

1997-16 Social Security (Open Long-Term Benefits Scheme)

Subsidiary Legislation made under ss.4(5), 6, 7, 8 and 39.

Social Security (Open Long-Term Benefits) (Contributions) Regulations 1997

LN.1997/116

Commencement **1.4.1997**

Amending enactments	Relevant current provisions	Commencement date
LN. 1997/163	r. 20	30.12.1997
1999/159	r. 10A	25.11.1999
2001/035	rr. 2-3, 3A-3C, 4, 6(2), 21-22	19.4.2001
2003/107	r. 12(2), (4)	25.9.2003
2005/020	r. 10A(1)	1.7.2004
2004/131	r. 20	3.1.2005
2007/069	r. 12	1.7.2006
Act. 2007-17	r. 3(4)	14.6.2007
2011-29	r. 14	1.7.2009
2013-27	r. 6(7)	28.11.2013

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Title and commencement.

1. These regulations may be cited as the Social Security (Open Long-Term Benefits) (Contributions) Regulations 1997 and shall be deemed to have come into effect on the 1st day of April, 1997.

**PART I
GENERAL**

Interpretation.

2. In these regulations, unless the context otherwise requires—

“arrears” shall have the meaning assigned to that expression by Part IV;

“Contributions Regulations” means the Employment Injuries (Contributions) Regulations 2001;

“contribution quarter” means a period of 13 or 14 contribution weeks as the case may be;

“due date”, in relation to any contribution under the Act, means the date on which that contribution was due to be paid;

“period of grace”, in relation to any contribution year, means the period beginning with the end of that year and ending on the 30th day of June next following, or such later date as the Director may in any particular case determine;

“voluntary contributor” has the meaning assigned to that expression by regulation 3 of the Social Security (Open Long-Term Benefits) (Voluntary Contributors) Regulations 1997.

**PART II
CONTRIBUTIONS**

Application of Employment Injuries (Contributions) Regulations.

3.(1) Except in so far as they are expressly varied by, or are inconsistent with, the provisions of the Act or of these regulations, regulation 2 to 8 of the Contributions Regulations shall apply in relation to contributions under the Act as they apply in relation to contributions under the Social Security (Employment Injuries Insurance) Act.

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(2) Where, in any one contribution week, a contribution is payable in respect of an employed person under the Act as well as under the Social Security (Employment Injuries Insurance) Act, a single payment shall be made in respect of both such contributions.

(3) Where, in any one contribution week, a contribution is to be paid by a voluntary contributor under the Act as well as a contribution under the Social Security (Employment Injuries Insurance) Act, the voluntary contributor shall retain his voluntary contributions schedules and submit it within 15 days following the expiration of each contribution quarter together with a remittance of the contributions as a voluntary contributor, and a second contribution schedule (which shall be delivered to the employer) shall be used for the payment of the contributions by the employer.

(4) The Director may, if he thinks fit, and subject to such terms and conditions as he may impose, approve any arrangements whereby contributions are paid at times, or in a manner, other than those prescribed in the Contributions Regulations, and any such arrangements may include provision for the payment to the Director of such fees as may be determined by the Director, with the concurrence of the Financial Secretary, to represent the additional expense in administration to the Government departments concerned, and may, as a condition of authorizing the payment of any contribution at a date later than that upon which the wages or other pecuniary remuneration for any part of the period in respect of which the contributions payable are paid, require the making of such deposit of money by way of security as the Director may approve.

(5) The provisions of the Contributions Regulations shall, subject to the provisions of any arrangements approved under paragraph (4) above, apply to any persons affected by the arrangements, and any contravention of any requirement of the arrangements shall be treated as a contravention of those regulations.

(6) An insured person who is entitled to pay contributions as a voluntary contributor shall-

- (a) obtain from the Director a voluntary contribution schedule in such form as the Director may direct for the contribution quarter which includes that week,
- (b) return his contribution schedule for that quarter, duly completed, to the Director or such other person as the Director may require within 15 days following the expiration of that quarter together with a remittance for the voluntary contributions payable by him in respect of any week in that quarter.

(6A) An insured person who is entitled to pay a contribution as a voluntary contributor in respect of any weeks in any quarter may remit the same to the Director or such other person

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as the Director may require at such intervals less than a contribution quarter as may be agreed by the Director.

(7) *Revoked.*

(8) Where in any contribution week a contribution is payable in respect of an employed person under the Act, and such person is also liable to pay a contribution as a self-employed person, only the former contribution shall be payable.

Contribution schedules as respects self-employed persons.

3A.(1) An insured person who is liable to pay a contribution as a self-employed person in respect of any week shall, immediately after such liability arises, register with the Director or such other person as he may require, and shall obtain from the Director a contribution schedule in such form as the Director may require for the contribution quarter which includes that week.

(2) Such schedule, whether produced manually or electronically, or whether contained on paper or such other medium as may be approved by the Director, shall be in such form as the director may specify for a self-employed person.

(3) A self-employed person, on obtaining the contribution schedule, shall become responsible for the custody thereof so long as the liability to pay contributions continues or until the contribution schedule is delivered to the Director or such other person as he may require, or retained by an inspector, in accordance with these regulations or any other regulations made under the Act.

(4) The person for the time being responsible for the custody of the contribution schedule in accordance with these regulations, or any person having in his possession or under his control any contribution schedule issued in respect of a self-employed person, shall produce it for inspection at any reasonable time when required so to do by an inspector, and if so required shall deliver up the contribution schedule to the inspector who may, if he thinks fit, retain it. The inspector shall acknowledge receipt in writing for any contribution schedule retained by him.

(5) Every self-employed person shall deliver to the Director or such other person as he may require the contribution schedule for that quarter so that the schedule, containing such information as the Director may require for determining the periods and the amount of the contribution payable by that person, is received within the fifteen days next following the expiration of each contribution quarter.

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(6) Each completed contribution schedule shall either be signed, or if not on paper, shall be accompanied by a document signed, by the self-employed person or by any other person duly authorised by him in that behalf, containing a declaration by the self-employed person or such other person that to the best of his belief the information contained in the contribution schedule is true.

Payment of contributions.

3B.(1) A self-employed person shall record on the appropriate contribution schedule for the contribution quarter in which contributions are due the class, number of contributions and total amount due in respect of any contribution week within seven days next following the end of every month.

(2) A self-employed person shall pay to the Director within fifteen days next following the expiration of that month the amount due for the contributions recorded in accordance with the foregoing provisions of these regulations as being payable.

Assessments by Director of contributions owing.

3C.(1) Where it appears to the Director that any employer or self-employed person liable to pay contributions under these regulations has not done so, or has done so at an amount less than that which ought reasonably to have been paid, the Director may assess such person at such amount or additional amount as according to his judgment ought to have been paid.

(2) The Director shall cause to be served personally on or sent by registered post to each employer or self-employed person to whom sub-regulation (1) applies, a notice stating the amount of contributions payable by him, the place at which such payment should be made, and informing him of his rights under this regulation

(3) If any employer or self-employed person disputes an assessment made under sub-regulation (1) he may appeal against that assessment by notice in writing addressed to the Director within 14 days from the date of the service of the notice of assessment.

(4) If the employer or self-employed person disputing the assessment was prevented from making the appeal within the specified period owing to absence from Gibraltar, sickness or other reasonable cause, he may apply to the Director for the appeal to be brought out of time: and where the Director is satisfied that the applicant was so prevented and that the application was made thereafter without unreasonable delay the Director shall consent to the application.

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(5) Notice of any amended assessment as determined on an appeal under sub-regulation (3) shall be served by the Director on the appellant, either personally or by registered post; and any additional contributions shall be due and payable in full within one month after such service.

(6) Where no valid appeal has been lodged within the time limit set out in this sub-regulation (3) or where the amount of such contributions has been determined or confirmed on appeal, the assessment as made or agreed to or determined or confirmed on appeal as the case may be, shall be final and conclusive for all purposes relating to the principal Act.

Application of the Employment Injuries (Contributions) Regulations.

4.(1) Subject to the provisions of paragraph (2) below, the provisions of regulation 9 to 12 of the Contributions Regulations shall apply in relation to contributions under the Act as they apply in relation to contributions under the Social Security (Employment Injuries Insurance) Act.

(2) There shall be substituted for the provisions of regulation 12 of the Contributions Regulations the provision that, in calculating the amount of any repayment to be made to an insured person or an employer, there shall be deducted the amount, if any, paid to that person (and to any other person on the basis of the erroneous belief that led to the refund) by way of benefit which would not have been paid had the contributions (in respect of which an application for their return is duly made) not been paid in the first instance.

Disposal of contributions improperly paid.

5. Where contributions are paid under the Act at the wrong rate, the Director may treat them as paid on account of the contributions properly payable or on account of contributions under the Social Security (Employment Injuries Insurance) Act, and where contributions are paid under that Act, which are not payable, he may, notwithstanding anything in that Act, treat them as paid on account of contributions under the Act.

Recovery of contributions.

6.(1) In any case where an employer or an insured person has been convicted of the offence against section 4(7) of the Act of failing to pay a contribution, he is, in addition to any penalty which may be imposed under the Act, liable and may be ordered by the court to pay to the Fund a sum equal to the amount which he failed to pay.

(2) In any case where—

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- (a) an employer or an insured person is convicted of an offence against section 39(1)(b) of the Act, or of an offence against section 10 of the Stamp Duties Act, or of an offence against regulations made under the Act; and
- (b) the evidence on which he was convicted shows that he, for the purpose of paying any contribution which he was liable or entitled to pay prior to the coming into force of the Social Security (Miscellaneous Provisions) Act 2001 (hereinafter “the amending Act”), has affixed to any insurance card any used insurance stamp within the meaning of section 39(1)(b) as it stood prior to the coming into force of the amending Act,

he is liable and may be ordered by the court to pay to the Fund a sum equal to the amount of the contribution in respect of which the stamp was affixed.

(3) On any such conviction as is mentioned in either paragraph (1) or (2) above, if notice of intention to do so has been served with the summons or warrant, evidence may be given—

- (a) of the failure on the part of the employer to pay on behalf or in respect of the same person other contributions under the Act during the two years preceding the date of the offence, or contributions under the Social Security (Employment Injuries Insurance) Act on that date or during those two years; and
- (b) in the case of such conviction as is mentioned in paragraph (1), of the failure on the part of the employer to pay any contributions referred to in sub-paragraph (a) above on behalf or in respect of any other person employed by him,

and on proof of such failure the employer shall be liable and may be ordered by the court to pay to the Fund or, as the case may require, the Employment Injuries Insurance Fund, a sum equal to the total of all contributions under the Act, or, as the case may be, the Social Security (Employment Injuries Insurance) Act, which he is so proved to have failed to pay.

(4) Where an employer or an insured person is charged with any such offence as is mentioned in paragraph (1) or (2) above, and an order is made under Part IX of the Criminal Procedure Act (which Part deals with the discharge and probation of offenders), the foregoing provisions of this regulation shall apply as if the making of the order were a conviction.

(5) Any sum ordered to be paid to the Fund or the Employment Injuries Insurance Fund under this regulation shall be recoverable as a penalty.

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(6) Any sum paid by an employer under the foregoing provisions of this regulation shall be treated as a payment in satisfaction of the unpaid contributions, and no part thereof shall be recoverable by the employer from the insured person.

(7) If the employer, being a body corporate, fails to pay to the Fund or the Employment Injuries Insurance Fund any sum which the employer has been ordered to pay under this regulation, that sum, or such part thereof as remains unpaid, shall be a debt due to the Fund or the Employment Injuries Insurance Fund, as the case may be, jointly and severally from any directors of the body corporate.

(8) Nothing in this regulation shall be construed as preventing the Director from recovering any sums due to the Fund or the Employment Injuries Insurance Fund by means of civil proceedings.

Late paid or unpaid contributions.

7.(1) Where a contribution under the Act payable by an employer on behalf of an insured person is paid after the due date or is not paid, and the delay or failure in making payment thereof is shown to the satisfaction of the Director not to have been with the consent or connivance of, or attributable to, any negligence on the part of the insured person, the contribution shall, for the purpose of any right to benefit, be treated as paid on the due date.

(2) In any other case, including the case of a contribution which an insured person is entitled, but not liable, to pay, a contribution under the Act paid after the due date shall be treated -

- (a) if paid before the expiry of the period of grace, as paid on the due date;
- (b) if paid after the expiry of the period of grace, as not paid.

Payments after death.

8. If a person dies, any contributions which immediately before his death he was entitled, but not liable, to pay if he so desired, may be paid notwithstanding his death, subject, however, to the same provisions with respect to the time for payment as were applicable to that person.

**PART III
CREDITS**

General.

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9. For the purpose of this Part of these regulations—

- (a) contributions paid by or credited to an insured person under the 1955 Act in respect of periods before the 1st day of January, 1994 will be treated as paid or credited (as the case may be) under the Act;
- (b) a person will be credited with contributions as if the Act and these regulations had come into effect on the 1st day of January, 1994, and as if the person concerned had become an insured person on the date on which he would have become an insured person in that event.

Unemployment.

10.(1) Subject to the provisions of these regulations, a contribution as an employed person shall be credited to an insured person for any week of unemployment if Condition I or Condition II of the Schedule has been satisfied.

(2) If Condition II is not satisfied, it shall be treated as satisfied if the insured person proves to the satisfaction of the Director that he has become unemployed following employment in an employed contributor's employment and that he will normally rely upon such employment for his livelihood.

(3) For the purposes of this regulation, a day shall not be treated as a day of unemployment if it is a day in respect of which the person concerned fails to prove, in such manner as the Director may require, that he is unemployed and capable of work and available for employment in an employed contributor's employment.

(4) A person who, in respect of any period of unemployment, has been entitled to credits under this regulation for twenty-six weeks, shall not thereafter be entitled to such credits (whether in the same or a subsequent period of unemployment) unless he has requalified by being employed in an employed contributor's employment for a period of, or periods totaling, thirteen weeks.

(5) In this regulation "period of employment" shall have the meaning assigned to that expression by section 8 of the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act.

Maternity.

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10A.(1) A Contribution as an employed person shall be credited to an insured woman for any week in which she is absent from work in exercise of her right to maternity leave under the Employment (Maternity and Health and Safety) Regulations 1996.

(2) Contributions under sub-regulation (1) shall be credited to an insured woman for a maximum period of 18 weeks.

Incapacity.

11.(1) Subject to the provisions of these regulations, a contribution as an employed person shall be credited to an insured person for any week of incapacity for work if Condition I or Condition II of the Schedule is satisfied.

(2) If Condition II is not satisfied, it shall be treated as satisfied if the insured person proves to the satisfaction of the Director that he became incapable of work following employment in an employed contributor's employment, and that he will normally rely on such employment for his livelihood.

(3) Subject to the provisions of these regulations a contribution as a self-employed person shall be credited to an insured person for any week of incapacity for work if Condition III or Condition IV of the Schedule is satisfied.

(4) If Condition IV is not satisfied, it shall be treated as satisfied if the insured person proves to the satisfaction of the Director that he became incapable of work following employment as a self-employed person, and that he will normally rely on such employment for his livelihood.

(5) For the purposes of this regulation, a day shall not be treated as a day of incapacity for work if it is a day in respect of which the person concerned fails to prove, in such manner as the Director may require, that he is incapable of work by reason of some specific disease or bodily or mental disablement.

(6) A person who, in respect of any period of incapacity, has been entitled to credits under this regulation for twenty-six weeks, shall not thereafter be entitled to such credits (whether in the same or a subsequent period of incapacity) unless he has requalified by being employed in an employed contributor's employment or in self-employed contributor's employment for a period of, or periods totaling, thirteen weeks.

(7) For the purposes of this regulation, any two days of incapacity, whether consecutive or not, within a period of six consecutive days (excluding Sundays) shall be treated as a period

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of incapacity, and any two such periods not separated by a period of more than thirteen weeks shall be treated as one period of incapacity.

- (8) Notwithstanding paragraph (6) above, where—
- (a) a person is entitled to credits under this regulation as a direct result of an industrial accident or occupational disease in respect of which he has been or is in receipt of any benefit under the Social Security (Employment Injuries Insurance) Act; and
 - (b) as a result of that industrial accident or occupational disease he continues, to the satisfaction of the Director, to be incapacitated for work,

that person shall continue to be entitled to such credits for so long as such incapacity for work continues.

- (9) Notwithstanding any other provision in this regulation, where—
- (a) an insured person satisfies Condition V or Condition VI of the Schedule; and
 - (b) as a result of physical or mental incapacity, the insured person is totally incapable of work; and
 - (c) the Director is satisfied that such total incapacity is permanent,

a contribution as an employed person or as a self-employed person, as the case requires, shall be credited to the insured person for any week of incapacity for work.

(10) Where an insured person claims credits under paragraph (8) or (9) above, the Director may require him to be examined by the Medical Board constituted by section 35 of the Social Security (Employment Injuries Insurance) Act in order to determine whether or not the insured person is incapacitated and whether or not such incapacity is the direct result of an industrial accident or occupational disease or is total or permanent, as the case may be.

(11) An insured person who is dissatisfied with the decision of the Medical Board in any examination made under paragraph (10) above may appeal against that decision to the Medical Appeals Tribunal constituted by section 35 of the Social Security (Employment Injuries Insurance) Act.

(12) The provisions of the Social Security (Employment Injuries Insurance) Act relating to determinations by the Medical Board, and to appeals to and determinations by the Medical

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Appeals Board, and to questions of law arising in consequence of any such determinations, shall apply to determinations under paragraphs (10) and (11) above in the same manner as they apply to determinations under that Act.

Credits for persons aged 60 or over or having attained statutory retirement age.

12.(1) This regulation applies to any person who—

- (a) has attained the age of 60 years but is under pensionable age; or
- (b) has retired at age 55 by operation of law;
- (c) is not entitled in respect of the same week to a credit under any other provision of these regulations.

(2) Subject to paragraph (3) below, a person to whom this regulation applies shall be credited with a contribution as an employed person for any week in respect of which he is not liable to pay contributions under the principle Act, if—

- (a) he has paid or been credited with not less than 104 contributions during the five contribution years immediately preceding the year he attains the age of 60 years; and
- (b) he has paid or been credited with sufficient number of contributions to qualify for an old age pension at the minimum rate under the Act.

(3) A person who is absent from Gibraltar for more than 182 days in a contribution year shall not be entitled to a credit for any of the weeks in that year.

(4) *Revoked.*

Unemployment and incapacity in same week.

13. For the purposes of these regulations, where in any week a person is for part of that week unemployed and for the remainder of that week incapable of work, he shall be treated as if unemployed for the whole of that week, and these regulations shall be construed accordingly.

Survivors.

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14. A contribution as an employed person or self-employed person shall be credited to a person for any week during the whole of which he or she is entitled to survivor's bereavement allowance, not being a week in respect of which a contribution is payable under the Act or a week in respect of which a contribution is credited to him or her in accordance with any other provisions of these regulations.

Full-time education, unpaid apprenticeship and training.

15.(1) In these regulations, "education" means full-time education, "apprenticeship" means full-time unpaid apprenticeship, and "training" means full-time training at a course approved by the Director.

(2) Subject to the provisions of these regulations, a contribution as an employed person or self-employed person shall be credited to an insured person for any week during the whole of which he is undergoing education, apprenticeship or training.

(3) In the case of a person who has attained the age of eighteen years, it shall be a condition of his entitlement to a credit for any week of training that, immediately before the commencement of the training, there must have been in the opinion of the Director, reasonable grounds for believing that unless he underwent training he would become, or remain, unemployed.

(4) Any payment which an employed person who is undergoing education or training receives from his employer during such period of education or training shall (notwithstanding the foregoing provisions of these regulations) be treated as remuneration paid in respect of such period, and no contributions shall be credited to such a person in respect of such a period.

Pre-entry credits.

16.(1) Subject to paragraph (2) below, contributions as an employed person or self-employed person shall be credited to a person for the period between the beginning of the contribution year last preceding that in which he became an insured person and his entry into insurance under the Act.

(2) Paragraph (1) above does not apply to any person who became insured under the 1955 Act before the 1st day of January, 1994.

Contributions and credits to be taken into account.

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17. For the purposes of the application of the relevant contribution conditions relating to any one benefit, and notwithstanding anything contained in these regulations, not more than one contribution (whether paid or credited) shall be taken into account for any week, and where, by virtue of the Act or any regulations made thereunder, a person has paid or is liable to pay a contribution for any week, and a contribution or contributions has or have been credited to him for that week, the contribution or contributions so credited shall not be taken into account.

PART IV
ARREARS

Right to pay arrears.

18. Where the total contributions paid by or credited to an insured person in any contribution year falls short of the maximum possible number, then, subject to the provisions of these regulations, he shall be entitled to pay such contributions (referred to in these regulations as “arrears”) as will bring the total up to the maximum possible number.

Arrears notices.

19.(1) Subject to paragraphs (2) and (3) below, as soon as may be after the end of any contribution year, the Director shall issue a notification of arrears to any insured person in respect of whom the contributions for that year (whether paid or credited) total less than fifty.

(2) Paragraph (1) above shall not apply in relation to the contribution year in which the appointed day occurs.

(3) If no contributions are paid or credited to an insured person in any two successive contribution years, the Director shall not be obliged to issue a notification of arrears in respect of the second of such years.

Rate of arrears.

20. The weekly rate at which arrears are payable shall be as follows—

- (a) by employed persons—
 - (i) in respect of any period from 5 January, 1998 up to and including 2 January, 2005; £12,00; and
 - (ii) in respect of any period from and after 3 January, 2005; £13.00.

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(b) by self-employed persons—

- (i) in respect of any period from 5 January, 1998 up to and including 2 January, 2005; £7.86; and
- (ii) in respect of any period from and after 3 January, 2005; £8.52.

Method of, and time for, payment of arrears.

21. An insured person who is entitled to pay arrears shall pay the amount due in relation to any contribution year, by such means as the Director may think fit, before the period of grace appropriate to that year.

22. *Omitted.*

Arrears not to be taken into account for certain purposes.

23. Notwithstanding anything in the Act or these regulations, contributions paid as arrears shall not be taken into account for the purposes of the following provisions of Schedule 3 to the Act, that is to say—

- (a) sub-paragraph (1)(a) of paragraph 1;
- (b) sub-paragraph (1)(a) of paragraph 2; and
- (c) sub-paragraph (1)(a) of paragraph 3.

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SCHEDULE

Regulations 10 and 11.

CONDITIONS ATTACHING TO THE CREDIT OF CONTRIBUTIONS IN RESPECT OF UNEMPLOYMENT OR INCAPACITY

CONDITION I.

That not less than twenty-six contributions as an employed person have been paid by or credited to the insured person in respect of the contribution year immediately preceding the contribution year which includes the relevant week.

CONDITION II.

That not less than ten contributions as an employed person have been paid by or credited to the insured person in respect of the thirteen weeks immediately preceding the relevant week.

In this Schedule, the expression “relevant week” means the week in respect of which a question arises under these regulations in relation to the crediting of a contribution.

CONDITION III.

That not less than twenty-six contributions whether as an employed person or self-employed person, have been paid by or credited to the insured person in respect of the contribution year immediately preceding the benefit year which includes the relevant week.

CONDITION IV.

That not less than ten contributions, whether as an employed person or a self-employed person, have been paid by or credited to the insured person in respect of the thirteen weeks immediately preceding the relevant week.

CONDITION V.

That not less than twenty-six contributions whether as an employed person, a self-employed person or a voluntary contributor, have been paid by or credited to the insured person in respect of the contribution year immediately preceding the benefit year which includes the relevant week.

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CONDITION VI.

That not less than ten contributions, whether as an employed person, a self-employed person or a voluntary contributor, have been paid by or credited to the insured person in respect of the thirteen weeks immediately preceding the relevant week.