

Transferring employers National Insurance to the employee: make a single transfer

Document format guidance for the transfer of employer's National Insurance to the employee

It's important to note:

1. **This is suggested wording** – this guidance is to help companies that need to write a similar legal document to transfer employer's National Insurance to an employee who has a share scheme. Using this exact wording will speed up the process of getting your document HMRC-approved.
2. **You need to add a declaration** – it should be signed by both the employee and the company and dated, and state that both parties agree to be bound by the terms in the legal agreement.

Joint Election for the transfer of Employer's National Insurance contributions to the employee

1. Between

The Company [**insert name of company**] ('the Secondary Contributor' who is the employer), whose Registered Office is at [**insert address and Company Registration number**], and

[**insert name of employee**], 'the Employee', whose National Insurance number is [example **AA 000000 A**].

2. Purpose and scope of election

(a) This election covers the

(Delete as appropriate)

- grant of employment related securities options
- the award of employment related restricted securities and/ or
- the award of employment related convertible securities

under [enter names of all Schemes/Plans/Individual awards or grants that may be used]

- Scheme
- Plan
- Individual awards or grants [Where no specific scheme or plan has been set-up such as the grant of EMI options]

(Delete as appropriate)

- on [DD/MM/YYYY] or
- between [DD/MM/YYYY] and [DD/MM/YYYY] or
- on or after [DD/MM/YYYY]

(b) This joint election is made in accordance with Paragraph 3B(1) of Schedule 1 of the Social Security Contributions and Benefits Act 1992 ('SSCBA 1992').

(c) The Company requests the Employee to enter into this joint election to transfer the liability for the secondary contributor's National Insurance contributions (NICs) that arise on any **relevant employment income** covered by this election from the secondary contributor to the Employee.

(d) The employer's National Insurance liability that shall transfer from the employer to the Employee under this joint election is

(Delete as appropriate)

- the whole of the secondary liability or
- [X %] of the secondary liability or
- the secondary liability on gains in excess of [£X]

Relevant employment income from securities and options specified in 2(a) on which employer's NICs becomes due is defined as:

- i. an amount that counts as employment income of the earner under section 426 of ITEPA 2003 (restricted securities: charge on certain post-acquisition events),
- ii. an amount that counts as employment income of the earner under section 438 of that Act (convertible securities: charge on certain post-acquisition events), or
- iii. any gain that is treated as remuneration derived from the earner's employment by virtue of section 4(4)(a) SSCBA 1992.

(e) This joint election will not apply to the extent that it relates to relevant employment income which is employment income of the earner by virtue of Chapter 3A of Part 7 of ITEPA 2003 (employment income: securities with artificially depressed market value).

(f) This election does not apply in relation to any liability, or any part of any liability, arising as a result of regulations being given retrospective effect by virtue of section 4B(2) of either the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

3. Arrangements for payment of secondary NICs

(a) In signing this joint-election the Employee authorises the Company, or other body (if applicable), to recover an amount sufficient to cover the liability for the employer's NICs transferred under this election in accordance with the arrangements summarised below [and further detailed in the attached scheme/plan/personal arrangement, [delete where necessary]].

- A deduction from salary or other payments due.
- The delivery in cleared funds from the Employee in sufficient time to enable the Company to make payment to HM Revenue & Customs (HMRC).
- The sale of sufficient shares acquired from the Employee's securities option following notification to the Company Secretary/Scheme Administrator (delete as necessary or add other party if applicable), the proceeds of which must be delivered to the Company in sufficient time for payment to be made to HMRC by the due date.
- A deduction from any cash payment, treated as Relevant Employment Income, given to the Employee.
- Where the proceeds of the gain are to be made through a third party, the Employee will authorise that party to withhold an amount from the payment or to sell shares sufficient to cover the secondary NICs transferred. Such amount will be paid in sufficient time to enable the Company to make payment to HMRC by the due date.

(b) The Company and the Employee will ensure that payment of the liability for the secondary NICs will be made to HMRC within 14 days following the end of the Income Tax month in which the relevant employment income arises – the due date.

The Employee understands that in making this election they will be personally liable for the secondary NICs covered by this election.

4. Duration of this election

(a) This joint election shall continue in force from the time it is made until whichever of the following first takes place:

- the Company gives notice to the Employee terminating the joint election
- it is cancelled jointly by the Company and the Employee
- it ceases to have effect in accordance with the terms of the joint election
- HMRC serves notice on the Company that the approval of the joint election has been withdrawn

(b) The terms of this joint-election will continue in full force regardless of whether the Employee ceases to be an employee of the Company.