipts from this income would be £25m. This is a much lower amount because the Class 4 rate is lower than the employees' Class 1 rate and there is no employers' NIC yield (as in Class 1) from self-employment.

8.31 In theory therefore, the maximum cost of this sub-option would be around £83 million less £25 million i.e. £58 million per year. On the basis of the Class 1 NICs rates not being currently correctly applied in all cases it is more reflective to compare the £25 million receipts estimate under this option to the £75m estimate of current receipts (rather than the theoretical £83m figure). This reduces the cost of this sub-option to the National Insurance Fund to around £50 million.

8.32 The full analysis and calculations relating to the above impacts of Option 4 are detailed in Chapter 10 of this document.

8.33 For entertainers, this option will mean that they are self-employed for both tax and NICs. In common with any claimant to Universal Credit who receives self-employed earnings, they will be required to report these earnings to the DWP on a monthly basis in order for the DWP to calculate the level of their Universal Credit award.

8.34 For the purposes of Universal Credit the DWP have to determine not only if a claimant has self-employed earnings but also if their self-employment is 'gainful.' A determination of gainful self-employment allows the DWP to assess whether claimants are entitled to a start-up period or not, whether the Minimum Income Floor applies to them or not, or whether they will be required to search for other work.

8.35 The Minimum Income Floor is an assumed level of earnings which is used to calculate a gainfully self-employed claimant's award when they report below an earnings threshold. In most circumstances the level will be 35 hours per week multiplied by National Minimum Wage. If Universal Credit claimants are deemed to be gainfully self-employed, they will be exempt from work search and work availability requirements.

8.36 Entertainers liable for Class 2 NICs under this option would provide a strong indicator in favour of the DWP determining that an entertainer is gainfully self-employed. As a result, more entertainers than otherwise would have been the case

may have a Minimum Income Floor applied to their award. For a number of claimants, this may result in a reduction in the monthly level of their Universal Credit award.

8.37 The DWP is not bound by HMRC's determination of an individual's employment status when determining whether or not a claimant is in 'gainful' self-employment. A range of factors are looked at by the DWP when determining gainful self-employment but how we view a claimant's employment status is an important factor for the DWP when considering its determination.

Question 3: Do you agree that self-employed entertainers should be placed in the Class 2 and 4 NICs regime?

Question 4: If you answered "Yes" to Question 3, which of the two possible options discussed in this chapter do you believe should be adopted?

9. HMRC's Preferred Option

9.1 Having engaged extensively and listened to our stakeholders from across the UK entertainment industry, and having sought advice from colleagues in other government departments, **our preferred option is Option 4** – Repealing the Regulations in respect of entertainers.

The policy rationale

9.2 In 1998 when entertainers were first introduced into the Regulations, having access to contributory JSA, which was payable even to those with substantial savings or a working partner, was seen as a key reason that entertainers should be able to pay Class 1 NICs despite being for all other purposes, self-employed.

9.3 Contributions-based JSA is payable only to individuals and does not reflect any additional needs a household may have. For example, an entertainer wishing to claim for a partner would need to claim income based JSA, thereby undermining the significance of contributions-based JSA.

9.4 Most entertainers will need to claim Universal Credit in addition to JSA, in order to get support for their family and housing costs, and would be unlikely to gain any financial advantage from entitlement to contributions-based JSA. Unlike contributions-based JSA Universal Credit is means tested with tighter controls over eligibility. For those entertainers with high amounts of savings or partners who are working this may mean they receive less in Universal Credit than they may otherwise have received.

9.5 For producers and those buying broadcast rights to UK made entertainment, Option 4 removes a significant and potentially damaging regulatory burden. It will allow the economic growth of a highly successful UK entertainment industry to continue free from the financial uncertainty of having an open-ended potential NICs liability of unknown value.

9.6 It will articulate within existing self-employed tax and NICs legislation. This will provide certainty for all parties in the industry going forwards and a simpler process by which entertainers can be engaged and remunerated.

9.7 For those entertainers most in need of support, we believe this option provides access to either contributions-based JSA (based on sufficient Class 1 NICs paid from other employment in the previous two tax years), or for those on a low income and with modest savings, continued eligibility to at least the same level of support in means tested benefits as from contributions-based JSA.

9.8 There will be an estimated loss from this option of around £50 million to the National Insurance Fund as explained in paragraphs 8.27 to 8.29. However, this must be balanced against the wider commercial detriment to the UK entertainment industry which is estimated to bring in around £50 billion per year for the UK economy.

9.9 Taking all these factors into account our view is that there is a clear case in favour of Option 4 which provides a balanced outcome for all parties whilst at the same time resolving the issues discussed in this consultation.

9.10 Whilst all the sub-options discussed in this document remain open and available to us, for the reasons outlined in chapters 6, 7, 8, and 9 of this document; taking into consideration the industry evidence we have received; and the multiple views we have gathered from stakeholders across the industry, we think that Option 4 has clearly been identified as a leading option. We would welcome your views on this.

Question 5: Having considered Chapter 9, do you agree that Option 4 should be implemented as the future NICs treatment of entertainers?

Question 6: Do you have any other comments you would like to make about the information contained in this consultation document, or information which you believe is relevant to this consultation?

10. Taxes Impact Assessment

Summary of Impacts

This consultation sets out the Government/ HMRC's current assessment of the impacts of the proposed changes to the Regulations. We will use the information gathered as part of the consultation in order to update this assessment and an updated version will be published alongside the next stage of consultation

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	+/-	+/-	-£50 million	-£50 million	-£50 million
<p>This Exchequer impact shown is for HMRC's preferred Option 4 only - Repealing the Regulations in respect of entertainers.</p> <p>Initial estimates are subject to change (liabilities basis). Costings have not yet been scrutinised by the Office for Budget Responsibility.</p> <p>Exchequer impacts must be considered in the context of the combined industry data which estimates entertainment production to be worth circa £50 billion per annum to the Economy (see next section below).</p>					
Economic impact	<p>2010 research by Oxford Economics suggests the UK film sector alone generates £13 for every £1 spent on film production.</p> <p>Representations from industry stakeholders suggest reform could have a positive impact on UK Film, TV, Video Communication and Music Production companies due to the overall savings of not operating and paying Class 1 NICs.</p> <p>The financial viability of those parts of the industry which operate on extremely tight budgets will be improved, so enabling them to continue to engage entertainers. The certainty, and reduction in regulatory burden and cost, will help the UK to be better able to retain its place as a world leader in certain aspects of entertainment production.</p> <p>The removal of Class 1 NICs from these engagements may free the financial resources of UK producers allowing them to make more productions and hence to engage more entertainers and technicians; boosting both the economy and the number of UK jobs created by the industry at the same time.</p>				
Impact on individuals and households	<p>Based on Self-Assessment (SA) data from 2010-11, there are approximately 80,000 self-employed entertainers in the UK declaring total taxable profits of around £900 million.</p> <p>We estimate that around £670 million of this income came from entertainment and would be within scope of the Regulations. If all of this income was subject to Class 2 and 4 NIC rates rather than</p>				

	<p>the higher Class 1 rates, then the cost to the National Insurance Fund is estimated to be around £50 million.</p> <p>DWP have advised that some households or individuals previously entitled to contributions-based JSA could see a substantial reduction in entitlement to benefits as they may have little or no entitlement to Universal Credit (UC) due to means testing, capital rules etc. Those likely to lose out will be entertainers with high savings or working partners. These groups are unlikely to satisfy the means testing for UC.</p> <p>DWP do not expect this impact to be significant at an overall level however.</p>
Equalities impacts	<p>The movement from Class 1 NICs regime to Class 2 and 4 NICs Regimes may impact upon pregnant female entertainers. These individuals are currently entitled to Statutory Maternity Pay operated by their engager on the basis of their Class 1 NICs paid but under Option 4 they will only be entitled to Statutory Maternity Allowance which is significantly less.</p> <p>It is not possible to accurately measure this impact without knowing how many entertainers are currently entitled to Statutory Maternity Pay from their engagers and how many are correctly receiving this. Stakeholder evidence suggests most entertainers consider themselves as self-employed and hence those entertainers concerned would seek Statutory Maternity Allowance via DWP based on their Class 2 contributions if seeking to claim any maternity benefit at all.</p>
Impact on businesses and Civil Society Organisations	<p>HMRC believes that Option 4 will deliver a significant administrative gain for the UK entertainment production industry.</p> <p>Based on one example provided by Industry stakeholders the administrative cost of operating Class 1 NICs for one 2012 award winning UK film production alone was £680,000. These funds were obtained by cutting the jobs of 250 freelance performers and technicians. This figure is reflective of other commercially sensitive evidence provided to HMRC by other external stakeholders. If this data is extrapolated across UK Film Television, Music and Corporate Video production the total administrative gain can be estimated to be a saving for the industry of many millions of pounds and the number of jobs protected in the thousands.</p> <p>Producers (and potentially third party buyers inside the EEA) will not be required to operate payroll systems (or incur the related administrative costs of this) simply for the purposes of being able to operate Class 1 NICs if the Regulations apply to an entertainer they engage.</p>

Impact on HMRC or other public sector delivery organisations	There is no significant burden on HMRC other than repealing the Regulations. Changes to guidance will be necessary, but costs incurred are expected to be negligible.
Other impacts	None.

Question 7: Do you agree with our assessment of the Taxes impacts of Option 4? If not, please provide evidence for this.

11. Summary of Consultation Questions

Question 1: Do you agree that current NICs treatment of entertainers under the Social Security (Categorisation of Earners) Regulations 1978 needs to be changed?

Question 2: Do you agree that self-employed entertainers should be removed from the Class 1 NICs regime? Please give reasons for your answer.

Question 3: Do you agree that self-employed entertainers should be placed in the Class 2 and 4 NICs regime?

Question 4: If you answered “Yes” to Question 3, which of the two possible options discussed in this chapter do you believe should be adopted?

Question 5: Having considered Chapter 9, do you agree that Option 4 should be implemented as the future NICs treatment of entertainers?

Question 6: Do you have any other comments you would like to make about the information contained in this consultation document, or information which you believe is relevant to this consultation?

Question 7: Do you agree with our assessment of the Taxes impacts of Option 4? If not, please provide evidence for this.

12. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework.

There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at Chapter 11.

Responses should be sent by **6 August 2013** by e-mail to gillian.standen@hmrc.gsi.gov.uk or by post to:

Mrs Gill Standen
Personal Tax Product and Process
HM Revenue and Customs
Room 1E/10
100 Parliament Street
London
SW1A 2BQ

Telephone enquiries **0207 147 3640** (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles. [If you wish to explain your choice of consultation period, this is the place. Also, if you are holding additional meetings or using alternative means of engaging, please mention this here].

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Amy Burgess, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Classes of National Insurance & 2013/14 rates

National Insurance contribution classes and what they pay for

Benefit	Class 1 - paid by employees	Class 2 - paid by self-employed people	Class 3 - paid by people who want to top up their contributions
Basic State Pension	Yes	Yes	Yes
Additional State Pension	Yes	No	No
Contribution-based Jobseeker's Allowance	Yes	No (except for share fishermen and volunteer development workers employed abroad)	No
Contribution-based Employment and Support Allowance	Yes	Yes	No
Maternity Allowance	Yes	Yes	No
Bereavement benefits	Yes	Yes	Yes

Class 4 National Insurance contributions (paid by some self-employed people with taxable profits over £7755 per annum in 2013/14) do not count towards any state benefits.

Class 1A and Class 1B contributions (paid by employers only) do not count towards any state benefits.

National Insurance contributions - rates and allowances 2013-14	
£ per week	
Lower earnings limit, primary Class 1	£109
Upper earnings limit, primary Class 1	£797
Upper accrual point	£770
Primary threshold	£149
Secondary threshold	£148
Employees' primary Class 1 rate between primary threshold and upper earnings limit	12%
Employees' primary Class 1 rate above upper earnings limit	2%
Class 1A rate on employer provided benefits (1)	13.8%
Employees' contracted-out rebate (for contracted-out salary related schemes only)	1.4%
Employers' secondary Class 1 rate above secondary threshold	13.8%
Class 2 rate	£2.70
Class 2 small earnings exception	£5,725 per year
Class 4 lower profits limit	£7,755 per year
Class 4 upper profits limit	£41,450 per year
Class 4 rate between lower profits limit and upper profits limit	9%
Class 4 rate above upper profits limit	2%

Annex B: List of stakeholders consulted

In the past 12 months we have held informal discussions with individuals and organisations representing circa:

- **50,000 UK entertainers.**
- **23,000 UK Film & Television producers**
- **30,000 Musicians**
- **82 Orchestras and Musical Ensembles**
- **500 Training corporate/video producers**
- **1000 specialist Tax/Legal advisors to the entertainment industry**

We are grateful for and acknowledge the input and assistance of these representatives. Particularly, we would like to thank those representatives who have kindly shared their own commercial information in order to assist HMRC's understanding of the regulatory burdens placed on the UK entertainment industry by the current National Insurance Regulations.

Annex C: Relevant (current) Government Legislation

STATUTORY INSTRUMENTS

2003 No. 736

SOCIAL SECURITY

The Social Security (Categorisation of Earners) Amendment Regulations 2003

Made

14th March 2003

Laid before Parliament

14th March 2003

Coming into force

6th April 2003

The Treasury, in exercise of the powers conferred upon them by sections 2(2)(b) and (2A) and 7(2) and (3) of the Social Security Contributions and Benefits Act 1992⁽¹⁾, with the concurrence of the Secretary of State insofar as required, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security (Categorisation of Earners) Amendment Regulations 2003, and shall come into force on 6th April 2003.

Interpretation

2. In these Regulations “the principal Regulations” means the Social Security (Categorisation of Earners) Regulations 1978⁽²⁾, and a reference to a numbered Schedule is a reference to the Schedule to the principal Regulations bearing that number.

Amendment of Schedule 1

3. In paragraph 5A of Schedule 1 (entertainers treated as employed earners)⁽³⁾ for the entry in Column (B) substitute—

⁽¹⁾5A. Any person in employment described in paragraph 5A in column (A) whose remuneration in respect of that employment does not include any payment by way of salary.

For the purposes of this paragraph “salary” means payments—

(a)made for services rendered;

(b)paid under a contract for services;

(c)where there is more than one payment, payable at a specific period or interval; and

(d)computed by reference to the amount of time for which work has been performed.”.

Amendment of Schedule 3

4. In paragraph 10 of Schedule 3 (person treated as the secondary contributor in respect of the employment)(4) for the entry in Column (B) substitute—

“10. The producer of the entertainment in respect of which the payments of salary are made to the person mentioned in paragraph 5A of Column (B) of Schedule 1.”.

Jim Fitzpatrick

John Heppell

Two of the Lords Commissioners of Her Majesty's Treasury

14th March 2003

The Secretary of State hereby concurs

Malcolm Wicks

Parliamentary Under-Secretary of State,

Department for Work and Pensions

13th March 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Categorisation of Earners) Regulations 1978 (S.I. [1978/1689](#)) (“the principal Regulations”).

Regulation 1 provides for the citation and commencement of the Regulations and regulation 2 for interpretation.

Regulation 3 amends Schedule 1 to the principal Regulations by substituting a new paragraph 5A for that added to Schedule 1 by regulation 3 of S.I. [1998/1728](#). That regulation would originally have applied only until 31st January 1999, but the temporal limitation was removed by regulation 2 of S.I. [1999/3](#). As substituted, paragraph 5A provides that an entertainer's employment is to be treated as employed earner's employment unless his remuneration does not include any payment by way of salary (as defined).

Regulation 4 makes an amendment to Schedule 3 to the principal Regulations, the effect of which is to treat the producer of the entertainment, in respect of which the payment of salary is made, as the secondary contributor for the purposes of making secondary Class 1 contributions.

(1)

[1992 c. 4](#). Section 2 was amended, and subsection (2A) substituted, by paragraph 2 of Schedule 11 to the Welfare Reform and Pensions Act [1999 \(c. 2\)](#). Section 7 was amended, and subsection (3) inserted by paragraphs 6 to 8 of the Social Security Contributions (Transfer of Functions, etc.) Act [1999 \(c. 11\)](#).

(2)

S.I. [1978/1689](#). The relevant amending instrument is [1998/1728](#): see also S.I. [1999/3](#) which continued the operation of the amendment made by S.I. [1998/1728](#).

(3)

Paragraph 5A was added by regulation 3 of S.I. [1998/1728](#). It originally applied only until 31.1.1999 (see regulation 5 *ibid.*), but that limitation was removed by regulation 2 of S.I. [1999/3](#).

(4)

Paragraph 10 was added by regulation 4 of S.I. [1998/1728](#), subject to the limitation mentioned in the previous footnote. The limitation was removed as mentioned there.